

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated June 17, 2015 denying the Appellant a Person with Persistent Multiple Barriers to Employment (PPMB) qualification because in the ministry's opinion the appellant did not meet all of the applicable statutory requirements of Section 2(3) and 2(4) of the Employment and Assistance Regulations (EAR). Specifically, the ministry concluded under 2(3) that the Appellant does not have a medical condition that is confirmed by a medical practitioner and seriously impedes her from searching for, accepting, and maintaining employment, and has not taken all reasonable steps to overcome her employment barriers, and under 2(4) that the Appellant does not have a medical condition that is confirmed by a medical practitioner and precludes the person from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2

PART E – Summary of Facts

The panel reviewed the following documents included in the appeal record:

- The Reconsideration Decision dated June 17, 2015
- The Request for Reconsideration dated June 11, 2015 and an accompanying letter from the Appellant noting that her GP and specialist agree that her back has permanent, irreversible damage, degenerative disk disease which has caused chronic lower back pain since 2007. She states she struggles with chronic physical pain and the emotional stress and frustration associated with this pain and that on days when the pain is bad she feels like she will always be limited physically, financially and emotionally and feels helpless and powerless. She has not been successful finding work that is suitable for her chronic pain as she is unable to do physical labor or stand for long periods but that she would like to be self-sufficient and independent. She wants the opportunity to continue to improve herself, upgrading her education in order to obtain a career that will be less physically demanding.
- A document from a community college dated December 8, 2014 which indicates the Appellant speaks English as a 2nd language and scored 40/88 in reading and 27/70 in writing.
- A letter from a physician specialist to the Appellant's General Practitioner dated January 9, 2015 which states that the Appellant had not followed the active rehabilitation approach recommended on July 31, 2014, as the Appellant states she could not afford the cost, that her mood and anxiety has improved and she is not taking medication for this. The specialist notes the Appellant continues to demonstrate a weak core, and that being sedentary may have aggravated her symptoms and it is unfortunate that she has not really pursued any activity further. The specialist makes recommendations for a rehabilitation plan that includes medication, exercise, and supplementation.
- A medical report / application for PPMB dated February 25, 2015 completed by a GP who has seen the Appellant for over 6 months, and indicates the Appellant has suffered from two medical conditions for 7 years: her primary condition is mechanical back pain, and secondary conditions is PTSD (post traumatic stress disorder). Under treatment, the physician wrote, "advised re: strengthening program", and no details regarding the outcome of this treatment has been provided. Under Restrictions related to these conditions, the physician states, "Able to work at job that does not require heavy lifting or prolonged sitting or standing." Over "Expected duration of medical conditions", the physician wrote, "N/A"
- A "Client Employability Profile" dated May 4, 2015 which indicates the Appellant has been unemployed for over 3 years, has a severe lack of employment search and planning skills, has post-secondary education, is fluent in written / spoken English, has minor or short-term health problems and does not have a disability that limits employment.
- An Employability Screen which indicates the Appellant has been on income assistance for more than 12 months, has a post-secondary degree or diploma, has non or very limited work experience, speaks English as a second language and has a total score of 16.
- A "Persons Who Have Persistent Multiple Barriers to Employment Checklist" dated May 4, 2015 indicating the Appellant is not eligible for the PPMB qualification based on the medical report and Client Employability Profile.

At the appeal hearing, Appellant provided the following evidence:

- The Appellant has a degenerative disc condition which will continue to progress
- She speaks English as a second language, and struggles with spoken English and her spoken English is better than her written English. She had help to write the letter that was submitted with her appeal package. She needed an interpreter at the hearing to clarify some of the things said especially when people spoke quickly. She believes she needs to improve her English language skills and upgrade her education in order to find work that she can handle physically.
- Her pain is not stable and is up and down from day to day. After a day-long English class she was unable to walk the next day.
- She tries to exercise as much as possible. Physiotherapy is too expensive as they charge \$25 - \$35 per visit, depending on the clinic, and she can't afford that. There is also a cost to go to the pool, which makes it difficult to afford but she goes about once a week but can't go when she has a cold or 'flu. She walks in her neighbourhood, does breathing exercises using her abdominal muscles, and core exercises that includes leg lifts and when she is feeling ok can do 25 of them. A physio told her that she does not need to walk in the figure 8 in the pool as recommended by her specialist as long as she continues to work on her core muscles, and there is no cost to exercising at home (vs the pool).
- She suffers from depression and her mood is up and down, and her physical pain also affects her mood. She does not take medication for PTSD – she was on medication but it caused her to gain weight, which was a

concern because diabetes runs in the family. She asked to change medications, and the next medication also had side effects and she started to have anxiety attacks. When she asked to change again, she was told that she does not need medication; she just needed to work on her issues. She saw a psychologist in the past as well as a nurse at a mental health clinic and has been encouraged to participate in a two month (level 1 and level 2) program on trauma. She goes to a group every week that is held in her language and also receives individual counselling and coaching, and plans to continue that.

- Her nephew, who used to live with her for 3 or 4 years, died in April and she is still cycling through stages of grief; she has not visited the grave so it is difficult to accept.
- She does have a diploma but it is from her home country, not Canada, so doesn't really help with finding work.
- The Appellant had a conflict with the GP who completed her PPMB application and she believes this may have influenced how it was completed.

The ministry did not object to the new evidence presented regarding her psychological health, treatment and her exercise regimen. The panel determined the additional oral evidence regarding her physical health, counselling for PTSD and exercise regimen was admissible under s.22(4) of the Employment Assistance Act (EAA) as it provided clarification of the information she provided to the ministry in her letter attached to the reconsideration decision, where she discussed her emotional stress related to her physical pain, the letter from her specialist referring to her mood and anxiety, the secondary diagnosis of PTSD on the PPMB medical report, and information in the letter from the specialist which indicated she told her specialist she could not afford the cost of the active rehabilitation approach that had been recommended. The panel determined that the information regarding her nephew's death was not admissible as this was new information not referred to at all in the information that was before the ministry at the time of reconsideration.

At the appeal hearing, the ministry relied on the evidence in the appeal record and clarified the following:

- It appears that there were two errors on the Client Employability Profile: it indicates the Appellant is fluent in written and spoken English under the column "No Employment Limitations" instead of indicating that she is "functional in a second language with spoken and written English" under the column "Affects Employment Options"; it indicates her disability "does not limit employment" instead of "May limit certain types of occupations or require specialized accommodations" under the column, "Affects Employment Options". The ministry clarified that this document serves only as a framework for the adjudicator of the PPMB application; the adjudicator relies on the Employability Screen and Employability Score when determining whether someone is eligible for PPMB status, and this document correctly indicates the Appellant speaks English as a second language (ESL) or is in need of English skills training.
- The ministry relies on the physician's report and the physician did not include information on the impact of PTSD on her employability or identify it as a significant barrier. The physician focuses on the Appellant's back pain issues and specifically states she is able to work at employment that does not require heavy lifting or prolonged periods of sitting or standing.
- The Appellant had PPMB status in the past; it is standard to review PPMB status every two years and the Appellant's PPMB status expired recently.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the EAR, specifically that the appellant did not meet the criteria of having a medical condition that precludes her from searching for, accepting, or continuing in employment and the appellant has not taken all steps that the minister considers reasonable for the person to overcome the barriers.

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*;
- (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.

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

The Parties' Positions

The ministry argues that the appellant has not met the criteria under Section 2(3) (b)(ii) of the EAR because in the letter from the Appellant's specialist to her GP, the specialist noted that the Appellant is able to work at a job that does not require heavy lifting or prolonged sitting or standing, and that the Appellant had indicated her mood and anxiety were much better and she was not taking medication for it. The ministry notes that her physician has indicated that she does not have a condition that seriously impedes her from searching for, accepting or continuing in employment.

The Appellant argues that her condition is much more limiting than indicated on the form and that the physician may have been upset about a conflict they had over a letter, and so initially refused to complete the application and when pressed, completed it but refused to support her. She states that her pain changes from day to day and is not stable, and some days she can't even walk. She argues that her grief over the death of a family member, combined with PTSD and depression are a significant barrier and she needs time to grieve, attend counselling and focus on her health before

looking for employment. The fact that she does not take medication for her condition does not mean that it is not an issue; she has been told that she needs to “deal with her issues” through counselling and that is what she is doing.

The panel finds that although the Appellant’s statements about her mental state are compelling, her accounts are not supported by any documentary evidence save from the acknowledgement on the PPMB Medical Report that she suffers from PTSD. There is no corroborating evidence from a medical practitioner that her mental health precludes her from searching for, accepting or continuing in employment and her specialist indicates that her physical limitations do not seriously impede her from searching for, accepting or continuing in employment and so the Appellant does not meet the criteria in Section 2(3)(b)(ii) of the EAR.

The ministry argues that at this time, the Appellant has not taken all reasonable steps to overcome her employment barriers as required in S 2(3)(c) because she was asked to start an active rehabilitation approach but did not follow the specialist’s recommendations, and she has not followed through with the revised recommendations which includes core resistance training in an aquatic environment and walking at least 5 days per week. Also the Appellant advised the ministry she is currently upgrading her education in order to obtain a career that will be less physically demanding.

The Appellant argues that upgrading will be the only way to find employment that she can handle physically, and her diploma from her home country is not sufficient and also her English language skills are a barrier. She argues that she may not be doing the exact activities her specialist recommended, but that is because she has limited income and cannot afford to go to the pool three times a week or take supplements, but she does walk around her neighbourhood a few times per week, go to the pool once per week and does core strengthening exercises at home. She is also spending time in individual and group counselling.

The panel finds that the ministry’s decision that the Appellant is not taking reasonable steps to overcome her employment barriers and therefore does not meet the criteria in Section 2(3)(c), is reasonably supported by the evidence

The ministry argues that the appellant has not met the criteria under Section 2(4) of the EAR because in the letter from the Appellant’s specialist to her GP, the specialist noted that the Appellant is able to work at a job that does not require heavy lifting or prolonged sitting or standing, and that the Appellant had indicated her mood and anxiety were much better and she was not taking medication for it. The ministry notes that her physician has indicated that she does not have a condition that precludes her from searching for, accepting or continuing in employment.

The Appellant argues that her condition is much more limiting than indicated on the form and that the physician may have been upset about a conflict they had over a letter, and so initially refused to complete the application and when pressed, completed it but refused to support her. She states that her pain changes from day to day and is not stable, and some days she can’t even walk. She argues that her grief over the death of a family member, combined with PTSD and depression are a significant barrier and she needs time to grieve, attend counselling and focus on her health before looking for employment. The fact that she does not take medication for her condition does not mean that it is not an issue; she has been told that she needs to “deal with her issues” through counselling and that is what she is doing.

The panel finds that there is no documentary evidence indicating that her physical limitations or mental health precludes her from searching for, accepting or continuing in employment and so the Appellant does not meet the criteria in Section 2(4) of the EAR.

For the reasons above, the Panel finds that the ministry’s Reconsideration Decision denying the Appellant the PPMB qualification is a reasonable application of the legislation and reasonably supported by the evidence in this case, and confirms the ministry’s decision.