

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated November 26, 2014, which found that the appellant did not meet the statutory requirements of section 2 of the *Employment and Assistance Regulation* for qualification as a person with persistent multiple barriers (PPMB).

The ministry was satisfied that the appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months as per EAR section 2(2), and that the appellant has a medical condition other than addiction that has continued for at least one year and is likely to continue for at least two more years as required by sections 2(4)(a)(i) and (ii).

However, the ministry was not satisfied that the appellant's medical condition is a barrier that seriously impedes her ability to search for, accept or continue in employment as required by EAR section 2(3)(a)(ii) or that her medical condition seriously impedes her from all types of employment as required by section 2(3)(b)(ii). The reconsideration decision also states that there is no information provided to demonstrate that the appellant had taken all reasonable steps to overcome any personal issues that stand in the way of employability so the ministry determined that the appellant had not met the legislative criteria required in EAR section 2(3)(c).

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 the reconsideration decision consisted of:

- 1) The appellant's Request for Reconsideration dated November 13, 2014 (RFR) stating that she should be approved for PPMB as she was in the past for the exact same condition. The appellant states that she has severe barriers that are long term. With the RFR the appellant provided a questionnaire completed by her general practitioner dated November 12, 2014 (the "Questionnaire") in which the physician states that in his opinion the appellant has barriers that seriously impede her ability to search for, accept or continue in employment, being her handicapped son and untreated major depression/anxiety. The appellant's physician states that in his opinion the barriers will likely continue for at least two more years and that the appellant should be entitled to PPMB benefits.
- 2) Letter from the Ministry to the appellant dated July 17, 2014 advising that the appellant that her PPMB application was denied;
- 3) Medical Report – Persons with Persistent Multiple Barriers ("Medical Report") dated April 11, 2014 completed by the appellant's general practitioner indicating that the appellant's primary medical condition is chronic depression and that her secondary medical condition is social isolation/caring for mentally challenged son, onset for both conditions being 1986. The treatment indicated is anti-depressant medication and to search for respite care for her son. The Medical Report also indicates that the appellant's medical condition is expected to last more than two years and that it is not episodic in nature. The Medical Report also indicates that nature of the appellant's restrictions relates to the necessity to provide 24 hour care to her son;
- 4) Medical Report – Employability dated April 11, 2014 indicating that the appellant's primary medical condition is chronic anxiety disorder and her secondary medical condition is probable depression that is permanent/longstanding. The general practitioner notes that the appellant's restrictions are due to her mentally challenged adult son's requirement for 24 hour care; and
- 5) Employability Screen indicating the appellant's score of 15 (age 50 to 65 inclusive, income assistance recipient for more than 12 months in the last 3 years, highest level of education is less than grade 10, none or limited work experience in the last 3 years).

In her Notice of Appeal the appellant states that she has permanent mental health issues with severe barriers that prevent her from obtaining and keeping a job. The appellant states that she has been struggling for years with her personal disability and has taken the necessary steps to receive and to be eligible for permanent disability. She states that her family doctor has been filling out the documentation to apply for permanent disability.

At the hearing the appellant stated that she previously had PPMB and her condition has not changed so she is not sure that the ministry considered her application correctly. She stated that she suffers from anxiety and depression, takes her anti-depressant medication as prescribed, and is currently waiting to see a psychiatrist and/or counsellor. She stated that she barely sleeps at night and is not doing very well. The appellant stated that her handicapped son is 27 years old and he is not a barrier to her ability to search for, accept or continue in employment and that it is her physical and mental condition that prevents her from being able to work. The appellant stated that although her physician did not include information about her physical condition on the Medical Report, that information was included in her prior PPMB application so she did not think it needed to be included on this one too.

The appellant stated that she applied for two jobs approximately one year ago and saw someone at with respect to a job search approximately one year ago but that she has not been able to make any further job search efforts since then. One of the jobs was standing for long periods, which the appellant felt unable to do as it would cause severe back pain.

The appellant stated that she will be submitting a Persons with Disability application.

Admissibility of New Evidence

At the hearing the appellant provided oral testimony regarding her medical condition that in addition to her depression she has ongoing disability with respect to her back and arthritis that was noted on her previous PPMB application. The information regarding the appellant's back and arthritis is evidence in support of information and records before the ministry at the time of reconsideration so the panel has admitted this information into evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant qualification as a PPMB was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that

- the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment as required by EAR section 2(3)(a)(ii);
- that her medical condition seriously impedes her from all types of employment as required by section 2(3)(b)(ii); and that
- the appellant has not taken all reasonable steps to overcome any personal issues that stand in the way of employability as required in EAR section 2(3)(c)?

Section 2 of the EAR states as follows:

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 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.

[en. B.C. Reg. 368/2002.]

EAR section 2(3)(a)(ii) – barriers that seriously impede the person's ability to search for, accept or continue in employment

The ministry's position is that the appellant's barriers listed on the employability screen include unemployment for over three years, no high school diploma, severe health condition and persistent disability. The ministry notes that the personal barrier is the need to provide care for her son and that the appellant's physician recommends respite care or perhaps a group home. The ministry's position is that these barriers do not seriously impede the appellant's ability to search for, accept or continue in employment as required by the legislation.

The appellant agreed that although her adult son is handicapped and lives at home, he is not a

personal barrier to her ability to search for, accept or continue in employment. The appellant's position is that her physical and psychological conditions are severe and prevent her from being able to find and maintain employment. The appellant's position is that her condition has not changed and she was eligible for PPMB designation previously so she should continue to be eligible for this designation.

Panel Decision

Section 2(3)(a)(ii) of the EAR requires that the minister be satisfied that based on the result of the employability screen that the appellant has barriers that seriously impede her ability to search for, accept or continue in employment. The appellant's employability screen indicates that her barriers to employment are her age, that she has been on income assistance more than 12 months in the past three years, that she has less than grade 10 education, and has limited work experience.

On the Questionnaire the appellant's general practitioner states that the appellant has barriers that seriously impede her ability to search for accept or continue in employment which include her untreated depression/anxiety and her handicapped son. The appellant's general practitioner states that in his opinion, the appellant should be entitled to PPMB benefits from the ministry. On the Medical Report and the Medical Report – Employability, the appellant's general practitioner notes her medical conditions of depression and anxiety and notes that her restrictions are related to the requirement of her mentally challenged adult son who requires 24-hour care.

Although the appellant's general practitioner opines that the appellant should qualify for PPMB, it is the minister's determination based on the employability screen that is addressed in EAR section 2(3)(a)(ii). While the employability screen notes barriers to employment there is no further information indicating that these barriers seriously impede the appellant's ability to search for, accept or continue in employment. In particular the one restriction noted by the general practitioner relates to the appellant's son and the appellant states that her son's care requirement is not a barrier to her ability to find and maintain employment. Accordingly, the panel finds that the ministry's decision that the barriers do not seriously impede the appellant's ability to search for, accept or continue in employment as required by EAR section 2(3)(a)(ii) was reasonable.

EAR section 2(3)(b)(ii) – medical condition that seriously impedes the person's ability to search for, accept or continue in employment

The ministry's position is that "*...a medical condition is considered to seriously impede a recipient's ability to search for, accept or continue in employment when, as a result of the medical condition, the recipient is unable to participate in any type of employment that would enable independence from income assistance*". The ministry's position is that the appellant's practitioner has not noted any physical restrictions related to her medical conditions and that anti-depressant medication has been prescribed to ameliorate the appellant's mood disorders so the minister is not satisfied that the appellant is seriously impeded from all types of employment by her medical condition.

The appellant agreed that although her adult son is handicapped and lives at home, he is not a personal barrier to her ability to search for, accept or continue in employment. However, the appellant's position is that her physical and psychological conditions are severe and prevent her from being able to find and maintain employment. In particular, the appellant's position is that she suffers from depression and anxiety despite taking anti-depressant medication as required and she is waiting

to see a psychiatrist and to submit a PWD application because she is not doing well.

The appellant's position is that her condition has not changed and she was eligible for PPMB designation previously so she should continue to be eligible for this designation. The appellant's position is that she did not realize that her physician needed to include information about her physical conditions on the Medical Report as that was already part of her file with the ministry from her previous PPMB application.

Panel Decision

On the Questionnaire the appellant's general practitioner states that the appellant has barriers that seriously impede her ability to search for accept or continue in employment which include her untreated depression/anxiety and her handicapped son. The appellant's general practitioner states that in his opinion, the appellant should be entitled to PPMB benefits from the ministry. On the Medical Report and the Medical Report – Employability, the appellant's general practitioner notes her medical conditions of depression and anxiety that are longstanding. The appellant states that she is waiting for psychiatric assessment and that the anti-depressant medication is not ameliorating her symptoms.

Although the appellant's physician indicates that the appellant's condition is expected to last two years or more, on both the Medical Report and the Medical Report-Employability, the only noted restrictions relate to the appellant's need to care for her mentally challenged adult son who requires 24 hour care which the appellant states is not a barrier to her ability to find and maintain employment.

Although the appellant's physician may have provided information about the appellant's physical condition on a previous PPMB application there is no medical information to indicate that the appellant has any physical medical condition or any physical restrictions. Although the appellant's physician provided the diagnosis of psychological conditions, the physician does not note any associated restrictions. Accordingly, the panel finds that the ministry's decision that the appellant's medical condition is not a barrier that seriously impedes her ability to search for, accept or continue in employment as required by EAR section 2(3)(b)(ii) was reasonable.

EAR section 2(3)(c) – steps to overcome barriers

The ministry's position is that as the appellant has a score of 15 on the employability screen she is required to demonstrate that she has taken all reasonable efforts to overcome her barriers identified on the employability screen. The ministry's position is that the appellant has not provided any information to demonstrate that she has taken all reasonable efforts to overcome any personal issues that stand in the way of employability, so the minister is not satisfied that the appellant meets the criteria of EAR section 2(3)(c).

The appellant's position is that her condition has not changed and that as she qualified for PPMB designation before she should still qualify now. The appellant stated that she spoke to a representative at a facility designed to help unemployed people and she applied for two jobs approximately one year ago but that she has not been doing well and is unable to work. The appellant stated that she takes her anti-depressant medication as required and is currently waiting for

a psychiatric assessment. The appellant's position is that based on the information provided she should qualify for PPMB again.

Panel Decision

Although the appellant states that she is taking her anti-depressant medication as required and is currently waiting for a psychiatric assessment, there is no information from her physician confirming the referral and no other information indicating that she has taken any other steps to overcome her personal issues that stand in the way of her employability. Accordingly, the panel finds that the ministry's decision that the appellant has not met the criteria required under EAR section 2(3)(c) was reasonable.

Conclusion

The panel finds that the ministry's reconsideration decision that determined the appellant did not meet the legislative criteria of EAR sections 2(3)(a)(ii), 2(3)(b)(ii) and 2(3)(c) for PPMB qualification was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's reconsideration decision.