

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 15 March 2017 that held that the appellant was not eligible for qualification as a person with persistent multiple barriers to employment (PPMB). The ministry determined that the appellant’s employability screen score was 12 and therefore assessed her PPMB eligibility under sections 2(2) and 2(4) of the Employment and Assistance Regulation (EAR). The ministry found that the appellant met the requirements of section 2(2). However, the ministry was not satisfied that the information provided established that the appellant met the criterion set out in section 2(4)(b) of the EAR, that to qualify for PPMB a person must have a medical condition, other than an addiction, that in the opinion of the minister is a barrier that precludes the person 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 evidence before the ministry at reconsideration included the following:

1. The appellant's employability screen score is 12.
2. Medical Report – PPMB dated 09 November 2016, completed by a general practitioner (GP) who provides the following information:
 - Primary medical condition: alcoholism (onset > 20 years).
 - Secondary medical condition: depression/COPD/malnutrition (onset > 20 years)..
 - Treatment: the GP writes:
 - “-she continues to struggle with abstinence; she is not willing to consider a treatment facility.”
 - depression – refractory to treatment due to alcoholism.
 - [2 prescription medications] – COPD.”
 - How long has this condition existed? > 20 years.
 - Prognosis: expected duration of medical condition – 2 years or more.
 - The medical condition is not episodic.
 - Restrictions: the GP did not complete this section of the form.
3. The appellant's Request for Reconsideration dated 07 March 2017. Under Reasons, the appellant writes that she is no longer able to work, due to many health problems not listed the first time. She writes that she has arthritis, osteoporosis, curvature of the spine, vertigo, and kidney problems for which she has to go for tests

In her Notice of Appeal, dated 17 March 2017, the appellant writes under Reasons for Appeal, “I did not get my doctor's letter on time. When I went to put the letter to [the ministry], the case was closed.”

The hearing

At the hearing, the appellant and her advocate submitted and spoke to the following in support of her PPMB application:

- Letter dated 16 March 2017 from the appellant's GP, who states that the appellant has been her patient for more than 29 years, and goes on to write:
 - “In addition to her diagnoses of alcoholism, refractory depression, COPD and malnutrition she would not be easily employable due to osteoporosis and resulting frailty. Her previous employment involved physical rather than sedentary work and she is no longer capable of that type of employment.”
- Letter dated 07 April 2017 from a friend of the appellant, who writes:
 - “.... I have known [the appellant] for a great many years. I have watched her go downhill over time. She hurts all the time and she is getting thinner every time I see her. She does not eat very well because she has no money. She goes to the food bank when she can get there. There's no way she can go back to work due to her illness. She does not look good. She is not a well lady and she's not a very happy person.”
- Letter dated 10 April 2017 from the appellant's son. He writes:
 - “My mother [name] is unable to work due to multiple health reasons. I have personally witnessed her struggle with house chores in her own home.

She suffers from chronic obstructive pulmonary disease which makes it very hard for her to do anything strenuous for a long or even a short period of time, she has to take three inhalers. She has bursitis in the shoulder, small things for example, packing groceries is a tough task, and she needs assistance doing that. She can't even walk into town. Even walking to the [store] down the street is tough.

She also suffers from Arthritis as well as Osteoporosis which of course means she is at a higher risk of bone fragility which could easily lead to a bone fracture.

On April 25, 2017 she has an appointment to have her kidneys scanned as they aren't functioning properly, she may have to have one removed.”

The ministry stood by its position at reconsideration.

Admissibility of new information

The ministry did not object to the submission all the above letters.

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry’s decision is reasonable and are not to assume the role of decision makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

With respect to the GP’s letter, the panel does not admit as evidence the GPs additional diagnosis of osteoporosis, as this diagnosis, while mentioned by the appellant in her Request for Reconsideration, was not before the ministry at reconsideration as “a medical condition...that is confirmed by a medical practitioner,” as required under section 2(4) of the EAR. Admitting this diagnosis as evidence on appeal would place the panel in the role of decision maker of the first instance. The panel also does not admit as evidence the GP’s opinion as to the appellant’s employability, as this information cannot be said to corroborate or substantiate anything before the ministry at reconsideration.

As to the letters from the appellant's friend and from her son, the panel finds the observations and opinions set out therein regarding the appellant’s medical condition or restrictions also do not corroborate or substantiate information before the ministry at reconsideration. Accordingly, pursuant to section 22(4) of the EAA, the panel does not admit these letters as evidence.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in determining that the appellant did not qualify for PPMB because she did not meet the criterion set out in section 2(4)(b) of the EAR. More specifically, the issue is whether the ministry's decision, which held that the information provided did not establish that the appellant has a medical condition, other than an addiction, that in the opinion of the minister, is a barrier that precludes her from searching for, accepting or continuing in employment, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from 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[not applicable to this appeal]
- (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.

Panel Decision

In the reconsideration decision, the ministry began by noting that to qualify for PPMB, a person must first meet the eligibility requirements under subsection (2) of section 2 of the EAR. The ministry found that, as the appellant had been a recipient of income assistance for more than 12 of the preceding 15 months, she met this eligibility requirement.

In accordance with the "either/or" provisions of subsection (1) and noting that the appellant's employability screen score is 12, the ministry found that subsection (3) does not apply and, appropriately in the panel's view, assessed her PPMB eligibility under subsection (4). To qualify under

subsection 4, a recipient must have a medical condition, other than an addiction, confirmed by a medical practitioner, which has continued for at least one year and is expected to continue for at least another 2 years, and in the opinion of the minister precludes the recipient from searching for, accepting or continuing in employment. The panel finds helpful the ministry explanation that the medical condition is considered to preclude searching for, accepting or continuing in employment when as a result of the medical condition, 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.

In assessing the appellant's PPMB eligibility under subsection (4), the ministry referred to the Medical Report – PPMB provided by the appellant's GP. The GP gave the appellant's primary medical condition as alcoholism; with the date of onset as more than 20 years ago. The GP listed her secondary medical conditions as depression, COPD and malnutrition, with dates of onset of more than 20 years ago. The GP also indicated that her medical conditions are expected to last for longer than 2 years. The ministry therefore concluded that the appellant's medical conditions, in the opinion of a medical practitioner, have continued for at least one year and are likely to continue for at least two more years.

The panel notes that the ministry did not refer to the GP having identified alcoholism – an addiction – as the appellant's primary medical condition. The panel interprets the legislation to mean that if an addiction were identified as the only medical condition, this would disqualify her for PPMB eligibility. However, as the GP has also identified other medical conditions that met the continuation criteria in subsection (4)(a), the panel finds that the ministry appropriately considered these other medical conditions.

The ministry also referred to the appellant's Request for Reconsideration, where she listed a number of other medical conditions, including osteoarthritis, noting however that she had provided no confirmation from her GP of these diagnoses in either of her current or past Medical Reports – PPMB.

In the panel's view, the identification by a medical practitioner of serious medical conditions does not in itself determine PPMB eligibility. As medical conditions present with a wide range in the degree to which employability is impaired, the panel finds that the ministry would justifiably look to any independent and professional evidence that would demonstrate restrictions arising from these medical conditions. In its reconsideration decision, the ministry noted that when asked about the restrictions associated with the appellant's medical conditions, her GP did not provide a response. Without any information regarding restrictions, the panel finds that ministry was reasonable in concluding that it is not satisfied that the appellant is precluded from searching for, accepting or continuing all employment, such as part-time work or participating in employment related programs.

In reaching this conclusion, the ministry noted that the appellant was previously approved for PPMB, (2 years ago) at which time her medical conditions were the same as they are now. While she was previously approved for PPMB, the ministry noted that on her previous Medical Report – PPMB her GP did not provide any commentary regarding the restrictions associated with her medical conditions. At the hearing, the ministry representative opined that this previous decision was perhaps “a mistake.” The panel finds that the ministry, in making the reconsideration decision based on the current Medical Report – PPMB, is not bound by the earlier decision made based on a similar Medical Report – PPMB (including no information given regarding restrictions). The minister has the authority to audit eligibility for assistance, including eligibility for PPMB, and make a new decision based on the information the minister directs the recipient to supply.

Conclusion

Based on the foregoing analysis, the panel finds that the ministry's decision that found that the appellant does not meet the qualification criteria for PPMB is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.