



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision dated 2016/10/20 which held the appellant was not eligible for Persons with Persistent Multiple Barriers ("PPMB") designation as she did not meet the requirements of section 2(4) of the Employment Assistance Regulation (the "EAR"), that she has a medical condition that in the opinion is a barrier that precludes the person's ability to search for, accept or continue in employment.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2

## PART E – Summary of Facts

The Appellant is a recipient of PPMB assistance with no dependent(s).

The evidence before the Ministry at reconsideration included the following documents:

Employment and Assistance Request for Reconsideration dated September 19, 2016:

Appellant's reason for request for reconsideration was that she is unable to work because of her epilepsy affecting her memory and causing confusion. Additionally her back condition makes it so that she is unable to sit, stand or walk for more than ½ an hour before she has to lie down for some relief. She walks hunched over from the pain being so severe and wakes up from it as well. She does get shots which help a little for a couple of days to a week.

The following documents were before the ministry at the time of reconsideration:

- PPMB Renewal Request letter dated 2016 May 02
- PPMB Renewal Request letter dated 2016 June 06
- Medical Report – PPMB dated 2016 May 26, wherein her physician notes a diagnosis of seizure disorder and mechanical back pain
- Medical results dated 2013 January 28 regarding her epilepsy frequency and treatment – last seizure occurred over ten years previously
- Employability Screen: score of 12
- Medical consult report dated 2014 October 02 noting on assessment that the appellant is affected by 1. Mechanical back pain with congenital spinal stenosis, complicated by facet joint hypertrophy and a paracentral disc herniation, 2. Seizure disorder 3. Very weak core muscles
- Medical consult report dated 2016 June 29 following nerve blocks performed on appellant's back
- PPMB Employment Checklist dates 2016 August 15
- PPMB Decision Summary dated 2016 August 15, noting that the appellant's physician does not indicate any restrictions to employment
- Decision letter dated 2016 August 15, wherein the Ministry informed the appellant that she was no longer met the requirements for PPMB

At the hearing the appellant stated that her epilepsy and the medication she takes to treat it leave her with memory problems and confusion. She estimates that she has seizures in her sleep and black-outs once every 1-4 weeks. Her back pain is constant and worsening. It prevents her from sitting or standing or more than ½ an hour, then she has to lie down for some relief. The pain causes her to waken and she walks hunched over. She goes for shots in her back every six weeks. She is waiting for a CT scan. Her right heel is now sore and it causes her to limp.

Additional evidence was submitted by the appellant for the appeal hearing. This evidence included the following document:

- Letter from the appellant's general physician dated November 9, 2016 stating that the appellant has significant restrictions with her chronic back pain and that she cannot stand or sit

for long periods, cannot lift more than 10-15 kg, has trouble with pushing and pulling, has restricted flexibility in her lower spine area with decreased forward flexion and has some straining symptoms of sciatica.

At reconsideration, the doctor reported the appellant's primary medical condition is seizure disorder and a secondary medical condition of mechanical back pain. The medical consult report dated 2014 notes mechanical back pain with congenital spinal stenosis, complicated by facet joint hypertrophy and a paracentral disc herniation. The appellant, in her request for reconsideration, stated she is unable to sit, stand or walk for more than ½ an hour before she has to lie down for some relief. She walks hunched over from the pain being so severe and wakes up from it as well. She does get shots which help a little for a couple of days to a week. The appellant repeats this information in her Notice of Appeal and at hearing.

The additional evidence from the appellant's general physician dated November 9, 2016 provides information restrictions she is having as a result of her back pain. Unfortunately this information was not provided at reconsideration. The PPMB form completed by the physician did not indicate any restrictions with motion in the arms or legs. As such, the panel determines the information is not admissible as it is new information and not in support of the information before the minister at reconsideration, as required by s. 22(4 *Employment and Assistance Act*). In this case, the legislation requires information from a medical practitioner for the ministry to base its decision upon and the PPMB application asks for a description of restrictions. There were no restrictions identified by the medical practitioner in the PPMB report dated May 26, 2016.

The Ministry did not submit additional evidence on appeal and relied exclusively on the Reconsideration Decision. The Ministry did not object to the submission of additional evidence provided by the appellant's advocate for this hearing.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision dated 2016/10/20 which held the appellant was not eligible for PPMB designation as she did not meet all the requirements of section 2(4) of the Employment Assistance for Regulation (the "EAR"), specifically that the ministry is not satisfied that the appellant is precluded from searching for, accepting or continuing in employment, is a reasonable application of the legislation in the circumstances of the appellant or is reasonably supported by the evidence.

Section 2 of the EAR states the following:

### **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.

[en. B.C. Reg. 368/2002.]

***Ministry's Position***

At reconsideration the ministry found that the appellant had qualified for PPMB under section 2(2) in that she had been in receipt of income assistance for more than 12 of the preceding 15 months. As the appellant scored 12 on the Employability Screen, she did not meet the test under s. 2(3) which requires the person to score at least 15 on the Employability screen. As such, the appellant has to meet the requirements of section 2(4) EAR. The ministry was not satisfied that the appellant qualified under section 2(4), specifically that her medical condition is a barrier that precludes her ability to search for, accept or continue in employment as her physician did not indicate any restrictions in the PPMB Medical Report dated May 26, 2016.

***Appellant's Position***

The appellant argued that the supplemental information from her physician provided for this hearing authenticated her statements regarding her limitations and restrictions and that she was not capable of searching for or accepting work, despite the fact that she scored 12 on the Employment Screen.

***Panel Decision***

The section 2(4) EAR requires that the appellant's medical condition, in the opinion of the minister, is a barrier that precludes her ability to search for, accept or continue in employment. Information is provided by the appellant's physician to assist the ministry in making this determination. In this case, the primary condition is seizure disorder and the appellant is receiving treatment. The secondary condition is mechanical back pain. At the time of reconsideration, the physician indicates no restrictions for either condition. Given this, the panel finds the ministry's determination that the appellant was not eligible for PPMB designation pursuant to section 2(4) of the EAR was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision.