

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) June 2, 2015 reconsideration decision in which the Ministry determined that the Appellant, with an employability score of 10, did not qualify as a person who has persistent multiple barriers to employment (“PPMB”) under section 2(4)(b) of the Employment and Assistance Regulation because in the opinion of the minister the Appellant’s medical condition does not preclude her from searching for, accepting and maintaining employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (“EAR”) Section 2.

PART E – Summary of Facts

In its reconsideration decision, the Ministry concluded that the Appellant met the requirements in section 2(2) of the EAR, her employability score is 10 and therefore section 2(4) of the EAR applies to the Appellant's circumstances. The Ministry also determined that a medical practitioner confirmed that the Appellant's medical condition has lasted at least one year and is expected to last at least 2 years, as required in section 2(4)(a) of the EAR. Based on these determinations, the Panel finds that the only issue in this appeal is whether the Appellant met the requirements in section 2(4)(b) of the EAR; that is, whether the Appellant's medical condition, in the opinion of the minister, is a barrier that precludes her from searching for, accepting or continuing in employment. The Panel will summarize only the evidence related to this issue.

For its reconsideration decision, the Ministry had the following evidence related to this one issue:

1. Information from its records that the Appellant has been working part-time since April 2014.
2. A Medical Report – Person With Persistent Multiple Barriers, completed by a doctor and signed on April 1, 2015. The doctor reported that the Appellant's primary medical condition is lower back pain, secondary condition is GA [generalized anxiety]. The Appellant takes Advil for pain. In the box for restrictions, the doctor wrote – “difficulties standing, walking, driving, lifting and carrying; gets anxious dealing with people”. Under Part C Medical Assessment, there is a statement that the Ministry uses the medical assessment to determine how a recipient's medical conditions may affect their employability. However, under “Part 3. Restrictions” in this form, there are no instructions specifically asking for information as to how any restrictions from the identified medical conditions may affect employability.
3. The Appellant's May 28, 2015 request for reconsideration with her statement as follows:
 - She suffers with disc degeneration of her back and neck along with bulged discs, and a disc slipping and wedging backwards.
 - She is trying to take natural medicines and anti-inflammatories because prescriptions take a toll on her stomach; she takes the odd prescription medication when absolutely needed; she takes Advil extra strength quite a bit when natural drops of anti-inflammatories aren't working as quickly or working the way she needs them to – an extra cost for her.
 - She is also changing her diet, eating and drinking different things that her doctor told her to for her anxiety that she suffers with really badly.
 - She has a hard time being on her feet for long periods of time; on days she works she has to have a hot bath, lie on her heating pad, and do stretches to try and loosen muscles.
 - She often gets bursitis in the hip that she dislocated and broke in two places, which is another challenge for her.
 - She is looking into trying acupuncture as her next step in a natural healing process because physiotherapy has only ever made it worse for her.
 - Standing, sitting, lifting and lots of movement cause her to suffer a great deal; her neck has been causing her a lot of problems over the past 8 months or so; she doesn't sleep too well most nights due to pain and anxiety.
 - She is trying her best to heal up enough to gain full time employment and also trying different things to accomplish this, but at this time she feels it is only going to make her suffer more than she already does; she needs a little more time if possible to see if the route she is trying to take is going to work and to start the road to full recovery with all the injuries she has sustained through the years.

- She is trying her best to get back to living a normal life again and limit the pain and suffering she has been faced with, and also trying natural ways of healing.

In her notice of appeal, dated June 5, 2015, the Appellant wrote that her medical condition has not changed a whole lot over the past few years. Now she is trying a more natural way of healing and she still suffers. She can get more documents and letters if needed from her doctor.

At the hearing, the Appellant said that she tried to contact her doctor so that he could provide more information. She has been unable to reach him by phone and his office is a 2 ½ hour drive away. The Appellant said that driving that far is very difficult for her because of her medical conditions and it also costs a lot of money. The Appellant provided details of the same medical conditions as she described in her request for reconsideration. She also described the same symptoms, especially the pain and swelling, and how she is trying to cope with medications but also using more natural health remedies. The Appellant said that she works part time at a job that requires standing for long periods and moving in a small space, which are very difficult for her. This job is an 8 minute drive away, but is still difficult because of her medical conditions. There are no other job options where she lives and the next nearest community is about ½ hour drive away, which would be more difficult and expensive for her.

Pursuant to section 22(4) of the *Employment and Assistance Act*, the Panel admits as evidence the information in the Appellant's notice of appeal and her oral testimony as being consistent with and tending to corroborate the information the Ministry had when it made its reconsideration decision.

At the hearing, the Ministry relied on and reaffirmed its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision was reasonably supported by the evidence and/or was a reasonable application of the applicable legislation in the Appellant's circumstances.

Applicable Legislation

Employment and Assistance Regulation - 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).

(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.*

The Parties' Positions

The Appellant's position is that her medical conditions restrict her ability to work. Disc degeneration in her back and neck along with bulged discs, and bursitis in her hip make it difficult for her to be on her feet for long periods of time, and to stand, lift, bend and drive. She also suffers from anxiety.

In its reconsideration decision, the Ministry wrote that it did not have sufficient information to establish that the Appellant requires a modified work environment or is currently being provided with a supported or sheltered work environment. The Ministry also noted that it is unable to consider the physical medical conditions described by the Appellant because they are not confirmed by her doctor. Therefore, the Ministry concluded that the requirements of section 2(4)(b) of the EAR were not met.

The Panel's Findings and Decision

The only issue in this appeal is whether the evidence from the Appellant and her doctor meets the requirements in section 2(4)(b) of the EAR; that is, in the opinion of the minister, the Appellant's medical conditions preclude her from searching for, accepting or continuing in employment. The Panel will apply this as the applicable legislated criterion because this is the language in section 2(4)(b) of the EAR and not what the Ministry stated in its reconsideration decision.

As part of her PPMB application, the Appellant submitted the Medical Report – PPMB completed by her doctor. However, the physical medical conditions described by the Appellant – disc degeneration and bursitis, were not confirmed by her doctor. He reported only lower back pain as the primary medical condition.

The Panel notes that the medical report form does not provide very much space for the doctor to write descriptions nor does the section headed "Restrictions" refer to restrictions which may affect employability. In this part of the form, the doctor did not confirm the information that the Appellant

submitted. He did not describe the same extent of physical restrictions as the Appellant did. He reported only difficulties with standing, walking, driving, lifting and carrying. The Panel also notes that the doctor did not provide any information about any limitations to the type of work that the Appellant might be able to do or the hours of work she may be restricted to. Because there is insufficient information from the Appellant's doctor, the Panel finds that the Ministry reasonably determined that the requirements in section 2(4)(b) of the EAR were not met.

Having considered all of the evidence and the applicable legislation in the Appellant's circumstances, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. The Panel therefore confirms that decision.