



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated October 15, 2015 denying the Appellant a Person with Persistent Multiple Barriers to Employment (PPMB) designation because in the ministry's opinion the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulations (EAR). Specifically, the ministry concluded that the Appellant does not meet the criteria in subsection 3 as her employability screen score was less than the minimum required, and does not meet the criteria in subsection 4 as she does not have a medical condition that seriously precludes her from searching for, accepting, and maintaining employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2

PART E – Summary of Facts

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

- The Notice of Appeal dated October 30, 2015, stating, “I disagree because I do need a sheltered work environment. I can obtain this information from my physician as required.”
- The Reconsideration Decision dated October 15, 2015. The reconsideration notes that the Appellant has earned approximately \$500/month since October 2014, and has reported daycare earnings since February 2014. Under Section 2 of the EAR, the Appellant does not meet the criteria in subsection 3 because she scored 9 on the employability screen and the standard is a score of at least 15, to indicate a medical condition that seriously impedes the ability to search for, accept or continue employment; the Appellant does not meet subsection 4, as the ministry indicates that she does not have a condition that precludes her from searching for, accepting or continuing in employment. It also states “The ministry accepts that a medical condition precludes when, as a result of the medical condition, the recipient is unable to participate in any type of employment for any length of time, except in a supported or sheltered-type work environment.” The decisions states that “while you note that you are able to do the daycare because you can rest any time you want the ministry requires additional information from your physician. As there were no restrictions identified by your physician the ministry is unable to conclude that you require only a supported or sheltered work environment to maintain any type of employment.”
- The Request for Reconsideration dated September 30, 2015 and an accompanying letter from the Appellant. The letter from the Appellant indicates that in the past she has been unable to maintain full-time work due and has been fired many times due to taking time off for health issues. She notes that she can only work the 100 hours per month because she is able to rest whenever she needs to – she rarely cares for more than one child at a time, they are young and take naps at least once a day. Also, working outside the home is very risky for her due to her allergies. She notes that she can provide confirmation of this from her GP if needed. She notes that she has arthritis in her fingers, knees and lower spine, TMJ, a deathly peanut / tree nut allergy and suffers from anxiety around people and crowds. She is also receiving treatment for a condition which may be ulcerative colitis which results in painful cramping, anal leakage, fatigue, sudden weight loss, and problems with malnutrition. She states between the fibromyalgia and arthritis she has days when she is barely able to move. Her teenage daughter has far more chores than her peers because there are so many things the Appellant is unable to do. She used to enjoy going out to hockey games and socializing but no longer does this due to anxiety. She also states that she meets the requirements of subsection 4 and believes that she fits the criteria for PPMB.
- A medical report / application for PPMB dated July 30, 2015 completed by a GP who has seen the Appellant for over 6 months, and indicates the Appellant has suffered from fibromyalgia for more than 10 years and arthritis and depression for more than 5 years. The report indicates that the Appellant is taking medications for pain, fatigue and to help with sleep. These conditions are expected to last for two or more years, and the GP notes that these are chronic and ongoing. Section 3 “Restrictions” was not completed.
- A “Client Employability Profile” with a total score of 9.
- A letter from the ministry dated August 27, 2015 indicating that the Appellant no longer meets the requirements for PPMB as in the opinion of the minister her medical conditions do not preclude her from all forms of employment as required under EAR Section 2(4)(b). The letter also indicates that as she no longer meets the PPMB requirements, she will be expected to find work.

[]

For the written Tribunal hearing, the parties submitted the following information:

- A letter from the Appellant's GP dated November 5, 2015. The letter confirms that the Appellant suffers from fibromyalgia, arthritis, TMJ, a severe peanut / tree nut allergy, and likely ulcerative colitis although they are waiting for a gastroenterologist to confirm the diagnosis. The letter notes restrictions to daily living: she cannot walk more than 3-5 blocks at a time; she cannot stand or sit for more than 15 minutes at a time; she requires assistance on a daily basis for basic tasks – her teenage daughter does the bulk of the housework and cooks at least 3 times per week; she has difficulty holding a pen for more than a few minutes and finds typing for any length of time painful. She has recently cut back her work hours due to her symptoms. She reports daily diarrhea, abdominal pain and cramping, anal leakage, chills and fatigue. She has been hospitalized approx 6 times due to anaphylactic reaction to nuts, which require emergency treatment and a regimen of Benadryl and prednisone for several days to follow up. The GP notes that the Appellant works from home to minimize the risks to her health and well-being, and because doing so allows her to rest as needed. He adds that he does not foresee a time in the future when she will be capable of working outside her home or full time hours. She takes medication for sleep and to manage pain and cramping. He also notes that due to TMJ the Appellant frequently has headaches and pain that resembles an ear infection.
- A letter from the ministry indicating that they have reviewed the additional information from the Appellant's physician dated November 5, 2015 and had they had this information at the time of the reconsideration decision, the ministry may have found that the Appellant had met all the criteria for PPMB designation.

The ministry did not object to the new evidence presented regarding the Appellant's health. The panel determined the additional evidence regarding the Appellant's medical conditions was admissible under s.22(4) of the EAA as it was in support of the records before the minister at reconsideration, and corroborates the information contained in the Appellant's letter submitted along with the Reconsideration Request as well as clarifying the need for pain and sleep medication referred to in the PPMB Medical Report..

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.

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. [B.C. Reg. 263/2002.]

The Parties' Positions

Subsection 1 of the legislation indicates that to qualify for PPMB, applicants must meet the criteria in either subsection 3 or subsection 4, along with the criteria in subsection 2.

The parties agree that the Appellant meets the requirements in subsection 2. She has been an income assistance recipient for at least 12 of the immediately preceding 15 calendar months.

The parties agree that the Appellant does not meet the requirement in subsection 3, as she scored 9 on the employability screen not the minimum of 15 indicated in 2(3)(i) of the EAR.

The ministry argues that the appellant has not met the criteria under Section 2 (4) of the EAR

because the Appellant has worked since February 2014 and has declared approx. \$500/month earnings since October 2014. The ministry states that a medical condition *precludes* when, as a result of the medical condition, the recipient is unable to participate in any type of employment for any length of time, except in a supported or sheltered-type work environment.

The Appellant argues that her condition is much more limiting than indicated on the initial PPMB application, and that in fact she does need to work in a supported or sheltered-type work environment. She is only able to maintain her current work because she can do it at home, and has the opportunity to rest when needed. This argument is corroborated by her physician's statement that the Appellant "works from home to minimize the risks to her health and well-being and because doing so allows her to rest as needed" and he does not "foresee a time in the future she will be capable of working outside her home..." .

The panel finds that the Appellant is only able to work in a supported or sheltered-type work environment, and therefore is precluded from searching for, accepting or continuing in employment.

Panel Decision

Section 2 (4) is clear that, in the opinion of a medical practitioner, a person must have a condition that is a barrier that precludes the person from searching for, accepting or continuing in employment. For these reasons, the Panel finds that the ministry's Reconsideration Decision denying the Appellant the PPMB designation was not a reasonable application of the legislation in, and rescinds the ministry's decision.