



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of November 5, 2015, which found that the appellant no longer met the criteria for the Persons with Persistent Multiple Barriers (PPMB) category under Section 2 of the Employment and Assistance Regulation (EAR). Specifically the ministry determined that the appellant did not demonstrate that her medical conditions presented a barrier that precluded her from searching for, accepting or continuing in employment, as required by EAR subsection (4)(b).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

The appellant is a recipient of income assistance who has been designated as a PPMB since 2011.

The information before the ministry at reconsideration included:

- January 5, 2015 letter from the appellant's family physician (Dr. D) confirming that the appellant has suffered from Irritable Bowel Disease (IBD) for several years, which in his opinion will likely continue for the foreseeable future;
- June 27, 2015 letter from Dr. D noting that the appellant struggles with weight gain and depression, which has resulted in social phobia ;
- PPMB medical report completed by Dr D dated August 18, 2011 noting the appellant's primary medical conditions as Post Traumatic Stress Disorder (PTSD), secondary medical conditions as endometriosis and IBD, and describing her restrictions as "frequent rest no heavy lifting, must avoid stressful situation. Hopefully back to reg. work December 2011";
- PPMB medical report completed by Dr D dated August 27, 2013 noting the appellant's primary medical condition as chronic pain, secondary medical condition as depression and describing her restrictions as "frequent rest, limited stress";
- PPMB medical report completed by Dr D dated September 11, 2015 noting the appellant's primary medical conditions as chronic pain and endometriosis, secondary medical condition as depression, and describing her restrictions as "frequent rest, limited stress";
- request for reconsideration received by the ministry October 28, 2015, to which was appended two letters:
 - August 21, 2015 letter from the appellant's employer confirming that the appellant works for a set wage as a cleaner on a project that is not time-sensitive due to the appellant's medical conditions;
 - undated note handwritten by the appellant stating that:
 - she suffers from endometriosis and IBD which at times stops her from functioning due to the pain;
 - she suffers from PTSD;
 - she is unable to commit to a fixed employment schedule;
 - in her current cleaning job her employer is highly flexible and gives her a week to perform her project, for which she is paid a flat rate.
- appellant's employability screen (undated) indicating a total score of 11;
- appellant's revised employability screen (undated) indicating a total score of 8;
- letter from the ministry to the appellant dated September 29, 2015 informing her that she no longer met the requirements for PPMB designation because her employability screen score was less than 15 and in the opinion of the ministry her medical conditions did not preclude her from all forms of employment.

In her Notice of Appeal dated November 17, 2015 the appellant wrote that her physical and mental conditions have not changed, she has just found an amazing employer, she works at a flat rate and cannot commit to a work schedule.

At the hearing the appellant introduced new evidence that she will soon be undergoing a re-evaluation of her PTSD late in 2015 or early in 2016 in order to determine the severity of her PTSD and to reconnect with her counsellor. The ministry did not object to the admission of this evidence.

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The panel determined that the new oral evidence was admissible under EAA Section 22(4) as evidence in support of the information before the ministry at the time of reconsideration because it addressed one of the medical conditions that were before the ministry at reconsideration.

At the hearing the appellant explained that she works at a single project of cleaning one vacation home over a week-long period, which under normal circumstances would take about 4 hours. She is allowed to work for short periods of time or not at all on any given day, as long as she completes the cleaning project within the week. Her employer allows her as much time as she needs to clean the rental. She receives a flat fee of \$100 for each cleaning project. Currently she is laid off because the home she cleans has not been rented for 2 months.

The ministry representative relied on the reconsideration decision, which found that:

- the appellant has been a recipient of income assistance for at least 12 of the preceding 15 months;
- the appellant has a medical condition other than addiction that has lasted 18 years, is not episodic, and is expected to continue for 2 or more years,
- the appellant has been employed since January 2015 and has declared earnings of \$150 - \$400 per month in 2015;
- the appellant's revised employability screen score is 8, reflecting a change in her paid employment during the past 3 years from "none or very limited" to "from 3 – 12 months", (rendering her ineligible for PPMB under EAR Section 2 (3));
- The appellant's medical conditions and restrictions create limitations on her ability to work, but do not preclude all types of employment activities, as demonstrated by the appellant.

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PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of November 5, 2015, which found that the appellant no longer met the criteria for the Persons with Persistent Multiple Barriers (PPMB) category under Section 2 of the Employment and Assistance Regulation (EAR). Specifically the ministry determined that the appellant did not demonstrate that her medical conditions presented a barrier that precluded her from searching for, accepting or continuing in employment, as required by EAR subsection (4)(b).

Relevant legislation:

EAR:

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

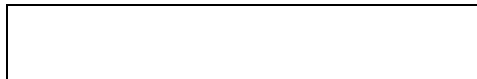
- (a) subsection (2), and
- (b) subsection (3) or (4).

(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

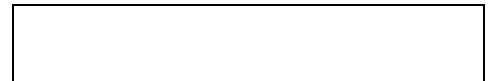
(ii) has occurred frequently in the past year and is likely to continue for at least 2 more years, and

(b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

Schedule E

Employability Screen

Number	Criteria	Category of Response	Score
1	What is the person's age?	(a) under 19 (b) 19 to 24 inclusive (c) 25 to 49 inclusive (d) 50 to 65 inclusive	0 1 0 0
2	Apart from the current application, how many times has the person been on Income or Social Assistance anywhere in Canada in the last 3 years?	(a) never (b) 1 to 3 times (c) more than 3 times	0 1 3
3	What is the total amount of time the person has spent on Income or Social Assistance in the last 3 years?	(a) less than 2 months (b) 2 to 12 months (c) more than 12 months	0 3 7
4	What is the highest level of education the person has completed?	(a) post-secondary program — degree or diploma (b) some post-secondary (c) high school/GED (d) grade 10 to grade 12 (e) less than grade 10 (f) trade certificate	1 0 1 3 0 0
5	What is the total amount of time the person has spent in paid employment over the last 3 years?	(a) more than 12 months (b) from 3 to 12 months (c) under 3 months (d) none or very limited	0 1 2 4



		work experience (e) volunteer work only	3
6	What is the person's English speaking ability or literacy level?	(a) good working knowledge of English (b) English as a second language (ESL) or in need of English skills training	0 3
TOTAL			
		Office use only: Score only most applicable response	

The appellant argues that she suffers from endometriosis, IBD and PTSD, which periodically cause crippling pain and anxiety, and preclude her from committing to a fixed full-time or part-time employment schedule. She has been able to work at her cleaning job only because her employer is highly flexible and gives her a week to complete a project that would normally take 4 hours.

The ministry argues that the appellant is not eligible for PPMB designation under EAR Section 2(3) because her revised employability screen score is less than 15, and is not eligible for PPMB designation under Section 2(4)(b) because her medical condition has improved and as a result is no longer a barrier that precludes her searching for, accepting or continuing in employment for the following reasons:

- in the September 11, 2015 medical report-PPMB Dr. D identifies the appellant's primary medical conditions as chronic pain and endometriosis only, and her secondary medical condition as depression. He does not refer to PTSD or IBD, which were cited as medical conditions in the 2011 PPMB medical report;
- in both the 2011 and 2015 PPMB medical reports Dr. D describes the appellant's restrictions as "frequent rest, limited stress" but does not address any additional physical or mental restrictions on employment;
- the appellant has been able to maintain employment since January 2015 and has earned \$150 - \$400 monthly.

Panel Decision

In order to qualify for PPMB designation a person must meet the requirements set out in EAR Section 2 (2) and either 2(3) or 2(4). The panel finds that the ministry reasonably determined that the appellant meets the threshold requirement in Section 2(2) because she has been a recipient of income assistance for at least 12 of the past 15 months.

The panel also finds that the ministry reasonably determined that the appellant did not meet the eligibility criteria set out in Section 2(3) because her employability screen score of 8 was less than the required minimum of 15.

The remaining PPMB eligibility criteria are set out in Section 2(4). Subsections (4) (a) (i) and (ii) require that the person have a medical condition that in the opinion of a medical practitioner has

continued for at least 1 year and is likely to continue for at least 2 years. Subsection (4) (b) requires that the medical condition be, in the ministry's opinion, a barrier that precludes the person from searching for, accepting or continuing in employment.

The word "preclude", in its ordinary use, means to make impossible or prevent from happening. In this instance the medical practitioner Dr. D has not indicated that the appellant is unable to work, or that work is impossible for her. He identifies her restrictions as "frequent rest, limited stress". The appellant has been able to find a unique employment situation whereby she can complete a cleaning project in her own time, thereby accommodating her ongoing physical and mental conditions and physician-directed restrictions of frequent rest and limited stress. She has earned \$150 - \$400 monthly over several months, which indicates that can handle this specialized job. By her own evidence she is laid off at present because the vacation home she cleans has not been rented for two months. She is not unemployed because she has been unable to do the work.

We find that the ministry reasonably determined that the appellant meets the PPMB criteria set out in EAR Section 2 (4)(a) but has not met the criteria in Section 2 (4)(b) because she has not satisfied the ministry that her current medical condition is a barrier that precludes her from searching for, accepting or continuing in employment.

Accordingly, the panel finds that the ministry's determination that the appellant no longer meets the criteria for PPMB designation under EAR Section 2 is a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision.