

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of August 13th, 2014 wherein the ministry determined the appellant does not meet the criteria for qualification as a Person with Persistent Multiple Barriers (PPMB) to employment under section 2 Employment and Assistance Regulation (EAR).

In particular, section 2(3) EAR has not been met because, in the opinion of the minister, her medical condition, other than an addiction, is not a barrier that seriously impedes her ability to search for, accept or continue in employment and, in the opinion of her medical practitioner, the appellant’s medical condition, which has existed for more than one year is not expected to continue for more than two years which does not meet the criteria stated in section 2(3)(b) EAR.

PART D – Relevant Legislation

EAR, section 2(1), 2(3)

PART E – Summary of Facts

This is a written hearing.

The evidence before the ministry at the time of reconsideration:

- Medical Report – PPMB signed by a medical practitioner (MP) on May 28th, 2014 stating;
 - Appellant's Primary medical condition – Grief onset of February 2013;
 - Appellant's Secondary medical condition – right peroneal palsy, onset December 2012;
 - Expected duration of primary condition will be less than two years;
 - Restrictions specific to medical condition – instability with standing/walking, poor concentration, and mood instability;
- Request for reconsideration dated July 31st, 2014 stating that her education was less than Grade 10.

On May 29th, 2014 the appellant submitted her application for PPMB designation. The medical assessment completed by her MP identifies the appellant's primary medical condition as grief with an onset date of February 2013 and a secondary medical condition as right Peroneal palsy with an onset date of December 2012; that treatment is a brace foot (no change over last year) and counsellor (some help); the medical condition (primary) has existed for 1 ½ years and his prognosis is that the primary condition will last for less than 2 years. He states that her medical condition is not episodic in nature. The MP describes instability when standing/walking, poor concentration and mood instability as the nature of any restrictions specific to the appellant's medical condition(s) which may impact on her employability. Initially, the Employability Screen score completed on the appellant determined a score of 13, however, the appellant provided additional information with her Request for Reconsideration and the ministry changed her Employability score to 15. It was the ministry's opinion, based on the information provided by her medical practitioner, that the appellant's medical restrictions (grief and right peroneal palsy) were not barriers to preclude her from searching for, accepting or continuing in all types of employment including sedentary or part-time.

In the Notice of Appeal the appellant stated that she has been having problems with her leg for almost 2 years; the leg feels numb; that she has seen a specialist who advised her that her condition may not improve for years, if ever. The appellant states that she is slow in walking and walks with a stagger due to her condition. Her family recommends that she walk with a cane.

The panel finds the appellant's statement in the Notice of Appeal reiterates the information that was before the ministry at the time the reconsideration decision was made and therefore is admissible pursuant to section 22(4) EAA.

In the appellant's written submission, the appellant submitted a two page medical report with a one page attachment dated July 2nd, 2013 sent to her MP by a specialist who had examined her and conducted tests on her right leg. The specialist concluded that his examination and findings would be consistent with right-sided Peroneal nerve palsy likely due to compression of the nerve at the knee. The specialist states, "I have discussed this finding with the patient (appellant) and have warned her against crossing her legs at anytime, seated or lying down, since crossing the legs may provoke or perpetuate the foot drop". The specialist recommends that she contact the Orthotic clinic when she visits her community as a foot/ankle brace may provide some further improvement.

The panel finds the letter from the specialist provides more detailed medical evidence on the condition of her right leg that substantiates the condition of her right leg and is therefore in support of the information that was before the ministry at the time the reconsideration decision was made and therefore is admissible under section 22(4) EAA.

The ministry relied on its reconsideration decision and submitted no new information.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry denied the appellant a PPMB qualification because, in the opinion of the ministry, the appellant does not have a medical condition that is a barrier that seriously impedes her ability to search for, accept or continue in employment as set out in section 2(3)(b) EAR.

The legislation considered:

Section 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*, or
 - (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).

In accordance with the EAR legislation to be designated as a PPMB the appellant must meet the all the criteria set out in section 2 subsection 2 and subsection (3) or (4) EAR.

The reconsideration decision stated that the criteria in section 2(2) EAR has been met because the appellant has been on assistance for at least 12 of the immediately preceding 15 calendar months. However, the criteria in section 2(3) has not been met because, in the opinion of the medical practitioner, the appellant's medical condition is not likely to continue for at least two years, and, in the opinion of the minister, her condition is not a barrier that seriously impedes her ability to search for, accept or continue in employment.

In reference to Section 2(3):

To be considered under section 2(3) the legislative requirements are divided into 3 areas – paragraph (a), (b) and (c); paragraph (a) addressing the result of employability screen and the barriers related to that score; (b) that the person has a medical condition that has continued for at least one year and is likely to continue for at

least two more years; and (c) if the person has taken reasonable steps to overcome any barriers to their employment. In the reconsideration decision the ministry denied the appellant a PPMB designation under section 2(3) paragraph (a) and (b). The ministry did not reference section 2(3)(c) EAR in the reconsideration decision.

Section 2(3)(a) EAR – Employability score and barriers to employment based on her score –

The ministry's position is that the appellant has an Employability Screen score of 15 and that based on her employability score she is employable. The ministry argued that the MP did not provide any information that would preclude the appellant from searching for, accepting or continuing in all types of employment.

The appellant does not provide an argument that she has barriers that seriously impede her ability to search for, accept or maintain based on her Employability score.

The panel finds that the ministry reasonably determined that the appellant did not meet all the criteria set out in section 2(3)(a) EAR; that she does not have any barriers that would seriously impede her ability to search for, accept or continue in employment.

In reference to section 2(3)(b) EAR – expected duration of medical condition and barriers to searching for and maintaining employment

The ministry's position is that the MP stated that the appellant's medical condition has continued for a least one year and expects her medical condition(s) to last less than two years. In his letter dated July 2nd, 2013, the specialist does not state how long he expects the condition in her right-sided and only comments that there may be some improvement in the dorsiflexion of her right ankle in next 6-12 months. The specialist recommended that she contact the Orthotic clinic in her community and be fitted for a foot/ankle brace. The ministry argues that the instability when standing/walking or poor concentration and mood instability as described as restrictions by her MP are not barriers that will seriously impede her ability to search for, accept or continue employment.

The appellant's position is that she has had problems with her right leg for almost 2 years. She argues that the specialist's report dated July 12th, 2013 supports her application since he told her it could be years before her leg is normal, if ever. The appellant also argued the condition in her right leg still has not changed; that she is slow walking, walks with a stagger and her family suggests she walk with a cane.

Decision:

The panel, in its finding, is relying on the comments from the MP and the specialist in making its decision. The panel finds the MP did describe the restrictions that the appellant's medical condition(s) have on her but he does not provide any evidence on the results of his treatment (brace foot and counselling) or that those restrictions would seriously impede the appellant from searching for and maintaining employment. The specialist commented that the appellant should contact an Orthotic clinic in her community for a fitting of an ankle/foot orthosis and if she avoids crossing her legs there may be some improvement over the next 6–12 months. The panel finds the specialist's report does not support the appellant's position that her right leg presents a barrier that seriously impedes her ability to search for, accept or continue in employment. Furthermore, neither physician confirmed that the medical conditions are likely to continue for at least 2 more years.

The panel finds that the ministry's decision that the appellant does not meet all legislated requirements in section 2(3)(b) EAR was reasonable because her medical condition, that is not an addiction, is not likely to continue for at least 2 more years and because her medical condition(s) is not a barrier that seriously impedes her ability to search for, accept or continue employment.

The panel acknowledges that the appellant's medical conditions have some impact on her ability to function.

APPEAL #

that the ministry's decision finding the appellant ineligible for PPWD designation is a reasonable application of the legislation and is supported by the evidence. The panel therefore confirms the ministry's decision.