

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated September 25, 2014 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular Section 2(4)(b) was not met because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 9 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2.

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included:

- a Medical Report - Employability dated July 7, 2011 indicated that the appellant's primary medical condition is severe anxiety/depression with recent exacerbation in May 2011 - long term diagnosis requiring counseling and medication - prognosis is 1-3 months - medical condition is episodic in nature - she is unable to look for work at this time and is currently on medication and undergoing counseling;
- a Medical Report - Employability dated February 3, 2012 indicated that the appellant's primary medical condition is moderate longstanding depression/anxiety - prognosis is 1-3 months - medical condition is not episodic in nature - she is unable to work and currently is receiving treatment;
- a Respiratory Report dated October 14, 2013 indicated mild to moderate airway obstruction and may be compatible with the diagnosis of COPD but there is a reversible component and clinical correlation is required, smoking cessation was discussed;
- a Medical Report - PPMB dated February 20, 2014 and completed by the appellant's physician;
- a ministry PPMB Employment Checklist dated June 19, 2014 indicating a new request;
- an Employability Profile dated July 31, 2014;
- an Employability Screen;
- the appellant's Request For Reconsideration dated September 18, 2014 which included an advocate prepared letter, a letter from the appellant's physician dated September 5, 2014 and a letter from the appellant's employer dated September 4, 2014.

In the Medical Report dated February 20, 2014, the specialist who has known the appellant for 6 months or less and has examined previous medical records reported that the appellant's primary medical condition is chronic pain/depression. The secondary medical condition is indicated as mild COPD. Under treatment, it is noted Effexor (ongoing depressive symptoms and chronic pain), counseling and Ventolin/Flovent (ongoing COPD exacerbations). The stated condition has existed for more than 3 years with the duration expected at 2 years or more. Further noted is that the medical conditions are not episodic in nature and under restrictions specific to the reported medical conditions, the physician wrote - pain with sitting for long periods due to mechanical low back pain.

A copy of the Employability Screen indicated a total score of 9 with results that correspond with Expected to Work (score 0-14) which are described on the Employability Screen form as immediately employable/employable with short-term interventions.

A copy of the Employability Profile indicated that the appellant:

- o has a stable employment history,
- o has a severe lack of employment search and planning skills,
- o has a grade 10 education,
- o is fluent in written/spoken English,
- o has vehicle/public transportation available and accessible,
- o has no childcare limitations,
- o has a criminal record that may limit employment options,
- o has adequate shelter,

- o has a severe health condition,
- o has a persistent disability, severely impacts on employment options, and
- o has good communication and interpersonal skills.

Under comments it is indicated that the appellant would like to work more and achieve independence from income assistance but feels the combination of education and health barriers has impeded this goal. The appellant is noted to have a solid work history of part time employment over the last year but not before. The appellant describes herself as computer illiterate.

The letter from the appellant's physician reports that the appellant suffers from a number of medical conditions that significantly impair her ability to function on a day to day basis as follows:

1. Degenerative disc disease (arthritis) of the C spine (neck) which causes constant pain, particularly with lateral neck rotation, as well as flexion and extension of the neck – chronic condition that will likely get worse with time.
2. Chronic Right Shoulder Pain – under investigation for rotator cuff tear – could be tendonitis – physiotherapy recommended but unaffordable and hindering treatment.
3. COPD (chronic bronchitis/emphysema) – moderate, causes shortness of breath especially when she walks up stairs - takes inhaled medications; atrovent, flovent and ventolin - chronic condition that will likely get worse with time.
4. Depression – moderate to severe – limiting in terms of fatigue, limited ability to concentrate and significant disruption in sleep – takes effexor and trazodone which are only partly effective – has seen a psychiatrist and tried multiple alternate medications - chronic condition that may get worse with time.

The appellant's employer writes that the appellant has been employed since March 2012 and that she has noticeable limitations that relate to the number of hours she is able to work as well as the tasks she can do. When the appellant first started work she was doing 3 - 4 shifts per week on her own; over time she has needed to cut back the number of hours in a week due to her physical condition and pain. She currently works 10 hours per week which seems to work well for her condition. She isn't able to do the more physical duties such as vacuuming, sweeping and mopping and now shares shifts with other staff that do the heavier duties.

On appeal, the appellant writes that her condition prevents her from continuing in employment except when her condition can be accommodated. The appellant indicates that she can work some but her medical condition limits what she can do and for how long she can work on a given day. Because of this, the appellant states that she doesn't make much money during a month.

The advocate's letter dated September 18, 2014 and the advocate's submission dated October 25, 2014 go to argument.

The appellant testified that her change in hours was related to the effect of her medical conditions on her physical ability to perform the more physical tasks. She indicated that she would last 2 hours and by the time she would get to the heavier duties, she couldn't do them resulting in her employer supporting her reduced hours and the other shift staff performing the more physical tasks/heavier duties. The appellant stated that she had worked 4 hour shifts on Mondays, Wednesdays, Thursdays

and Fridays and 3 hour shifts on Saturdays, about 16 hours when she first started working and now she works only 10 hours a week.

### **Admissibility of New Information**

The appellant's testimony provided additional detail consistent with the employer's letter. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the Employment and Assistance Act.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation. In particular, the appellant has not met Section 2(4)(b), because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 9 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

### Relevant Legislation

#### 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, 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).

(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 1 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. (B.C. Reg. 263/2002)

In accordance with the legislation to qualify as a PPMB the appellant must meet the all the criteria set out in Section 2, subsection (2) and subsection (3) or (4). The criteria in Section 2, subsection 2, and subsection (4)(a), have been met.

### Ministry's Position

The ministry's position is that a medical condition is considered to preclude the appellant from searching for, accepting or continuing in employment when, as a result of the medical condition, the appellant is unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment. The ministry argues that the appellant's medical

condition does not preclude her from maintaining all types of employment; therefore she does not meet section 2(4)(b). The ministry noted that modifications to the appellant's work environment have been made to accommodate her physical conditions and that she works about 10 hours per week and does no heavy tasks. This demonstrates that the appellant is able to participate in employment for a length of time (part-time) and that treatments with medications ameliorate the appellant's medical conditions and allow for physical function on a job site. For these reasons, in the minister's opinion, the appellant's medical condition and resultant restrictions do not preclude her from searching for, accepting or continuing in all types of employment including part-time work.

### **Appellant's Position**

The appellant's position is that based on the facts of the case; specifically, the information on the record supplied by the doctor confirms that the appellant meets the medical portion of the test for PPMB and that the ministry was unreasonable to deny her the PPMB qualification. The appellant currently works about 10 hours a week, which is accommodated by her employer; however, she isn't able to do the more physical tasks such as vacuuming, sweeping and mopping leaving them to other staff on her shift.

The appellant's advocate argues that;

- the appellant does have a supportive and accommodating employer;
- the earning income exemption has meaning and must apply as the appellant is working within the confines of the legislation;
- employment and working are different words used for different reasons and a limited ability to work in a supportive environment is not the same as being able to maintain employment;
- the ministry's decision claims that a PPMB recipient must be precluded from searching for, accepting or continuing in employment for any length of time except in a supported or sheltered-type work environment which is not what the legislation says [precludes the person from searching for, accepting or continuing in employment]; and
- Section 8 of the Interpretation Act , "Every enactment must be construed as being remedial and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objective."

### **Panel's Findings**

The panel chair noted that the decision under appeal is the reconsideration decision, not the original decision, and that the appellant is an applicant for PPMB and not a recipient of PPMB. Therefore some of the issues argued by the appellant's advocate are not relevant to this appeal. The appellant's advocate stated that she understood this to be the case.

The panel notes that in the appellant's Medical Report - PPMB dated February 20, 2014, the primary medical condition is chronic pain/depression. The secondary medical condition is mild COPD. The appellant's restrictions specific to the reported medical conditions are pain with sitting for long periods. In the physician's report dated September 5, 2014, it is reported that; the appellant has degenerative disc disease (arthritis) of the neck which causes constant pain with lateral neck rotation as well as flexion and extension of the neck; chronic right shoulder pain; moderate COPD and moderate to severe depression.

After reviewing both the PPMB Medical Report and the more recent physician's report, the panel finds that while the appellant's physician confirms that her patient's medical conditions significantly impair her ability to function on a day to day basis and the expected duration of her medical condition is 2 years or more, this opinion has not been substantiated with any further explanation or restrictions. The legislation requires that in the opinion of the minister, the nature of the restrictions is a barrier that precludes the person from searching for, accepting or continuing in employment. The panel acknowledges that the appellant has pursued some treatment and under outcome in the physician's last report, it is indicated that the chronic conditions may likely get worse with time but the physician does not explain how the appellant's medical conditions are a barrier that restricts her from searching for, accepting or continuing in employment aside from preventing sitting for long periods. While, the appellant currently works in a supportive and accommodating environment for 10 hours per week, the panel finds that evidence does not show that she can only work in a supported environment or that she can only work a minimum of 10 hours per week. Although, the panel finds that a limited ability to work in a supportive environment is not the same as being able to maintain employment, the panel also finds that while the appellant's employer is accommodating with a reduction in weekly work from 16 to 10 hours and removing any expectation to perform the more physical tasks due to the appellant's physical condition and pain, the evidence establishes that the appellant is independent and maintaining employment by regularly working 10 hours a week.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical conditions are a barrier that precludes her from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not established.

The panel finds that the appellant does not qualify as a person with persistent multiple barriers to employment and confirms the reconsideration decision.