

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (ministry) reconsideration decision dated September 28, 2015 which held that the appellant is not eligible for Persons with Persistent Multiple Barriers (PPMB) qualification pursuant to section 2 of the Employment and Assistance Regulation (EAR). The ministry found that the appellant has been in receipt of income assistance for at least 12 of the past 15 months as required by section 2 (2)(a), she has an employability screen score of at least 15 pursuant to section 2 (3)(a), and that in the opinion of a medical practitioner the appellant has a medical condition other than an addiction that has occurred for 1 year and is likely to continue for at least two years as required by section 2 (3)(b) and (4)(a). However, the ministry was not satisfied that:

- the evidence establishes that the appellant's medical condition other than an addiction presents a barrier that either seriously impedes or precludes her from searching or accepting or continuing in employment, as required by section 2 (3)(b)(ii) and (4)(b) of the EAR; and
- the evidence establishes that she has taken all steps that the minister considers reasonable for her to overcome her barriers as required by 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 reconsideration consists of:

- 1) Medical report – persons with persistent multiple barriers, signed by the appellant’s physician and dated May 9, 2015, which states that:
 - section 1- medical condition, the primary medical condition is I5 – S1 sciatica,
 - a secondary medical condition of osteoarthritis in the right knee,
 - section 2-prognosis, the condition(s) are expected to continue for 2 years or more, are not episodic in nature, and she has “chronic pain”,
 - section 3-restrictions, the physician left this section blank;
- 2) Employability Screen with a score of 15 in which she received, among other points, 4 points for limited work experience and 3 points for English as a Second Language(ESL);
- 3) Request for Reconsideration dated August 27, 2015 and signed by the appellant that states that:
 - 70% of the time her body is in pain and she has tried both western and traditional medicine to reduce the pain and follows her therapist’s instruction to do exercise with her body but her conditions are getting worse therefore she cannot participate in any jobs;
 - She has to keep her head perpendicular to her lower back when sitting or standing or she will experience pain to the point that lifting her head would be difficult;
 - Due to nerve pressure in her neck, her left arm is painful, numb and when sitting its painful but less painful when lying down;
 - Her lower back cannot move easily and she can only bend 40 to 45 degrees. She experiences irregular and sudden pain that can radiate to either of her lower extremities causing her body to bend in the direction that the pain followed;
 - It is painful to kneel on her right knee and she cannot stand up. There is a floating bone in her knee and she cannot feel her left from the knee down. If this floating bone presses on her she cannot feel her lower leg. With a slow and light massage the numbness goes away and she can move again;
 - Her hands are painful due to inflammation. She had surgery on her right hand in 2008 and on the left in 2009. Now both thumbs feel weak and therefore she cannot use her hands to do work. She has tinnitus and slow reflexes;
 - Her walking speed is half that of a normal person’s and when outside, she uses a stroller to keep her balance; and
 - Due to chronic pain she feels depressed, has deteriorating memory and has been on sleeping pills for a long time and only sleeps 4-5 hours every night.

A Notice of Appeal signed and dated October 1, 2015 which states that she disagrees with the ministry’s decision and that she is not able to work because of her medical conditions.

Additional Information

Prior to the hearing the appellant resubmitted the May 9, 2015 medical report which included the following addendum in section 3 - restrictions: 1) back pain from sciatica prevents patient from ambulating without support. Requires walker all the time. 2) right knee OA (osteoarthritis) – unable to stand more than 45 minutes due to pain. Difficulty with going up stairs and bending knee. The same physician who completed the medical report applied his stamp and signature as well as the date of October 2, 2015. The appellant also submitted a x-ray report dated September 10, 2015,

which states:

- Straightening of the normal cervical lordosis is seen;
- Mild multilevel degenerative disc disease is seen with small anterior osteophytes;
- Mild disc space narrowing at C5-6; and
- Vertebral body contours are maintained, soft tissues are remarkable and neural foramina at C5-6 are mildly narrowed bilaterally.

The ministry objected to the admission of the amended medical report and x-ray report and stated that no restrictions were listed in the original medical report dated May 9, 2015, therefore any list of restrictions submitted now is new information that was not before the ministry at the time of the reconsideration decision.

The panel found that the amended medical report dated October 2, 2015 and the x-ray report dated September 10, 2015 provided additional detail or disclosed information that was in support of or corroborated the information available at reconsideration. Specifically, the new information corroborates the appellant's self-assessment. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

At the hearing:

The appellant reiterated what she stated in her request for reconsideration and added that:

- She has had back pain for 10 years and temporarily lost her ability to walk;
- Eventually she regained the ability to walk but must use a cane, push a cart or rely on her children to walk but still does not walk like a normal person;
- She takes too many oral medications that it has now become overwhelming, therefore she will rely on traditional medicines however they have bad side effects which has left her skin with an awful appearance;
- When her physician realized that he omitted her restrictions on the medical report, he apologized and filled in that sections and because she does not know how to read in English she does not know what he stated nor did she ask him; and
- She is thankful for the ministry's help thus far and it is not that she cannot find work (as she worked in caretaker roles) it is that she cannot work.

The ministry relied on its reconsideration decision and added that the ministry considers the employment requirement to include non-physical part-time work, flexible hours, and participation in programs to improve employability and the appellant has not shown that she cannot participate in any or all types of employment or employment programs such as ESL classes.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry decision to deny the appellant PPMB qualification on the grounds that the evidence does not establish that the appellant's medical condition other than an addiction presents a barrier that seriously impedes or precludes her from searching or accepting or continuing in employment, as required by section 2 (3)(b)(ii) and (4)(b) of the EAR and that she has taken all steps that the minister considers reasonable for her to overcome her barriers as required by section 2 (3)(c).

Section 2 of the EAR sets out the eligibility requirements which are at issue on this appeal 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 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 Appellant's Position

The appellant argues that due to her medical conditions she is unable to work and that her physician has confirmed that she is restricted in her movements and therefore cannot work.

The Ministry's Position

The ministry argues that the evidence presented at the time of reconsideration not establish that she met the legislative requirements to qualify for PPMB. Specifically, the ministry argues that the appellant has not met the requirements of sections 2 (3)(b)(ii), (3)(c) or (4)(b) of the EAR.

The Panel's Decision

The panel finds that since the appellant's employability screen score is at least 15, her request for PPMB must be considered only under section 2(3) of the EAR and not section 2(4) of the EAR.

Section 2 (3)(b)(ii) of the EAR states that in the opinion of the ministry, the medical condition(s) is a barrier that seriously impedes the person's ability to search for, accept or continue in employment. At the time of reconsideration the appellant's physician did not indicate that she had any restrictions as a result of her medical conditions. However prior to the hearing the appellant submitted a new medical report in which restrictions are listed. The panel finds that the restrictions listed by the physician in the October 2, 2015 medical report speak to her restrictions to mobility and not restrictions to employability. Furthermore, the physician did not indicate that the appellant's medical condition(s) *seriously impede* her ability to participate in all types of work, which as the ministry argues includes sedentary and part time employment. The panel finds that the ministry reasonably determined that the evidence did not establish that the appellant's medical conditions are barriers that seriously impede her ability to search for, accept or continue in employment.

Section 2 (3)(c) of the EAR states that the person has to take all steps that the ministry considers reasonable for the person to overcome the barriers he or she face, identified in the employability screen as including limited work experience and being in need of English skills training. The appellant argues that she can find work in the area of care-giver but her medical conditions prevent her from doing so. The appellant's physician has indicated that her mobility is limited, but the appellant did not provide evidence of any efforts to participate in training for alternative non-physical employment or to attain English skills training. The panel finds that the ministry reasonable determined that the evidence did not establish that the appellant has taken reasonable all steps for her to overcome her barriers to employment.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Person with Persistent Multiple Barriers qualification because the requirements of Sections 2 (3)(b)(ii) and (3)(c) of the EAR were not met, was reasonably supported by the evidence. The panel confirms the ministry's decision.