



### PART C – Decision under Appeal

The Appellant appeals the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision dated 03 June 2016, which denied the Appellant's application for designation as a person with Persistent Multiple Barriers to Employment (PPMB) because, while the Ministry found that the information provided established that the Appellant had an Employability Score of less than 15 and had a medical condition which had continued for at least one year and was likely to continue for at least two more years, the Appellant had not met the requirement of section 2 (4)(b) of the *Employment and Assistance Regulation* (EAR), as the information provided did not satisfy the Minister that the Appellant had a medical condition which presented a barrier that precludes the Appellant from searching or accepting or continuing in any type of employment for any length of time, and therefore the Appellant did not meet all the required conditions of section 2 (4)(b) of the *Employment and Assistance Regulation* (EAR).

### PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), Section 2(2) and Section (4)(a) and (b).

## PART E – Summary of Facts

The information before the Ministry at the time of the Reconsideration Decision consisted of the following:

**The Appellant's Request for Reconsideration** dated 23/MAY/2016, in which she writes:

- That she feels that she is being treated like a person with full disability which prevents a person from working
- She is not satisfied that she is fully disabled
- The application is for a person with multiple barriers which is what she has and what she has been applying for all along
- The proof she has multiple barriers is in the reports submitted
- She has an extensive criminal record
- Her skills are extremely outdated in today's work force and she needs extensive schooling and training
- Her back and neck have degenerated so severely that she cannot stand or walk straight, and is constantly hunched over
- It hurts her to keep a straight back
- She has developed a cyst/polyp in the right nasal passage to the point where she can only breathe on one side of her nose and it is physically impossible for her to exert herself in any way without running out of breath and fighting for air
- Her teeth are all rotten and causes constant pain as well as headaches
- Her neck and shoulder pain are such that she can barely function let alone eat and stay healthy
- The Ministry will not pay for food or get dentures so she is in constant pain from various things.

**An Employability Screen** with the Appellant scoring 11

**A Medical Report - Persons with Persistent Multiple Barriers** dated 29/SEP/2015 signed by the Appellant's general practitioner which reports:

- Her primary medical condition is chronic sinusitis with right nasal difficulties which has persisted for about three years
- Chronic nerve and back pain, degenerative, which has persisted aggressively for over five years
- She is likely going for surgery to correct the nasal problem
- She has been referred to treatment for the neck pain and occipital headaches
- Her exertion is limited by respiratory difficulty
- Physical tasks cause her back and neck pain



**A Medical Imaging Report** dated 25/JUN/2015 in which the radiologist finds (22/SEP/2015):

- Mastoid air cells are normally aerated
- Sphenoid sinuses clear
- Sphenoethmoidal recesses are patent
- Front ethmoidal recesses appear patent
- Left Maxillary Sinus is deformed and has mild diffuse mucosal thickening
- Ostiomeatal Complex appears patent but is narrow
- Left Nasal cavity appears expanded compared with the right
- There is lobulated soft tissue density in the right nasal cavity possibly due to polyps or mucus retention cysts
- All most complete opacification of the right maxillary sinus associated with superior convex boarder likely due to a mucus retention cyst
- Right ostiomeatal complex is patent
- Mild mucosal thickening in the right maxillary sinus separate from the larger opacity with minor mucosal thickening present in the ethmoid air cells
- Dental abnormalities around some teeth with mild encroachment in the base of the right maxillary sinus by right sided pre-molar
- The diagnosis is diffuse sinus disease with more prominent pacification in the right maxillary sinus likely due to a mucus retention cyst with a polypoid opacity in the right nasal cavity and dental abnormalities.

**An X-Ray Report** dated 29/JUN/2015

- Showing there was mild exaggerated cervical lordosis,
- Mild grade 1 anterolisthesis on the 4 5 and 7 cervical vertebra and the 1 thoracic vertebra,
- Mild degenerative changes mostly in the mid and lower cervical spine
- Moderate to severe foraminal narrowing of the right 3 to 5 cervical foramen with no significant left foraminal narrowing but noting that the upper left neural foraman were not well evaluated:

**A Two-Page Ministry Check List** for persons who have persistent multiple barriers to employment with decision date 19/APR/2016 reporting that a medical practitioner has

- confirmed the medical condition has continued for at least one year, and
- is likely to continue for at least two years or has occurred frequently over the past year and is likely to continue for the next two years, with attached medical report, client employability plan, employability screen, and medical X-Rays Report, which concludes that the Appellant is “not eligible for PPMB”.

**A Ministry Persons with Persistent Multiple Barriers Decision Summary** noting that the medical conditions are chronic sinusitis with right nasal polyposis, chronic neck and back pain with disc degeneration, that she is likely to have surgery for the nasal problems and is referred to a rehabilitation specialist to consider trigger point injections for the neck pain and occipital headaches.



The decision summary notes her condition has lasted for more than one year, the expected duration is in excess of two years, and that the condition is not episodic in nature. It notes the physician states her exertion is limited by respiratory difficulties and physical tasks are limited by back and neck pain.

The Decision summary acknowledges that while her conditions may create some limitations in certain circumstances, the Ministry has no confirmation that these restrictions prevent her from participating in all types of employment activities and therefore her current conditions and restrictions are not confirmed to preclude employment.

PART F – Reasons for Panel Decision

**Issue**

The issue in this appeal is whether the Ministry's decision to deny the Appellant designation as a person with Persistent Multiple Barriers to Employment (PPMB) was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

**Relevant Legislation**

***Employment and Assistance Regulation, Sections 2(1), 2(2)(a), 2(3), 2(4)***

**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;

(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.

## **The Hearing**

### **Appellant's Submissions:**

The panel confirmed that the Appellant was notified of the date and time of the hearing, and that it was by teleconference. The Appellant did not appear at the hearing. The hearing proceeded in accordance with section 86(b) of the *EAR*.

### **Ministry's Submissions:**

The Ministry stood by its position at reconsideration.

At the hearing, the Ministry representative submitted:

- That to be designated as a person with Persistent Multiple Barriers to Employment (PPMB) the Appellant must meet at least the requirements of
  - Section 2(1) and Section 2(2) of the *EAR*, and
  - Either Section 2(3) or Section 2(4) of the *EAR*.
- That the Appellant qualified for PPMB designation under Section 2(1) and Section 2(2) of the *EAR*.
- That the Appellant did not qualify for PPMB designation under Section 2(3) *EAR* because the Appellant's employability score was 11 and in order to qualify the score must be at least 15 and further submitted that the Appellant did not dispute the Appellant's lack of qualification under Section 2(3)
- That in order to qualify for PPMB designation, because the Appellant did not meet the requirements of section 2(3) *EAR*, the Appellant then must meet the requirements of Section 2(4) *EAR*
- That the reconsideration officer determined that the Appellant is not precluded from employment
- That the reconsideration officer reviewed the Appellant's file to see if there was any more medical information including a medical information or employability reports previously submitted to the Ministry, but could find none
- That it was unfortunate that the Appellant had not provided any further information from the family doctor.

## **Analysis**

### **Section 2(1) EAR**

This section requires the Appellant for designation as PPMB to qualify under subsection (2), and either subsection (3) or (4) *EAR*.

### **Section 2(2) EAR**

On the evidence, and acknowledged by the Ministry representative, the Appellant meets the requirement of Section 2(2)(a) *EAR* because she has been a recipient of income assistance or hardship assistance under the Act for at least 12 of the immediately preceding 15 calendar months.

### **Section 2(3) EAR**

The Appellant does not meet the requirements of Section 2(3) *EAR* because, on the evidence, the Appellant scored 11 on the Employability Screen and in order to qualify under this subsection the Appellant must have scored at least 15. Therefore the Appellant does not qualify for PPMB designation under Section 2(3). This leaves the only section remaining to the Appellant as Section 2(4).

### **Section 2(4) EAR**

This subsection requires that the Appellant have a medical condition (other than addiction), confirmed by a medical practitioner that has continued for at least one year, or has occurred frequently in the past year, and in either case is likely to continue for at least two more years and which in the Minister's opinion is a barrier that precludes the Appellant searching for, accepting or continuing in employment.

On the evidence the Appellant has a number of medical conditions that have continued for at least one year, and that have occurred frequently in the past year, and that are likely to continue for at least two more years, and thus the Appellant satisfies requirements of section 2(4)(a)(i) and (ii) *EAR*.

The question then becomes whether or not the Appellant meets the requirements of section 2(4)(b) *EAR*, namely whether or not the Appellant's medical condition is a barrier that precludes the Appellant from searching for, accepting or continuing in employment.

In the evidence before the reconsideration officer, there was no evidence that the Appellant's medical conditions preclude the Appellant from searching for, accepting or continuing in employment and that she could not do some type of work, such as a sedentary occupation not involving physical labour.

More specifically, the panel notes that while the Appellant's physician goes into detail in the medical report for persons with Persistent Multiple Barriers (dated 29/SEP/2015) as to the Appellant's medical conditions, and does address some of the Appellant's limitations, at no time in that report does the physician relate the medical conditions to the ability or lack of the ability of the Appellant to search for, accept or continue in employment. In neither the Medical Report – Employability (dated 26/MAY/2015) nor in the earlier Medical Report – Employability (dated 03/APR/2014) does the physician relate the Appellant's medical conditions to the issue of whether or not the Appellant has the ability (or not) to search for, accept or continue in employment, nor does any of the other medical evidence do so. Indeed, the question of employment is simply not addressed in any of the medical



evidence.

The panel finds that the Ministry's reasoning on the evidence before the Reconsideration Officer was reasonable.

Thus the Appellant does not meet the requirements of section 2(4)(b) *EAR*.

**CONCLUSION**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the Ministry's reconsideration decision, which determined that the Appellant was not eligible for designation as a person with Persistent Multiple Barriers to Employment (PPMB), was reasonably supported by the evidence, and therefore confirms the decision.