

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated June 13, 2016 made by the Ministry of Social Development and Social Innovation (the ministry) which determined that the appellant does not qualify as a Person with Persistent Multiple Barriers to Employment (PPMB) because:

1. she does not have an employability score of at least 15 as required by section 2(3)(a)(i) of the Employment and Assistance Regulation (EAR), and
2. the minister is not satisfied that the appellant has a medical condition that is a barrier that precludes her from searching for, accepting or continuing in employment in accordance with section 2(4)(b) of the EAR.

PART D – Relevant Legislation

The relevant legislation is section 2 of the EAR.

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- (1) An employability screen completed by the appellant with a score of 7. In its reconsideration decision the ministry identifies that this score was adjusted to 10 upon corrected information being supplied to the ministry.
- (2) A Medical Report – PPMB (MR) dated February 5, 2016, completed by the appellant's physician indicating that the appellant suffers from a neurological weakness in her left arm that she has suffered from since 2013, is expected to last for more than 2 years and is not episodic. The restrictions are described as "cannot use left arm, weakness and muscle wasting in left hand."
- (3) In her Reconsideration Application the appellant wrote: "After waiting 3 years my left elbow was operated on. It was a ulner nerve transposition and cubital tunnel release. My surgeon was not optimistic about the recovery. As the ulner nerve was a mess. It would be up to a year before we could see results. I will be going to a brace clinic ...".

In her appeal submission the appellant writes: "Again I do not think I was fairly reviewed. I can not use my left arm at all. I have a year of recovery to find out what I can do. My right arm is very weak. I have a hard time picking up plates and have smaller cups of tea. My right knee has been in a brace for almost a year gets an MRI July 4."

Admissibility of New Evidence

In accordance with section 24(2) of the Employment and Assistance Act, the panel may only admit information and records that were either before the ministry at the time of the reconsideration decision or are in support of information and records that were before the ministry at the time of the reconsideration decision.

The appellant's statement that she has had surgery on her right knee which is not healed and that her right arm is also weak were not before the ministry at the time of the reconsideration decision. To be admissible, that statement must therefore be evidence in support of information that was before the ministry at the time of the reconsideration decision. In this case, the evidence of additional medical conditions in her right leg and arm is clearly information that is in addition to the information was before the ministry at the time of the reconsideration decision and so cannot be in support of the information regarding the medical condition of the appellant's left arm.

Based on this analysis, the new evidence submitted by the appellant at the appeal is not admissible.

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PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment in accordance with section 2 of the EAR and so cannot designate the appellant as a PPMB was reasonably supported by the evidence and/or a reasonable application of the legislation.

The criteria for being designated as a PPMB are set out in s. 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.

THE APPELLANT'S POSITION

At the hearing the appellant reiterated that she cannot use her left arm as she has no feeling from her elbow down. She stated that she did seek work at a nursery, but was told that she could not do the

job with her medical conditions. She has worked in the past with horses, dogs and vets, but these jobs are not open to her given her medical conditions. The appellant stated that she has had surgery on her right knee that is still healing and that her right arm is also weak.

THE MINISTRY'S POSITION

The ministry's position is that there is no evidence supporting the appellant's position that her medical condition precludes her from searching for, accepting or continuing in employment. It concedes that her medical condition creates restrictions for her, but there is no evidence that it precludes her working in any type of employment or engaging in employment-related activities such as job searches and employment and training programs.

THE PANEL'S DECISION

Based on the information before the ministry the appellant had an employability score of 10 and so did not qualify for PPMB under subsection 2(3). At the hearing, the appellant confirmed that she considered that number to be accurate.

In order to qualify as PPMB she must therefore meet the requirements under subsection 2(4).

The ministry found that the appellant did not qualify under subsection 2(4) because it was not of the opinion that the appellant's medical condition is a barrier that precludes her from searching for, accepting or continuing in employment. This determination was based on the MR, which describes the appellant's restrictions as: "cannot use left arm, weakness and muscle wasting in left hand."

The MR provides no information that would establish that the appellant's medical condition precludes her from searching for, accepting or continuing in employment. It simply indicates that she cannot use her left arm. Not being able to use her left arm does not preclude the appellant from working in any type of employment or engaging in employment-related activities such as job searches and employment and training programs. The fact that the appellant cannot find work in her preferred occupations is not relevant. The legislation is clear that the medical condition must preclude the applicant from working in *any* type of employment or engaging in *any* employment-related activities.

Accordingly, the panel concludes that the ministry's decision that the appellant does not qualify for PPMB designation because she does not meet the requirements of sections 2(3)(a)(i) and 2(4)(b) of the EAR was reasonably supported by the evidence before it, and confirms the ministry's decision.