



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of March 8, 2016, 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, Schedule E

PART E – Summary of Facts

The appellant is a recipient of income assistance.

The information before the ministry at the time of reconsideration included:

- PPMB Medical Report completed by Dr. G dated February 12, 2009 noting primary medical conditions as sarcoidosis, asthma, Hepatitis C, ADHD and secondary medical condition as chronic neck pain. Restrictions were not legible, but daily analgesic medication was needed;
- PPMB Medical Report completed by Dr. T dated October 13, 2011 noting primary medical condition as sarcoidosis, secondary condition as depression. Restrictions described were shortness of breath, weakness, fatigues restricting both physical and cognitive functions, limiting ability to work and daily living activities (DLAs)
- PPMB Medical Report completed by Dr. T dated December 19, 2013 noting primary medical condition as sarcoidosis, secondary conditions as chronic back pain and depression. Restrictions described were pain resulting in stiffness and weakness, also breathing difficulties related to her lung conditions (sarcoidosis/asthma).
- PPMB Medical Report completed by Dr. C dated January 14, 2016 noting primary medical condition as depression, secondary medical conditions as sarcoidosis and chronic pain. Onset dates of medical conditions were not specified. Restrictions described were low mood, lability and difficulty in functioning day to day;
- ministry PPMB checklist dated January 26, 2016 including appellant's employability screen indicating a total score of 8;
- February 1, 2016 letter from the ministry informing appellant that she no longer met the requirements for PPMB designation;
- Appellant's Request for Reconsideration received by the ministry on March 10, 2016 to which was appended a handwritten six-page note by the appellant, containing evidence and argument. The appellant's note is summarized as follows:
 - Dr. C is new to her, and doesn't know her;
 - her medical file was not in front of Dr. C when she met with him;
 - her cleaning job boss let her work 6 hours over 2 days;
 - she has breathing problems, arthritis, and high blood pressure;
 - now she can barely run for a bus or take laundry upstairs, and when she walks down the street she must stop and catch her breath;
 - she sweats profusely, which causes her great stress.

In her Notice of Appeal dated March 21, 2016 the appellant stated that commencing in 2015 her doctor had changed her highly addictive pain-killing medication which resulted in more pain. She added that Dr. C has referred her to respiratory and liver specialists.

At the hearing the appellant stated that she had found it difficult to discuss all her medical problems with Dr. C, and she assumed he had read her extensive file before meeting with her. When he asked the appellant what was bothering her, she replied "Depression". The appellant also remarked that all of her symptoms are worsening, including: memory problems, night/day sweats and shortness of breath, adding that it now takes four times longer to go for groceries than previously. She recounted that she had a brain tumour that was removed in 2011 but caused nerve damage to her back resulting in chronic pain, and added that she believes she suffers from Reynaud's Syndrome, which makes her hands cold.

The appellant also told the panel that the cleaning job she had worked at had been temporary, to replace her cousin while the cousin was away, and that she had last worked in September or October 2015. She does not have the education or skills to do sedentary or less strenuous work.

Adjournment Request #1

The appellant then asked for an adjournment in order to submit a September 26, 2013 respiratory spirometry report and to get a letter from her employer to explain how the cleaning job had been modified to meet her physical barriers. The ministry representative consented to the adjournment request. The hearing was adjourned and the appellant was allowed two business days to submit the documents.

Adjournment Request #2

The hearing reconvened on April 22, 2016, at which time the appellant requested another adjournment because she had an upcoming medical appointment and wished to submit additional medical evidence. The ministry representative did not object to the second adjournment request, but the panel did not grant a second adjournment, for the following reasons:

- the first adjournment was allowed solely to allow the appellant to submit a medical report that was not suitable for “reading in” to the teleconference hearing and an employer’s letter;
- the appellant had the opportunity to submit additional medical evidence between the date of the original decision of the ministry (February 1, 2016) and the resumption of the appeal hearing on April 22, 2016.

The panel considered the oral evidence of the appellant and determined that it was admissible under EAA Section 22(4) as evidence in support of the information that was before the minister at the time of reconsideration because it did not contain new information and it helped to explain the difference between the 2016 PPMB medical report and earlier medical reports. The panel also admitted the spirometry report as additional evidence under Section 22(4) because it was related to the appellant’s respiratory diagnoses of sarcoidosis and asthma.

The ministry relied on the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of March 8, 2016, 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

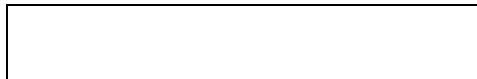
- (a) subsection (2), and
- (b) subsection (3) or (4).

(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 0 1 3 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 work experience (e) volunteer work only	0 1 2 4 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			

The appellant argues that Dr. C did not review her medical history before completing the 2016 PPMB medical report, and failed to include sarcoidosis, asthma, chronic back pain, Hepatitis C and ADHD as primary medical conditions in the report even though she continued to suffer from these conditions and they were included in earlier PPMB medical reports. She felt uncomfortable when she was interviewed by Dr. C and did not inform him of the physical symptoms she is experiencing, including breathing problems, back pain, profuse sweating and cold hands. She adds that her symptoms are worsening and it now takes four times longer to go for groceries than previously, she can barely run for a bus or take laundry upstairs, and when she walks down the street she must stop and catch her breath. She sweats profusely, which causes her great stress.

The appellant also argues that she undertook the cleaning job as a favour to her cousin, to hold the position on her cousin's behalf during the cousin's absence. She was allowed to work 6 hours over 2 days to complete a day's cleaning work.

The ministry's argument is contained in the reconsideration decision, which is summarized as follows:

- in the 2016 PPMB application Dr. C noted the appellant's primary medical condition as depression, and secondary medical conditions as sarcoidosis and chronic pain. In describing the restrictions specific to the appellant's medical conditions he wrote: "low mood, labile, hard to function every day". He did not describe the severity, frequency or duration of the appellant's low mood and lability and how it affected the appellant's ability to work, and he did not describe any physical symptoms that restricted the appellant's ability to engage in employment activity.
- during the period September 2013 - September 2015 the appellant reported net earnings ranging from \$240 to \$768 per month arising from employment in cleaning services. She did not provide information from her employer to indicate that due to her medical conditions she was allowed more time to complete her assigned employment tasks.
- between the original decision dated February 1, 2016 and the reconsideration date of March 8, 2016 the appellant did not submit additional medical information to demonstrate that her medical condition constituted a barrier that precluded the appellant from searching for, accepting or continuing in work, including more sedentary employment.

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, other than addiction, 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 minister'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, and when used in the context of EAR Section 2(4) means that the person is unable to participate in any type of employment for any period of time, other than in sheltered work environments or very infrequently with minimal hours. The appellant’s 2016 PPMB medical report did not contain information from a medical practitioner that described the severity, frequency or duration of the appellant’s low mood and lability and how it affected the appellant’s ability to work, and did not describe any physical symptoms that restricted the appellant’s ability to engage in employment activity. Although the appellant offered evidence to indicate that her daily activities are restricted by serious breathing problems, chronic pain and profuse sweating the medical report did not mention these restrictions.

Between September 2013 and September 2015 the appellant reported net earnings ranging from \$240 to \$768 per month arising from employment in cleaning services. She failed to provide evidence from her employer to support her argument that her cleaning job was modified or adapted to accommodate the restrictions caused by her medical condition. Also no information was submitted to the ministry to indicate that the appellant was unable to search for or participate in more sedentary types of employment.

For all of these reasons the panel finds that the ministry reasonably determined that the appellant did not meet the criteria in EAR Section 2(4)(b) because she failed to provide sufficient information to satisfy 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 reasonably supported by the evidence, and confirms the decision.