

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 8, 2015 which found that the appellant did not meet the statutory requirements of section 2 of the *Employment and Assistance Regulation* (EAR) for designation as a person with persistent multiple barriers (PPMB). The ministry found that the appellant met the requirements of EAR section 2(2) in that she had been in receipt of income assistance for more than 12 of the preceding 15 months. The ministry found that the appellant has an employability screen of 11 so EAR section 2(3), which requires an employability screen of 15 was not applicable.

The ministry found that the appellant's physician had confirmed that she has a medical condition that has lasted at least 1 year and is expected to last at least another 2 years as required under EAR section 2(4)(a)(i) but that the appellant's medical condition was not a barrier that precludes her from searching for, accepting, or continuing employment as required by EAR section 2(4)(b).

PART D – Relevant Legislation

EAR, section 2

PART E – Summary of Facts

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

- Chiropractic narrative dated September 27, 2010 (2 pages)
- Medical Report – PPMB dated June 15, 2012 (June 2012 Medical Report)
- Medical Report – PPMB dated October 4, 2012 (October 2012 Medical Report)
- X-Ray Thoracic Spine Thoracic dated May 1, 2013 indicating slight idiopathic S-shaped scoliosis but no significant degenerative change or other bony abnormality
- Page containing hospital information regarding the appellant's health number and birthdate dated October 16, 2013 and handwritten notes of the appellant indicating that she sustained a left shoulder injury on September 28, 2012
- Lab report re blood test results dated November 2013 (3 pages)
- Consultation report of a physician dated May 2, 2014 (Consult Report)
- Radiography of left shoulder dated January 13, 2015 indicating normal x-rays of left shoulder
- Medical Report – PPMB dated February 17, 2015 (Medical Report)
- Employability Screen indicating the appellant's total score of 11
- Letter from the ministry to the appellant dated March 31, 2015 advising that the appellant no longer meets the requirements for PPMB category
- The appellant's Request for Reconsideration (RFR) dated May 9, 2015 indicating that the PPMB Medical Report form is incomplete
- Handwritten letter from the appellant (7 pages)
- Forms detailing the appellant's medications relating to various medical conditions (4 pages)

Additional information provided

In her Notice of Appeal and attached handwritten letter (4 pages), the appellant stated that she disagreed with the reconsideration decision because while she and her physician were completing the Medical Report they were talking about the good results she had received with physiotherapy for her left shoulder but did not realize that they should have been recording her injuries with her spine and hips. The appellant stated that the wrong information is on the Medical Report because of the lack of space on the form and she would like a new Medical Report – PPMB form. She stated that she has five ailments, namely shoulder, neck, back/spine, anxiety, and depression.

At the hearing the appellant provided oral evidence indicating that the Medical Report-PPMB form does not allow enough space to adequately list and describe all of her medical conditions. The appellant stated that her left shoulder injury is recovering well from physiotherapy but that is the only area that has received therapy and that her back, hip, depression and anxiety will continue beyond two years and prevent her from working, and these conditions were not included in the Medical Report. The appellant stated that she had a CT Scan approximately 1 ½ weeks ago and is waiting for the results from her physician.

The appellant stated that she asked her physician to provide more information regarding her conditions and the physician advised that she would not lie. The appellant explained to her physician that she was not asking her to lie, just to clarify things, but when she went to her physician last week, her physician was very emotional, and she does not have any further information from her physician

clarifying her medical conditions. The appellant stated that she has spent the last 3 years looking after her children's various health issues and that she needs the next two years to focus on her medical conditions, including attending further counseling.

The appellant stated that the public transportation in the city where she lives is quite limited and the walk to and from her children's school of approximately 20 minutes is extremely difficult for her requiring rest time before making dinner and again after dinner. The appellant stated that on a good day it takes her 20 minutes but on a bad day it could take 30 minutes each way. As a result the appellant chose to home school her children this year, spending 4 hours per day ensuring that they perform school work, and she stated that this is much better for her as the pain has lessened as she does not have to go out of the house to take them to and from school. The appellant stated that she would love to go and work but is unable to do so as her anxiety is holding her back, she has significant depression, and considerable back pain, for which she wears a back brace. She can't sit for a long time before she has to stand up.

Admissibility of New Information

The ministry did not attend at the hearing.

The panel has admitted the appellant's oral testimony into evidence as it is 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*. In particular, the new information supports the information provided from the appellant regarding her medical conditions and impact on her ability to search for and maintain employment.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant PPMB designation was reasonably supported by the evidence or was a reasonable application of the applicable enactment 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 employment as required by EAR section 2(4)(b)?

The relevant legislation is EAR section 2 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*, 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)

The ministry's position is that as the appellant's employability screen of 11, EAR section 2(3), which requires an employability screen of 15 is not applicable and the appellant was assessed under EAR section 2(4).

The ministry's position as set out in the reconsideration decision is that a physician has confirmed that the appellant has a medical condition that has lasted at least 1 year and is expected to last at least another 2 years. The ministry is satisfied that the appellant has chronic hip pain, mild scoliosis and chronic depression/anxiety but the ministry's position is that it is unable to conclude based on the information provided, that the appellant's current medical condition would preclude her from searching for, accepting, and maintaining employment. The ministry notes that the physician reports that the appellant has had excellent response to treatment, chronic pain is worse when stressed, and the appellant struggles walking long distances, but no other restrictions were reported. The ministry also states that a report notes that the appellant has full range of motion in her shoulder but experiences pain with rotation. The ministry concludes that based on the medical reports, the appellant should be able to manage sedentary or less physically demanding low stress environments and that the reports do not support a conclusion that the appellant requires only a supported or sheltered work environment to maintain employment suited to her condition.

The appellant's position is that her medical conditions prevent her from working, that her physician has not provided all the necessary information regarding all of her medical conditions, particularly her hip/spine, anxiety and depression, that the Medical Report – PPMB forms are not sufficient to adequately provide the necessary information, and that she should be found eligible for PPMB designation. The appellant's position is that because she has to rest before and after making dinner after walking her children to and from school, she would not be able to maintain employment. The appellant also argues that it is the combination of her physical and mental health conditions that are barriers to her employment.

The appellant also argues that she needs the next two years to focus on herself and her health, and attend counseling. The appellant also argued that the reconsideration decision is not clear, in that she is unable to determine which medical condition the ministry is referring to because if it is her shoulder that is being considered that is not her only medical condition.

Panel Decision:

As the appellant has an employability score of 11, the panel finds that the ministry was reasonable in determining that EAR section 2(3) is not applicable and that the applicable section for assessment is EAR section 2(4). As the ministry determined that a physician confirmed that the appellant has a medical condition that has lasted at least 1 year and is expected to last at least another two years, EAR section 2(4)(a)(i) is met and the only section at issue is whether the appellant meets the criteria required in EAR section 2(4)(b).

While the appellant argues that the Medical Report – PPMB form does not have sufficient space to detail all of her medical conditions, section 3 of the form indicates that additional pages can be

attached if required, so the appellant's physician is not restricted from providing additional information regarding the appellant's medical conditions. As the physician is not precluded from providing additional information the appellant's position that there is no detailed information because there is not enough space on the form is not supported.

Although the appellant argues that her physician has provided the wrong information and insufficient information, no further information was provided by the physician elaborating on the appellant's conditions or providing any clarification regarding the appellant's medical conditions. The Medical Report indicates that the appellant's primary medical condition is hip pain and her secondary medical condition is depression/anxiety so although the appellant argues that the physician has not identified all of her medical conditions, the physician has in fact noted three different medical conditions. The physician indicates that the appellant has had excellent response to physiotherapy and while the appellant states that comment relates to her shoulder condition and not her back/hip condition, the physician has not provided any additional information to clarify the comments in this regard. The panel notes that the appellant's comments in the RFR that the physician was on holidays until June 8 but no further information from the physician was provided prior to the hearing.

The Medical Report indicates that the appellant had an excellent response to one medication, and good responses to two other medications but the physician does not indicate which conditions the particular medications helped. The physician indicates that the appellant's medical conditions are episodic in nature and that her pain is worse when she is stressed. However, the only noted restriction is that the appellant struggles to walk very long distances. In her letter provided with her Notice of Appeal, the appellant indicates that she is struggling due to her neck and skull muscles and that she gets dizzy, but the physician has not provided any information regarding these symptoms and/or consequent restrictions. While the appellant indicates that she had to stop the focus on her hips and spine because of her shoulder/arm injury, the physician has not provided any information supporting this information or any further information indicating what medical condition causes the appellant to struggle walking very long distances.

In light of the limited and unclear information provided by the physician and only one noted restriction resulting from the appellant's medical condition(s) the panel finds that the ministry was reasonable in concluding that the appellant's medical condition does not preclude her from searching for, accepting or continuing in employment as required by EAR section 2(4).

Conclusion

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision finding the appellant ineligible for PPMB designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.