

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated May 10, 2016 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because she did not meet all of the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular Section 2(4)(b) was not met because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 12 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2.

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

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

- A Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated January 25, 2016 and completed by the appellant's physician;
- An Employability Screen;
- The appellant's Request For Reconsideration dated April 12, 2016 which indicated that she was waiting for more tests and the results would not be available before her PPMB application was due and requested an extension. This request was also signed and dated by the appellant's physician.

In the Medical Report, the physician who indicated that she had been the appellant's medical practitioner for 6 months or more reported that the appellant's primary medical condition is Osteoarthritis –left knee – onset 2000 and the secondary medical conditions are COPD, Asthma, Hepatitis C, Depression and Anxiety - onset 1990's. The appellant's treatment is indicated as "Being referred to respirology for possible sleep apnea." The physician has reported that the medical conditions are not episodic in nature and restrictions are "Pain in left knee on prolonged standing or walking. Chronic cough and shortness of breath."

A copy of the Employability Screen indicated a total score of 12 with results that correspond with Expected to Work (score 0-14) which are described on the Employability Screen form as immediately employable/employable with short-term interventions.

With the Notice of Appeal dated May 24, 2016, the appellant provided a 2 page letter addressing why she disagrees with the ministry's decision. Details are as follows:

- Her PPMB applications from past years are pretty much the same and that the report from two years ago was almost identical to this year's.
- When she receives the medical PPMB form, she fills out the personal identification part and then drops it off at her doctor's office which once completed is faxed to the ministry without the appellant seeing it.
- In 2012, the appellant received a call from a ministry representative who suggested that she might qualify for Persons with Disabilities status and sent her a 23 page booklet.
- The appellant's doctor did not include her sleep apnea diagnosis which was received before January.
- The appellant's doctor did not include the diagnosis of her damaged occipital nerve and that the appellant had been referred to a neurologist/anesthesiologist for a procedure that would numb the nerve. (The appellant choose not to undergo the procedure and continued with her medication which is no longer working.) The appellant has been referred for the same procedure on August 8, 2016 as her pain has gotten worse.
- She has an autoimmune disorder called Lichen sclerosis which is hard to keep under control and subsequently has an appointment with her gynecologist on May 25, 2016.
- The appellant has psoriasis on her hands which constantly break out causing painful fissures

along her fingers. She is therefore unable to hold a pen for long.

- Regarding her depression and anxiety, there are days when the appellant cannot get out of bed, hallucinates and doesn't leave the house for days. Her roommate picks up her prescriptions, goes to the grocery store and because she can't ride the bus, drives her to every doctor's appointment.
- She cannot hold down a job, can barely walk ½ a block before her knee starts aching, has stage one COPD and asthma which are everyday issues.
- The denial letter caused her anxiety to spike.
- She called the ministry to advise that she had doctors' appointments until June and will be going to the sleep lab on June 6, 2016.
- The ministry told her that she could have an extension if she filled out section 3 of the Request For Reconsideration, which she did, and returned it to the ministry on April 18, 2016; however, it was not mentioned that the extension was only good for 10 days.
- Once the appellant received the reconsideration decision, she contacted the ministry and was advised that a supervisor would call within a day or two; however, the appellant didn't receive a call and stayed in bed for 5 days while waiting.

The ministry had no objections to the admissibility of the appellant's letter. The ministry relied on its reconsideration decision and submitted no new information.

The panel determined the appellant's documentary evidence was admissible under Section 22 (4) of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration and provided further information about the appellant's medical conditions as well as insight in to her personal circumstances.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all the criteria under Section 2 of the Employment and Assistance Regulation. In particular, the appellant has not met Section 2(4)(b), because in the opinion of the minister, her medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 12 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

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, or (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 1 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)

Appellant's Position

The appellant argues that she has not been denied PPMB designation in past years and that she figured that her doctor was doing it right as the medical report from two years ago was almost identical to the report this year. The appellant's position is that she is waiting for more tests and that she has upcoming medical appointments; therefore, she would like to have another chance at completing the PPMB form once her physician has the results.

Ministry's Position

The ministry argues that the appellant's physician has confirmed medical conditions of Osteoarthritis in her left knee, COPD, Asthma, Hepatitis C, Depression and Anxiety. The restrictions noted are "Pain in left knee on prolonged standing or walking. Chronic cough and shortness of breath." The ministry found that there is insufficient evidence to verify that the appellant's medical conditions preclude her from all forms of employment activities; therefore, she does not meet the requirement of section 2(4)(b).

Panel's Findings

The panel notes that in the appellant's Medical Report - PPMB dated January 25, 2016, the appellant's primary medical condition is Osteoarthritis in her left knee and the secondary medical conditions are COPD, Asthma, Hepatitis C, Depression and Anxiety, The appellant's treatment is indicated as "Being referred to respirology for possible sleep apnea." The physician has reported that the medical conditions are not episodic in nature and restrictions are "Pain in left knee on prolonged standing or walking. Chronic cough and shortness of breath." The panel further notes that the physician who has been the appellant's medical practitioner for 6 months or more does not indicate that an examination of previous medical records was conducted.

After reviewing both the PPMB Medical Report and the appellant's reasons for reconsideration, the panel finds that while the appellant had indicated that more medical information would be forthcoming, there is no other medical information at this time to substantiate the other conditions as described by the appellant or their potential impact on her employability. The legislation requires that in the opinion of the minister, the nature of the restrictions is a barrier that precludes the person from searching for, accepting or continuing in employment. The panel acknowledges that the appellant has had PPMB designation for previous years; nevertheless, there is insufficient information to support that the appellant's medical condition is severe enough to present a significant barrier to all employment.

The panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical conditions are a barrier that precludes her from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not established. The panel finds that the ministry reasonably determined that the appellant does not qualify as a person with persistent multiple barriers to employment and confirms the reconsideration decision.