

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 10, 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 7 or 10 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) and (ii) 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:

- Medical consultation report dated October 31, 2011 indicating that the appellant has a lifelong mental disorder and that prior traumatic events have predisposed her to have depressive episodes, that she developed fibromyalgia that has further compounded her depressive symptoms, that she has lost several jobs because of her disabilities and that she has looked for part-time jobs but couldn't find any. The report further indicates that the appellant's PTSD and all her medical problems compound her mental handicap which makes her unable to hold down employment (the "2011 Medical Report").
- Medical Report – PPMB dated February 18, 2015 (Medical Report)
- Employability Screen (ES) indicating the appellant's total score of 7
- Letter from the appellant dated March 25, 2015 regarding her medical conditions and reasons she qualifies for PPMB designation (2 pages);
- Letter from the appellant's physician dated May 25, 2015 indicating that the appellant can only work part time due to post traumatic stress disorder, anxiety disorder, depression, fibromyalgia, and previous foot surgery
- The appellant's Request for Reconsideration (RFR) dated May 25, 2015 indicating the appellant's primary barriers to employment are post traumatic stress disorder (PTSD), anxiety disorder, depression, fibromyalgia and previous foot surgery. The RFR indicates that the appellant's secondary barriers to employment are environmental sensitivities, asthma, obesity and age. The RFR indicates that the ES is incorrect because the ministry missed some information.
- Appellant's chart regarding her primary barriers to employability
- Appellant's statement regarding her secondary barriers to employability
- Newspaper article regarding factors impacting employment
- Letter from the appellant regarding her medical conditions, employment history, current employment situation, her willingness to work and reasons why she believes the ministry incorrectly calculated her ES (2 pages)
- ES with the appellant's handwritten notes indicating that she believes her employability score should be 16
- Article "2012: The Labour Market Year-in-Review" with information regarding job search among older workers (2 pages)
- Article regarding PTSD (5 pages);
- Article regarding anxiety and depression (13 pages)
- Research Paper: "Association of employment and working conditions with physical and mental health symptoms for people with fibromyalgia" (8 pages)
- Article titled: "Fibromyalgia A Deeper Understanding" (5 pages)
- Excerpt of article from Behavioural Medicine re fibromyalgia research study (5 pages)
- Information re Environmental Sensitivities, cleaning living and working (6 pages)
- Article "Struggling for Air" re adult-onset asthma (6 pages)
- Article from Occupational Health regarding obesity and recruitment (3 pages)

Additional information provided

In her Notice of Appeal the appellant states that she disagrees with the reconsideration decision because the information provided confirms her medical conditions preclude her from searching for all types of employment including sedentary and part-time employment.

At the hearing the appellant provided oral evidence regarding her primary barriers to employment (extreme PTSD, fibromyalgia, anxiety disorder, depression, and prior surgery on two dislocated toes) as well as secondary barriers to employment being environmental sensitivities, asthma, obesity and ageism). The appellant stated that although she has and continues to work, it has been very sporadic in the last three years and the ministry incorrectly calculated the ES. The appellant stated that although she continues to work part-time at her current job she is not sure how long she is going to be able to continue her current employment due to unreasonable requirements from her boss with respect to fulfilling her job duties. The appellant stated that the letter from her physician dated May 25, 2015 indicating that she can work part-time was her fault in that the physician wanted to write that she was precluded from working but she asked her physician to indicate that she could work part-time.

Admissibility of New Information

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 to be decided in 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 the appellant's employability score was originally assessed at 7 but that if they added an additional 3 points for question 3 to more accurately reflect the total time that the appellant has been on income assistance in the last three years, her employability score would then be 10. As EAR section 2(3) requires an employability score of 15 or higher, the appellant's application must be assessed under EAR section 2(4) as EAR section 2(3) is not applicable.

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 so she meets the criteria of EAR section 2(4)(a). The ministry notes that the Medical Report indicates that the appellant has difficulty maintaining regular employment due to anxiety and depression. However, the physician's updated letter dated May 25, 2015 indicates that the appellant can only work part time due to PTSD, anxiety disorder, depression, fibromyalgia and previous foot surgery. The ministry's position is that although the physician indicates that the appellant cannot maintain regular full time employment she is able to work part time and there is no information from the physician indicating that the appellant requires a supported or sheltered-type work environment. The ministry's position is that the information provided is not sufficient to meet the criteria that the appellant has a medical condition that precludes her from searching for, accepting or continuing in all types of employment, including sedentary or part-time.

The ministry states that they reviewed the 2011 Medical Report in which the psychiatrist indicates that the appellant's mental disorder is of a lifelong duration and that it is not just the appellant's PTSD but all her medical problems compounding her mental handicap which makes her unable to hold down employment. However, the ministry notes that this report was written 4 years ago.

The reconsideration decision states that although the minister is sympathetic to the appellant's case, the information provided does not meet the eligibility criteria of EAR section 2(2) and 2(4)(a) and (b) so the appellant's RFR is denied.

The appellant's position is that her medical conditions prevent her from working, that the May 25, 2015 letter from her physician does not provide the complete picture, and that she should qualify for PPMB designation. The appellant's position is that her employability score should be 16, not 7 or 10 as the ministry concludes. The appellant states that for question 2 regarding her age, box d allows a score of 0 however she states that the form should allow one point for that as there are significant barriers to employment as an older worker, as supported by the newspaper articles she provided. The appellant states that if an employer has a choice between a younger worker or her they are going to pick the younger worker.

The appellant indicates that for question 3, her score should be 3 not 0 as she has been on income assistance more than 3 times in the last three years. The appellant states that for question 5 she should have one point as she had completed a post secondary computer program and the ministry did not take that into account. The appellant states that for question 6, her score should be 4 rather than 0 as her work in the last three years has been sporadic and minimal.

The appellant's position is that her medical conditions are a persistent problem to her finding and keeping employment and she has ongoing PTSD, anxiety and depression. She states that her physician is ready to sign a note for her to stop work and apply for medical Employment Insurance.

The appellant states that the ministry allows her to earn \$500 per month but then on the other hand punishes her for that and that the ministry is breaking its own laws. The appellant states that she is doing the best she can and what is allowed so to now be denied PPMB designation is like entrapment.

Panel Decision:

With respect to the appellant's employability score, the panel finds that the with respect to question 2, the form only allows a score of 0 for the appellant's age category so although the appellant argues that this should be open to interpretation the panel finds that the ministry's determination that a score of 0 was reasonable. For question 3, the appellant argues that she should have a score of 3 and in the reconsideration decision the ministry confirms that 3 would be appropriate so the panel finds that the appellant's score for question 3 should be 3 not 0. For question 5, the panel finds that the ministry should have included 1 point to account for the appellant's post-secondary program degree. For question 6, although the appellant states that her score should be 4 as she has had only very limited work experience in the past three years, the appellant confirmed that she has worked for her currently employer for over one year with some months being very little work and the most hours worked being 20 hours per month. The panel finds that the appellant has worked more than 12 months in the last 3 years so the ministry's determination that her score for question 6 is 0 was reasonable. In summary the panel finds that the appellant's employability score, taking into account the one point for question five that the ministry ought to have included, would be 11.

EAR section 2(3) requires that the appellant have an employability score of 15 or more so the panel finds that whether the appellant's score was 7, 10 or 11, ministry was reasonable in determining that EAR section 2(3) is not applicable and that the applicable section for assessment of the appellant's PPMB application 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) 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 and the letter from her physician dated May 25, 2015 do not describe the whole picture and that the only reason her physician reports that she can work part-time is because she asked him to include that in his May 2015 letter, the appellant has not provided any further information from the physician indicating that the appellant's medical conditions preclude her from searching for, accepting or continuing in employment. While the appellant indicates that she is not sure how long she can continue at her current job and may take a medical leave, the information at time of reconsideration and at the time of the hearing indicates that she was working part-time and her physician confirmed that she could work part-time.

The panel acknowledges the difficulties that the appellant has due to her various medical conditions, both primary and secondary conditions, and recognizes that some of these conditions may make it more difficult to obtain and retain employment. However as the appellant is working and her physician confirms that she is able to work part-time, the panel finds that the ministry was reasonable

in concluding that her medical conditions are not barriers that preclude her from searching for, accepting or continuing in employment as required by EAR 2(4)(b).

The panel's jurisdiction is limited to a determination of whether the reconsideration decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel does not have the jurisdiction to consider the appellant's arguments that the ministry is breaking its own laws or whether the ministry's actions amount to entrapment.

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.