

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 27, 2017 wherein the ministry determined the appellant does not meet the criteria for qualification as a Person with Persistent Multiple Barriers (PPMB) to employment under section 2 Employment and Assistance Regulation (EAR).

In particular, the ministry determined that the appellant does not have a medical condition that is confirmed by a medical practitioner that, in the opinion of the minister, is a barrier that precludes the appellant from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR

PART D – Relevant Legislation

EAR, section 2

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- The appellant is receiving income assistance as a sole recipient with a dependent child.
- November 22, 2016 – the ministry mailed a letter to the appellant advising that her PPMB allocation had been denied along with a Decision Summary that states “The medical report does not provide sufficient information about how the diagnosed conditions cause the inability to work. While applicant’s conditions and restrictions may create some limitations in certain circumstances, they do not prevent applicant from participating in all types of employment (part-time non-physical, sedentary) for restricted lengths of time or participation in employment related activities (job programs, retaining). Conditions and degree of restrictions do not preclude all employment. Not eligible under 2(4).”
- Employability Screen – reporting a total score of 11.
- Medical Report – PPMB application signed by a medical practitioner on September 8, 2016 confirms the appellant’s primary medical conditions as “chronic pain/soft tissue injuries – thorax/neck” and secondary medical conditions as “anxiety/depression/alcohol abuse,” the expected duration of the medical conditions is 2 years or more.
- Request Reconsideration signed by appellant on December 29, 2016 requesting an extension and stating that she is still not able to do a lot of things for herself, chores, walking long distances and being on her feet. Still have a lot of back pain and lack of sleep.
- January 27, 2017 – after the minister advised the appellant that the extension period had expired and there was no new information provided by the appellant, the ministry completed the Reconsideration Decision.

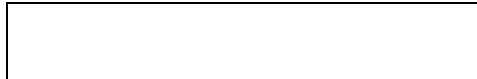
Notice of Appeal dated February 7, 2017, the Appellant stated the following:

“I do not agree with the ministry’s decision because I still have problems with my back and lack of sleep. I am at usually 4/5 hours of sleep. I also have an appointment to see a specialist on February 20, 2017. I am also still on pain medication.”

At the hearing

The appellant presented a letter from her medical practitioner detailing her medical issues that resulted from a motor vehicle accident which occurred on February 14, 2015. The report supports the information provided in the “Medical Report – Persons With Persistent Multiple Barriers” dated September 8, 2016. The appellant also presented a letter from her lawyer that substantiated the occurrence of the motor vehicle accident on February 14, 2015 and to confirm that the appellant attended on a neurosurgeon on February 20, 2017 and to advise that the neurosurgeon’s report is not received in time for the hearing. The appellant also advises that she has been seeing a physiotherapist for the two years following her motor vehicle accident and reports that she experiences more pain after the treatments, has difficulty walking two blocks or playing on the floor with her child. She further states that she must use the community bus to get around now and her physiotherapist has told her that her back will be in this poor condition for a considerable amount of time. She states that her doctor keeps changing her medications and this is resulting in weight gain and when she takes her sleeping pills, prescribed because of her inability to sleep due to the pain, they knock her out until sometimes 1 pm the next day.

At the hearing, the ministry re-stated the information and reasons contained in the reconsideration



decision. The ministry also objected to the admission of the physicians letter and the letter from the appellant's lawyer.

The panel admitted the two letters submitted by the appellant, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration. The panel admitted the testimony in accordance with section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the appellant does not meet the criteria for qualification as a PPMB under section 2 EAR.

In particular, the ministry determined that the appellant does not have a medical condition that is confirmed by a medical practitioner that, in the opinion of the minister, is a barrier that precludes the appellant from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

Relevant Legislation:

Section 2 EAR

(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,

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- 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.*

Position of the Appellant:

The appellant argues in the Notice of Appeal that “I do not agree with the ministry’s decision because I still have problems with my back and lack of sleep. I am at usually 4/5 hours of sleep. I also have an appointment to see a specialist on February 20, 2017. I am also still on pain medication.”

Position of the ministry:

The ministry position is that the appellants’ physician indicates that the appellants’ chronic pain/condition is not episodic in nature, but her anxiety/depression/alcohol abuse are episodic, and notes that she is unsure how frequently the episodes are likely to recur. The physician also lists the appellant’s restrictions specific to her medical conditions as “pain contributes to insomnia and also limits her ability to do things like housework and errands.” The current information provided by the physician does not explain how the appellant’s medical conditions preclude or prevent her from participating in all types of employment nor does it explain how the appellant’s medical conditions preclude or prevent her from searching for work, which includes activities such as writing a resume, researching job opportunities, job preparation programming, and retraining. The appellant has not provided any information on restrictions or limitations she faces or how it affects her employability. The ministry is not satisfied that the appellant is precluded from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

Panel Decision

To qualify as a person who has persistent multiple barriers to employment, section 2(1)(a) EAR states that a person must meet the requirements set out in section 2 EAR and section 2(1)(b) states that a person must meet the requirements set out in section 2(3) or section 2(4) EAR. Section 2(3)(a)(i) states that “the minister has determined that the person scores at least 15 on the employability screen set out in Schedule E.” The appellant scored 11 on the employability screen. The panel finds that the ministry reasonably relied on section 2(4) based on the results of the appellant’s employability screen score of 11. Section 2(4) EAR states that the person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that (b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

The evidence before the panel is that the medical practitioner states the appellants’ chronic pain/soft tissue injuries are not episodic in nature, but the appellant’s anxiety/depression/alcohol abuse are episodic, noting that she is unsure how frequently the episodes are likely to recur and narrates that the appellant’s restrictions specific to her medical conditions as “pain contributes to insomnia and also limits her ability to do things like housework and errands. There is no evidence or information on restrictions or limitations she faces or how such restrictions or limitations affect her employability.

The panel finds that the ministry reasonably determined that based on the evidence provided by the

medical practitioner there is not sufficient evidence to establish that the appellant has a barrier that precludes her from searching for, accepting or continuing employment and has not met all the requirements set out in section 2(4) EAR.

Conclusion:

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PPMB designation as she did not meet all the criteria set out in section 2(4) EAR was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.