

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 2, 2017 which held that the appellant does not qualify as a person who has persistent multiple barriers (PPMB) to employment because she did not meet all the criteria set out under section 2 of the *Employment and Assistance Regulation* (EAR).

Initially, the ministry determined the appellant’s Employability Screen score (ES) as 14 and assessed her application under section 2(4) EAR and when her ES was amended to 17 she was then assessed under section 2(3) EAR. The ministry determined the appellant had met the requirements under section 2(3)(a) and 2(3)(b)(i) of the EAR, however, section 2(3)(b)(ii) was not met because, in the opinion of the minister, her medical condition, other than an addiction, is not a barrier that seriously impedes her ability to search for, accept or continue in employment; and, in section 2(3)(c) that she had not taken all steps that the minister considers reasonable to overcome her barriers.

The ministry had also determined that the appellant’s medical condition, other than an addiction, from searching for, accepting or continuing in employment as set out in section 2(4) of the EAR.

PART D – Relevant Legislation Employment and Assistance Regulation (EAR), section 2

PART E – Summary of Facts

The appellant did not attend the hearing. The information before the panel is that the appellant has poor English language skills and on the Notice of Appeal she had requested an interpreter who was present at the hearing. The panel noted that on February 24, 2017 Canada Post had delivered the Appeal package to the appellant.

The panel is satisfied the appellant was properly notified of the date and time of the hearing and the hearing proceeded under section 86(b) of the EAR.

The evidence before the ministry at the time of reconsideration:

- Medical Report (MR) - Persons with Persistent Multiple Barriers (PPMB) application dated and signed September 31, 2016;
- Letter from ministry dated January 4, 2017 that advised the appellant she no longer meets the criteria for PPMB under section 2(4)(b) EAR and will be expected to look for employment;
- Employability Screen report initially indicated a score of 14 which was modified to a score of 17;

The appellant is a single mother with one dependent child. The appellant has been on income assistance since August 1995 and her PPMB status was under review. She was involved in a motor vehicle accident and now suffers with neck and back pain. The doctor (MP), who has been the appellant's physician for over 6 months signed the PPMB Medical Report on September 31, 2016; he describes her primary medical condition as neck/back myalgia, and her secondary condition as tension headaches. Her treatment is acupuncture, massage therapy, kinesiology and medications with the Outcome being temporary benefit. The MP advised her condition has existed for more than one year and is expected to continue for 2+ years. Her medical condition is not episodic in nature and the appellant experiences ongoing neck/back pain. The MP stated her restrictions are "Restricted ROM (Range of Motion) Neck/Back". Initially her Employability Screen indicated a score of 14 and was later amended by the ministry to indicate a score of 17.

Under section 3 of the Request for Reconsideration form the appellant gave Reasons "I have depression along with back and neck pain. I cannot get proper sleep during the day or at night. It also affects my daily routine, which then, my daughter needs to assist me with my everyday daily activities. I feel that it is not safe for myself or other safety to go to work. In addition, my English speaking and understanding is very limited. I can only understand a few simple words. Therefore, it is hard for me to communicate in English." [Please also change Employability screen form] – Transcribed by (name) - the daughter.

On the Notice of Appeal the appellant stated she is a single mother of an 8-year-old son. She writes, "Have back and neck pain, as well as depression. Do not feel capable to work. In addition, it is very hard for me to get some rest."

At the hearing the ministry relied on the facts as stated in the Reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration of February 2, 2017 that denied the appellant PPMB qualification because she did not meet all the legislated criteria under section 2 of the EAR is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant. More specifically, the issue is whether the ministry was reasonable in determining that the appellant does not have a medical condition that:

a) seriously impedes her ability to search for, accept or continue in employment as set out in section 2(3)(b)(ii) of the EAR; and, that she has taken all the necessary steps that the minister considers reasonable for here to overcome the barriers that impede her to search for, accept or continue in employment as set out in section 2(3)(c) of the EAR; or

(b) is a barrier that precludes her from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

The legislation considered: EAR

Persons who have persistent multiple barriers to employment

Section 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.

Section 2(3) of the EAR

Section 2(3)(b)(ii) EAR – has a medical condition that seriously impedes the person

Ministry's position

The ministry stated that the criteria under section 2(3)(b) EAR states the person has a medical condition that, in the opinion of the minister, is a barrier that "seriously impedes" the person's ability to search for, etc. whereas in section 2(4)(b) EAR the legislation uses the term "precludes" the person from searching for, accepting, etc. which, in the ministry's opinion, is a higher standard than seriously impedes.

The ministry argued that the appellant's MP reported her medical restrictions at ROM medical neck/back and tension headaches. The ministry argued the MP did not elaborate on the appellant's restrictions (ROM) nor did he confirm a diagnosis of depression. The ministry argued there is not sufficient information to establish that the appellant's medical conditions severely impede her from all types of employment and her ability to search for, accept or continue in employment. The ministry stated they rely on the opinion of the MP to assist them in making their decision.

The ministry stated that the criteria under section 2(3)(b) EAR – has a medical condition that is a barrier that "seriously impedes" the person's ability to search for, etc. whereas in section 2(4)(b) EAR the legislation uses the term "precludes" the person from searching for, accepting, etc. which, in the ministry's opinion, is a higher standard than seriously impedes.

Appellant's position

The appellant argued that she suffers from depression and cannot get proper sleep either in day or at night; this affects her daily activities and she relies on her daughter for assistance. The appellant also argued that she feels it is not safe for her to work or for the safety of others for her to go to work.

Panel Decision

The panel finds that the MP's assessment of "restricted ROM neck/back" on the medical report under Restrictions (specific to medical condition) is very vague and does not offer any opinion to support that the appellant has a medical condition that seriously impedes her from searching for, accepting or continuing in employment. The panel also notes that the appellant's argument that she suffers from depression has not been confirmed by the MP.

The panel therefore finds that the ministry's decision that the information provided did not establish that the appellant met the criteria in section 2(3)(b)(ii) EAR that the appellant's medical condition seriously impedes her ability to search for, accept or continue in employment was reasonable.

Section 2(3)(c) EAR – has taken all steps that the ministry considers reasonable to overcome the barriers that severely impede her abilities to search for, accept or continue in employment

Ministry's position

The ministry argued that the appellant's employment barriers include length of time on assistance, education level, lack of work experience, and her literacy level in English. The ministry argued that since the appellant was approved for PPMB there is no information to explain why she continues to have long-standing employment barriers when her medical condition(s) do not appear to be a severe

impediment to employment.

Appellant's position

The appellant did not offer any information regarding what steps she has taken to overcome her barriers to employment.

Panel Decision

The ministry stated that when the appellant initially qualified for PPMB her employment barriers included length of time on assistance, education level, lack of work experience and literacy level in English. The ministry's position is that it is unclear why she continues to have these long-standing employment barriers, however, there is no explanation for long-standing barrier. The ministry states when the appellant was initially approved for PPMB she was not required to have an Employment Plan which would have satisfied this requirement. There is no evidence from the appellant explaining what steps she has taken to overcome her barriers to employment.

The panel finds that based on the evidence the ministry's decision that the appellant had not taken all the steps the ministry considers reasonable for the person to overcome the barriers to search for, accept or continue in employment as set out in section 2(3)(c) of the EAR was reasonable.

Panel Decision – Section 2(3) of the EAR

The legislation under section 2(3) requires that the appellant satisfy all the requirements set out in section 2(3)(a) and 2(3)(b) and 2(3)(c) to qualify for PPMB.

The panel finds the appellant met the legislated requirements under section 2(3)(a)(i) and section 2(3)(b)(i) of the EAR.

The panel finds the appellant did not meet the legislated requirements under section 2(3)(a)(ii) and 2(3)(b)(ii) and 2(3)(c) of the EAR.

Therefore, based on the above, the panel finds the ministry's decision that the appellant did not qualify as a PPMB to employment under 2(3) EAR was reasonable.

Section 2(4) of the EAR

Section 2(4)(b) EAR – has a medical condition that precludes the person

Ministry's Position

The ministry stated that it accepts that a medical condition precludes when the recipient is unable to participate in any type of employment for any length of time, except in a supported or sheltered-type work environment. The ministry argued that the MP reported that the appellant has restricted ROM in her neck and back and has tension headaches; he did not identify depression as a medical condition. The ministry argued the MP did not provide an explanation or any further information on the severity of her restrictions - ROM and tension headaches – specific to her medical condition that would be a barrier that would preclude her from all types of employment.

Appellant's position

On her Request for Reconsideration, the appellant argued that she suffers from depression and cannot get proper sleep either in day or at night which affects her daily activities and then she relies on her daughter for assistance. The appellant also argued that she feels it is not safe for her to work or for the safety of others for her to go to work.

Panel Decision

The panel finds that the MP's comment under Restrictions - ROM neck/back - on the medical report is very vague and does not offer his opinion explaining how the appellant's restrictions to her medical condition(s) are a barrier that precludes her from searching for, accepting or continuing in all forms of employment which would support the appellant's position that she is not able to work because she does not feel safe.

The panel finds the ministry reasonably determined that the appellant's medical condition(s) is not a barrier that precludes her from searching for, accepting or continuing in employment as set out in section 2(4)(b) of the EAR.

Conclusion

Overall, the panel finds the ministry's decision that the information provided did not establish that the appellant met all the requirements under section 2 of the EAR to qualify as a person who has persistent multiple barriers to employment was a reasonable application of the legislation and was reasonably supported by the evidence. The panel confirms the ministry's decision.