

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 September 22, 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 section 2(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 section 2(4) rather than section 2(3) based on her employability screen score of 12. The ministry was satisfied that the requirement of section 2(4)(a) was met as a medical practitioner has confirmed that the appellant has a medical condition, other than an addiction, that has continued at least for 1 year and is likely to continue for at least 2 more years. However, the ministry determined that the requirement of section 2(4)(b) was not met as it could not be determined that the appellant's medical condition precluded her from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2

PART E – Summary of Facts

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

- The appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. Her employability screen score is 12.
- In support of her PPMB application the appellant provided a “Medical Report - Persons with Persistent Multiple Barriers” (MR) form dated May 25, 2016 and completed by a medical practitioner. It identifies “right wrist severe Osteoarthritis” with a date of onset of 2009 as primary medical condition and “post-traumatic stress disorder” with a date of onset of 2009 as secondary medical condition.
- The Medical Report describes the treatment/remedial approaches that have been tried to date are expected in the future.
- The medical practitioner, I describing the nature of any restrictions specific to the appellant’s medical conditions writes “Cannot work with right arm – deformity and pain.”
- In addition, the appellant provided 4 MRs dated in 2008, 2010, 2012 and 2014. The panel notes that PPMB qualification is subject to a 2 year renewal and, as such, re-qualification is contingent upon current medical information.
- In her September 13, 2016 request for reconsideration the appellant writes that - 1) she is physically not capable of performing due to pain; 2) post stress disorder I hop into depression and can’t deal with public; and 3) thyroid is always going up and down and bothers my everyday living.
- Submitted with the Request for Reconsideration:
 - A referral letter written by the appellant’s medical practitioner dated August 17, 2016 describing the medical conditions, medical history, allergies and medications.
 - A letter written by the appellant’s medical practitioner dated September 12, 2016 stating that the appellant would like to contest the decision not to renew her (PPMB) Income.
 - She has a new medical condition affecting her right foot. The condition leads to recurrent falls, affects her ability to walk and causes chronic pain in her ankle. She will be assessed by a neurologist in the near future to confirm the diagnosis. It is most likely a condition that cannot be remedied.
 - A letter written by the appellant’s medical practitioner dated July 18, 2016 stating that the appellant is unemployable, she has severe post-traumatic stress disorder, end stage liver disease and chronic arthritis.

Additional information provided

In her Notice of Appeal dated October 14, 2016 the appellant states she feels the ministry was overly particular in how they interpreted the paperwork submitted by her medical practitioner. She attached a letter from her medical practitioner dated October 13, 2016 containing the following summarized information:

- As the information previously provided does not explain the appellant’s difficulties with being unable to seeking, accepting or continuing in all types of employment, I will explain in

further detail.

- Osteoarthritis is not a condition that can be cured, it is degenerative.
- The appellant is in chronic moderate to severe pain with her back. Any back and forward motion – ie – filing papers – increases her back pain within a five to ten minutes to intolerable levels, requiring her to stop what she is doing and lie down for an hour or more and take medication to return to her “normal” pain levels. She is unable to sit more than ten minutes without her pain getting worse and requiring her to stand up or lie down and try to bring down her pain to its “normal” levels. I know of no type of employment that does require a certain level of mobility and an ability to sit that the appellant would be able to fulfill.
- The appellant is now starting with osteoarthritis on her left wrist and any stress on that wrist will cause this to become worse.
- The appellant is unable to lift anything that does not severely increase her pain and require her to lie down for an hour or more to recover.
- The appellant has now developed a problem with her right foot that has led to falls, chronic pain and affects her ability to work.
- The appellant’s depression and PTSD exacerbate her physical difficulties. There is an inertia and exhaustion that suffers of chronic moderate to severe depression experience that can make just getting out of bed in the morning a struggle. Medications do little to alleviate this. The appellant’s difficult life situation and chronic pain are making her depression worse.
- It is my considered opinion that the appellant is unable to seek, accept or continue in all types of employment, hence my use of the term “unemployable”.

The ministry did not make a submission to the written hearing.

Admissibility of New Information

The October 13, 2016 letter from the appellant’s medical practitioner (the letter) contains a notation that “the ‘appellant’ is now starting with osteoarthritis on her left wrist and any stress on that wrist will cause this to become worse”. This reference to osteoarthritis on the appellant’s left wrist is a medical condition that was not before the ministry at reconsideration, and therefore the panel has not admitted into evidence this portion of the letter.

The panel has admitted into evidence the remainder of the letter as it is in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information supports the information provided from the appellant in her May 25, 2016 and previous medical reports as well as the information provided in her request for reconsideration.

PART F – Reasons for Panel Decision

The issue to be decided in this appeal is whether the ministry's decision to deny the appellant PPMB designation was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant's medical condition is not a barrier that precludes her from searching for, accepting, or continuing employment as required by EAR section 2(4)(b).

The relevant legislation is EAR section 2 as follows:

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's position is that her medical condition precludes her from any work and should qualify her for PPMB status: she has osteoarthritis in her right wrist, osteoarthritis starting in her left wrist, PTSD, depression, Grave's disease, end stage liver disease, chronic moderate to severe pain with her back, unable to sit for more than 10 minutes without pain, unable to lift anything and problem with her right foot causing falls and chronic pain affecting her ability to walk.

Ministry's position

The ministry's position is that the information provided in the May 25, 2016 Medical Report - PPMB, osteoarthritis in her right wrist and PTSD, does not demonstrate that the appellant's medical condition presents a barrier precluding her from searching for, accepting or continuing in employment because the medical practitioner does not describe the nature of any restrictions specific to the appellant's medical conditions. Medical conditions included in previous Medical Reports – PPMB were not included in the May 25, 2016 report. Based on the medical conditions included in the May 25, 2016 Medical Report – PPMB, it cannot be said that the appellant is unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment. Consequently, the appellant's application does not meet the requirements set out in the EAR, section 2(4)(b).

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.

The ministry argues that the May 25, 2016 Medical Report – PPMB includes only the medical conditions of right wrist severe Osteoarthritis with a date of onset of 2009 and post- traumatic stress disorder with a date of onset of 2009. The ministry's position is that the May 25, 2016 Medical Report – PPMB did not include the appellant's medical conditions reported in previous medical reports – PPMB of Lower Back Osteoarthritis, Graves' Disease, Hypothyroid, Depression and Chronic Leg Pain.

All of the appellant's medical conditions were known to the ministry at reconsideration. The panel gives significant weight to the evidence provided in the October 13, 2016 letter from the appellant's medical practitioner and finds that the ministry must consider all of the appellant's medical conditions including Right Wrist severe Osteoarthritis, Post-Traumatic Stress Disorder, Lower Back Osteoarthritis, Graves' Disease, Hypothyroid, Depression and Chronic Leg Pain. The appellant's medical practitioner explains that any back and forward motion increases the appellant's back pain

within a five to ten minutes to intolerable levels requiring her to stop what she is doing and lie down for an hour or more and take medication to return to her “normal” pain levels, the appellant is unable to sit for more than ten minutes without her pain getting worse and requiring her to stand up or lie down and try to bring down her pain to its “normal levels, the appellant is unable to lift anything that does not severely increase her pain and require her to lie down for an hour or more to recover, the appellant’s Chronic Leg Pain condition with her right foot has led to falls, chronic pain and affects her ability to walk .The appellant’s medical practitioner states “it is my considered opinion that “the appellant” is unable to seek, accept or continue in all types of employment, hence my use of the term “unemployable”.

Conclusion

Based on the foregoing, the panel finds that the ministry decision in determining that the appellant’s medical condition is not a barrier that precludes her from searching for, accepting, or continuing employment as required by EAR section 2(4)(b) and to deny the appellant PPMB designation was not reasonably supported by the evidence in the circumstances of the appellant

Therefore, the panel rescinds the ministry’s decision pursuant to section 24(2)(b) of the Employment and Assistance Act. The appellant is successful on appeal.