

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated March 21, 2016 which held that the appellant did not qualify as a person with persistent multiple barriers to employment (PPMB) under section 2 of the Employment and Assistance Regulation (EAR).

The ministry determined that the appellant met the requirement of subsection (2) as she has been in receipt of income assistance for 12 of the immediately preceding 15 calendar months and that her application would be assessed under (4) rather than subsection (3) based on her employability screen score of 12. The ministry was satisfied that the requirement of subsection (4)(a) was met as a medical practitioner has confirmed that the appellant has a medical condition, other than addiction, that has continued for at least one year and is likely to continue for at least 2 more years. However, the ministry determined that the requirement of subsection (4)(b) was not met as it could not be determined that the appellant's medical condition precluded her from all forms of employment.

PART D – Relevant Legislation

EAR, section 2

PART E – Summary of Facts

The appellant has been in receipt of income assistance as a sole recipient. Her previous PPMB qualification expired on October 31, 2015. The appellant's employability screen score is 12.

In support of her re-application for PPMB, the appellant provided two "Medical Report – Persons with Persistent Multiple Barriers" (MR) forms completed by two different medical practitioners.

The first MR is dated May 21, 2015, and identifies PTSD as the primary medical condition and COPD as the secondary medical condition. Treatment is described as seeing a counsellor, taking medication for COPD, and trying to quit smoking. The medical practitioner notes that the appellant may have flares of COPD exacerbation. No restrictions specific to the diagnosed medical conditions are indicated.

The second MR is dated November 13, 2015, and also indicates PTSD as the primary medical condition with chronic cough NYD as the secondary medical condition. Medication is identified as treatment and restrictions specific to the diagnosed medical conditions are described as no work in 10 years, multiple issues.

The appellant also provided additional medical documentation, including the results of a 2012 CT and 2013 MRI of her cervical spine, a May 29, 2013 consult letter respecting a neurologic review conducted in hospital, and a 2009 letter referring the appellant for investigation of gastroesophageal reflux with chronic cough. The neurologic review identifies the appellant's profession and that it requires static holding postures of both the body and hands.

In her February 22, 2016 request for reconsideration, the appellant writes that the main reason she is requesting PPMB is that she has very little use of her hands, mostly her right. She has constant pain which has gotten more severe over the years and has been referred for surgery. She cannot hold anything more than 4 to 5 lbs. and drops light things without even feeling them drop. She also constantly coughs throughout the day and night. She has lost three jobs due to her cough and falling asleep at work due to lack of sleep from coughing. PTSD is also a major issue and she has depression. Some days she doesn't get out of bed other than to eat and sleeps 12-14 hours. She indicates that she will get further diagnoses and more paper work.

On appeal, in her Notice of Appeal, the appellant confirms her previous description of having little or no use of her hands, especially the right hand, and being unable to hold things without dropping them. She also provided a March 2016 4-page Outpatient Clinic Consultation Note in which the physician writes "I think the CTS [carpal tunnel syndrome] is the main cause of her hand symptoms." The physician also references an MRI of the appellant's cervical spine.

The panel admitted the additional information provided on appeal under section 22(4) of the EAA because it substantiated the previous information provided by the appellant respecting the use of her hands and her cervical spine and was therefore in support of the information available to the ministry at reconsideration.

The ministry did not submit additional information and relied on its reconsideration decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry's reconsideration decision which held that the appellant did not qualify for PPMB because she had not met the requirement of section 2(4)(b) of the EAR that her medical condition precludes her from employment is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Relevant Legislation – section 2 of the 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.

Appellant's position

The appellant's position is that she has multiple medical conditions, including PTSD, depression, chronic coughing, and especially little or no use of her hands, which qualify her for PPMB status.

Ministry's position

The ministry's position is that the information provided by the medical practitioner that the appellant has not worked for 10 years and has multiple issues does not provide sufficient information concerning the type or degree of restrictions. Consequently, it cannot be determined that the restrictions would preclude all forms of employment activities and the requirement of section 2(4)(b) has not been met.

Panel Decision

Section 2 of the EAR sets out the requirements for PPMB qualification. The requirements of subsection (2) must be met as must the requirements of either subsection (3) or (4). The requirements of subsection (3) apply where an applicant has an employability screen score of at least

15, otherwise, the requirements of subsection (4) apply.

In the appellant's case, the ministry determined that the requirements of subsection (2) were met and that the appellant's application must be assessed under subsection (4) based on her employability screen score of 12. That the appellant's employability screen score is 12 is not in dispute and accordingly, the requirements of subsection (4) apply in the appellant's circumstances. The requirements of subsection (4)(a) were found to have been met. The only basis for denial was the requirement of subsection (4)(b) that the ministry be of the opinion that the medical conditions confirmed by the medical practitioner are a barrier that precludes the appellant from searching for, accepting or continuing in employment.

While the appellant argues that her main reason for requesting PPMB status is the limited use of her hands and has provided medical documentation addressing her hands and other conditions including problems with her cervical spine, the only diagnoses confirmed by a medical practitioner as having existed for one year and being likely to continue for at least two years are PTSD and COPD (chronic cough). The medical practitioner who completed the second MR writes that the appellant has multiple issues but offers no further description. Consequently, only the information respecting PTSD and COPD (chronic cough) can be considered when determining eligibility for PPMB.

While the medical practitioner who completed the second MR states that the appellant has not worked in 10 years, as the ministry notes there is no description of restrictions arising from the PTSD and COPD. Consequently, it is unclear what physical, cognitive, or emotional restrictions result from these medical conditions or the degree of any restrictions. In the absence of this information, the panel finds that the ministry reasonably concluded that the information did not establish that the appellant's medical conditions of PTSD and COPD preclude her from all types of employment activities.

The panel finds that the ministry reasonably determined that the information provided did not establish that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment as required by section 2(2)(b) of the EAR.

As the reconsideration decision was reasonably supported by the evidence, the panel confirms the decision.