



PART C – Decision under Appeal

The Decision under Appeal is the Ministry Reconsideration Decision of August 18, 2014 in which the ministry determined the appellant was ineligible for the qualification of Persons With Persistent Multiple Barriers (PPMB) because she did not meet the requirements set out in Section 2 of the Employment and Assistance Regulation (EAR). The ministry found that because the appellant has been in receipt of income assistance for at least twelve (12) of the past fifteen (15) months prior to her application she met the requirements under Section 2 (2). The ministry found that as the appellant scored twelve (12) on the employability screen, her application did not meet the requirements to be assessed under Section 2 (3). The appellant's application was therefore considered under Section 2 (2) and (4) of the EAR. The ministry was satisfied that the appellant's medical condition has lasted at least one (1) year however the ministry was not satisfied that her condition is expected to continue for two (2) years or more. In addition, in the opinion of the ministry, the appellant's medical condition and the resulting restrictions are not a barrier that precludes her from searching for, accepting or continuing in all types of employment; therefore, she did not meet the criteria under subsection (4) (b), so she does not qualify for PPMB designation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) – Section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Four medical imaging reports for the appellant dated May 23, 2014. One report states her spine has mild scoliosis, AP alignment is anatomic, there is a mild narrowing of the L1-L2, L5 S1 intervertebral disc spaces with associated endplate degenerative changes, and that her vertebral body and disc heights are otherwise maintained. The second report states there has been a prior amputation of the tip of the left phalanx, the joint spaces are preserved, and no erosive or proliferative changes are noted. The third report on her knee states a comparison was made to February 21, 2013 and there has been no significant interval change, there is a mild osteoarthritic change in the medial patellofemoral compartments of both knees, and that no acute space abnormality is identified. The fourth report on her cervical spine states her cervical spine is in normal alignment, there is a mild narrowing of the C5-C6 intervertebral disc with mild endplate degenerate changes, vertebral body and disc heights are otherwise maintained, there is evidence of fracture/dislocation and his impression is there is mild cervical spondylosis at C5-C6.
- A medical report for Persons with Persistent Multiple Barriers dated June 17, 2014 completed by the appellant's physician. He writes her primary medical condition is "OA back and knee," her condition has existed for many years, the expected duration of the condition is less than two years, and the condition is not episodic in nature.
- A medical report for Persons with Persistent Multiple Barriers dated June 12, 2014 completed by the appellant's physician. He writes her primary medical condition is "OA knee, hands, and back," and her secondary condition is asthma, there is no indication of onset, the expected duration of the condition is less than two years, and the condition is not episodic in nature. The report states the appellant's restrictions are problems walking, standing for too long, bending, lifting, use of hands and [illegible].
- A copy of the Employability screen completed in the name of the appellant giving her an overall score of 12.
- A letter written by the appellant's advocate dated July 31, 2014 to the appellant's physician. The letter asks the physician to agree or disagree with several statements about the appellant's condition. The physician agrees that the appellant has widespread osteoarthritis, is limited to lifting 15 lbs, no repetition, no repetitive bending/reaching/twisting, limited to sitting less than 30 minutes before body pain and stiffness, standing is limited to 20 minutes, and walking is limited to less than 1 block and taking 5 times longer than normal.
- A letter sent by the ministry to the physician dated August 5, 2014 asking that the physician clarify if the appellant's condition is expected to last more than two years.

With the notice of appeal, the appellant has included a copy of the letter that the ministry sent to the physician. In the letter the physician responds to the ministry's question if the appellant's condition will last more than two years by indicating that yes, it will. This letter was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the evidence contained in the document is in support of evidence that was before the ministry at the time of the reconsideration. The letter was accepted because it provides clarity of how long the appellant's condition is expected to last. At the hearing the ministry had no objections to the letter being accepted as evidence.

At the hearing the appellant told the panel that the August 15, 2014 letter provided by the physician answers the question of whether the appellant's condition would continue for two years. The

appellant points out that the letter clearly states that the physician agrees that the condition will continue for more than two years.

The appellant told the panel that although the medical imaging reports describe her condition as mild, the reports do not include details of pain or the restrictions she suffers from as a result. She continued that the physician did include details of her restrictions on the medical report for Persons with Persistent Multiple Barriers dated June 12, 2014 and the appellant's advocate provided additional details with the letter dated July 31, 2014 where the physician agreed with more details on her restrictions. The appellant added that the medical report for Persistent Multiple Barriers provides a very small area for the physician to detail an applicant's restrictions so the physician may be exceptionally brief in their description. She added that in response to the ministry's statement in the decision that an employment program may help her overcome the barriers noted in her Employability Screen, she told the panel that the barriers noted on her Employability Screen are being on employment assistance for more than 12 months, having a grade 10-12 education, having little or no work experience in the last 3 years. She argues these barriers are not going to be eliminated by an employment program.

In regards to her physical limitations the appellant told the panel she has difficulty getting out of bed, climbing stairs, sitting, and that her medication severely affects her ability to think clearly so she cannot drive or attend appointments when she is medicated. She uses a cane for walking but she expects she may need more support in the near future if her condition worsens. This information was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the testimony is in support of evidence that was before the ministry at the time of the reconsideration. The testimony was accepted because it provides the appellant's perspective and additional details of how her condition affects her physical ability and wellness.

Her son and daughter attended the hearing as witnesses. Her son told the panel he cooks the household meals, cleans the house, assists with the animals, and assists her with shopping. He added that he pours the milk from the large container into a smaller one so that his mom can lift it. The appellant's daughter told the panel that the appellant cannot lift her granddaughter, she drives her mom most places, carries her purse for her, and that her mom is in pain all of the time.

The ministry told the panel that the requirement of the appellant's condition being likely to last two more years has been satisfied by the physician's response to the ministry's letter.

At the hearing the ministry told the panel that the decision to deny the appellant PPMB designation was based solely on the information provided in the application. The ministry interpreted the information about the appellant's condition in her application as causing barriers to her ability to seek, accept and maintain employment. The ministry read the physician's comments in the application and found that there was insufficient detail as to a description of her limitations. The ministry told the panel that in many cases, if a person attends an employment related program they can overcome barriers that have restricted them in the past from employment. She added that some employers would make accommodations for employees with barriers to enable them to work.

The panel finds as fact the following:

- The appellant has been on income assistance for at least twelve (12) of the past fifteen (15) months.



- The appellant scored twelve (12) on the employability screen.
- The appellant's primary medical condition according to her physician is osteoarthritis in her back and knee.
- The appellant's secondary medical condition according to her physician is asthma.
- The appellant's physician has indicated the condition has existed for many years.
- The appellant's physician has indicated in his prognosis that the expected duration of the medical condition is more than two (2) years.
- The appellant's physician indicates the condition is not episodic in nature.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that the appellant does not qualify as a person with persistent multiple barriers on the basis that she does not meet all of the legislative requirements. The ministry found that the appellant met the requirements of Section 2 (2) that she had been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. The appellant's score on the employability screen is 12, therefore the ministry considered the application under section 2 (4) of the Employment and Assistance Regulation (EAR).

The EAR section 2 states;

Persons who have persistent multiple barriers to employment

- 2 (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out in
- (a) subsection (2), and
 - (b) subsection (3) or (4).
- (2) The person has been a recipient for at least 12 of the immediately preceding 15 calendar months of one or more of the following:
- (a) income assistance or hardship assistance under the Act;
 - (b) income assistance, hardship assistance or a youth allowance under a former Act;
 - (c) a disability allowance under the Disability Benefits Program Act;
 - (d) disability assistance or hardship assistance under the Employment and Assistance for Persons with Disabilities Act.
- (3) The following requirements apply
- (a) the minister
 - (i) has determined that the person scores at least 15 on the employability screen set out in Schedule E, and
 - (ii) based on the result of that employability screen, considers that the person has barriers that seriously impede the person's ability to search for, accept or continue in employment,
 - (b) the person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,
 - (i) in the opinion of the medical practitioner,
 - (A) has continued for at least one year and is likely to continue for at least 2 more years, or
 - (B) has occurred frequently in the past year and is likely to continue for at least 2 more years, and
 - (ii) in the opinion of the minister, is a barrier that seriously impedes the person's ability to search for, accept or continue in employment, and
 - (c) the person has taken all steps that the minister considers reasonable for the person to overcome the barriers referred to in paragraph (a).
- (4) The person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that,
- (a) in the opinion of the medical practitioner,
 - (i) has continued for at least one year and is likely to continue for at least 2 more years, or
 - (ii) has occurred frequently in the past year and is likely to continue for at least 2 more years, and
 - (b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

It is the ministry's position that the appellant's score on the Employability Screen is less than 15 and therefore her application must be considered under EAR section 2(4). The ministry argues that the appellant's medical condition does not cause a barrier that would preclude her from searching for, accepting or continuing in any employment.

The appellant argues that her medical condition creates a barrier to her searching for, accepting, or continuing in any employment.

Regarding the ministry's decision that the appellant's physician has not confirmed that her medical condition is likely to continue for at least 2 more years, the panel notes that at the time the reconsideration decision was written, the ministry had not received a response from the physician regarding the expected duration of the appellant's condition. Following the reconsideration decision being issued the physician responded that her condition is expected to last more than two years. At

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the hearing the ministry told the panel that it is satisfied by the response and concedes that the requirement of the EAR section 2(2)(4)(ii) has been satisfied. The panel finds that in light of the new evidence the ministry's finding in the reconsideration decision was not supported by the evidence and was unreasonable.

Regarding the ministry's determination that, in the opinion of the minister, the appellant's condition does not present a barrier that precludes her from searching for, accepting or continuing employment the panel considered the evidence in the appeal record and the testimony given at the hearing. The panel considered the details provided by the appellant's physician about the restrictions that her condition causes, including that she is limited to lifting 15 lbs, no repetition, no repetitive bending/reaching/twisting, limited to sitting less than 30 minutes before body pain and stiffness, standing is limited to 20 minutes, and walking is limited to less than 1 block and taking 5 times longer than normal. The oral evidence of the appellant and her witnesses is consistent with this description and did not identify any conflicts.

In weighing the evidence of the appellant, her condition, and the barriers it creates, the panel found that the details in the medical report for PPMB and the information in the advocate's letter sent to the physician was more useful than the medical imaging reports. This is because the panel found the medical imaging reports detailed only the physical characteristics of her condition visible by the physician but provided no interpretation of how these characteristics affected the appellant in terms of pain, strength, movement, restrictions, or ability. The panel finds that the medical report for PPMB dated June 12, 2014 in which the physician described her restriction as, "problems walking, standing for too long, bending, lifting, use of hands and [illegible]" was more useful in determining her level of restriction. The panel also relied on the letter dated July 31, 2014 where the physician agreed with the advocate that the appellant, "has widespread osteoarthritis, is limited to lifting 15 lbs, no repetition, no repetitive bending/reaching/twisting, limited to sitting less than 30 minutes before body pain and stiffness, standing is limited to 20 minutes, and walking is limited to less than 1 block and taking 5 times longer than normal" to provide a more clear picture of her barriers. The panel notes the ministry acknowledged the physician's description of her restrictions but did not include details in the reconsideration decision about why her restrictions did not satisfy the minister of the legislated requirements other than to write that her restrictions "may prevent her from accepting employment in positions requiring prolonged physical activity." The panel finds that this determination by the ministry was unreasonable. When the barriers enumerated on the appellant's employability screen are considered, the panel finds the ministry's argument that the appellant could find an employer who will accommodate her restrictions unreasonable as she has little education, little or no work experience, and has been on social assistance for more than 12 months of the past three years.

The panel finds that the reconsideration decision was not a reasonable application of the applicable legislation in the circumstances of the appellant and therefore the panel rescinds the decision.