

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 21 April 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 7 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 criteria set out in section 2(4)(a) of the EAR, that to qualify for PPMB a person must have a medical condition, other than an addiction, that in the opinion of a medical practitioner is likely to continue for at least 2 more years, and as set out in section 2(4)(b) of the EAR, that in the opinion of the minister the medical condition 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 7.
2. Medical Report – PPMB dated 13 December 2016, completed by a general practitioner (GP) who provides the following information:
 - Primary medical condition: Chronic wrist pain (R) (onset -- April 2016).
 - Secondary medical condition: Lateral epicondylitis (R) (onset -- April 2016).
 - Treatment/outcome:
 - Cortisone wrist injection/ Helped with pain for 1 week.
 - Prescription anti-inflammatory drug/ Minimal improvement.
 - Physiotherapy (planned)/ Will get wrist and elbow braces.
 - Pain intervention clinic for possible further injection therapy.
 - How long has this condition existed? 8 months.
 - Prognosis: expected duration of medical condition – Less than 2 years.
 - The medical condition is not episodic.
 - Restrictions: the GP writes:
 - “Can't use right hand to carry anything over 10 lbs., can't do repetitive motion like washing floors/cleaning houses (which is her current job).”
3. Attached to the Medical Report – PPMB are the following medical reports arising from the appellant's visits to specialists:

- Consult report dated 07 December 2016 from an orthopedic surgeon.

Impression and plan: “... Unfortunately I don't see a cause I can easily treat. She does not have a wrist arthritis and does not have an obvious ganglion that I can palpate on physical exam today.... Given [the appellant's] diffuse constellation of symptoms I would suggest that [the GP] refer her to a pain specialist. I don't see any structural cause for her significant pain and dysfunction in the right upper arm... I don't think it is unreasonable that she try a wrist brace while she is working to see if that helps her get through the day.”

- Consult report dated 17 May 2016 from a specialist in physical medicine and rehabilitation.

Impression: “1. Osteoarthritis of the right wrist. 2. Dorsal ganglion cyst of the right wrist. 3. Tennis elbow and golfer's elbow. 4. No injury to the peripheral nervous system is appreciated. She does not have carpal tunnel syndrome, thoracic outlet syndrome, or radiculopathy. She may have a very mild ulnar neuropathy at the elbow.”

Recommendation: “1. I would suggest a wrist extensor protocol for the lateral elbow pain and activity modification. 2. A corticosteroid injection into the right dorsal wrist would go a long way.”

4. The appellant's Request for Reconsideration, dated 22 March 2017. Under Reasons, the appellant writes that she does qualify for PPMB and is waiting for new or more information from her physician.

Attached to her request for reconsideration is an 8 page handwritten submission reviewing events and situations that have had an impact on her physical and emotional situation. In summary, these include:

- A car accident in 1996 with injuries to her right shoulder, causing chronic pain ever since, with the shoulder re-injured in 2006 in another car accident.
- Having no close family nearby, as in the past 2 years her adult son moved to another town, her parents relocated to another country, and her grandmother passed away.
- In 2014, separating from an abusive relationship, with the ex-spouse non-compliant of court orders and ongoing interference with her life, with the consequent need for court appearances. During this relationship, she suffered a broken nose. As a result of damage to her nasal passages, she has sudden headaches, causing her to be sick for 2-3 days at a time.
- Dealing with her young child being molested at a nearby daycare centre.
- In 2015, being referred to a mental health organization for anxiety and depression.
- Having recent dental surgery to have the bottom 2 wisdom teeth removed, and subsequently told that her jaw was fractured.

The appellant goes on to describe how her physical limits affect everything in her day-to-day life, such as mowing the lawn, painting fences or walls for upkeep, trimming and pruning shrubbery, washing windows and vacuuming, hand-washing dishes, brushing her teeth, bicycling, and playing Lego with her child.

The appellant reports that she finds it difficult to manage her custodial position with a local sports organization. She also reports that she has been attending a program with WorkBC to upgrade her computer skills and the program paid for her to obtain a custom wrist brace. However the brace does not ease her pain and therefore she is receiving injections for pain management.

At the conclusion of this submission, she writes that if the ministry has any further questions to contact her GP and the GP will answer. The GP is expecting a call and will forward any documents she has to support the appellant's claim.

[In the reconsideration decision, the ministry stated that the reconsideration officer contacted the GP's office. However, the office would not release any information to the reconsideration officer without a consent form completed by the appellant. The reconsideration officer called the appellant but was unable to leave a message. There was no time remaining to arrange for the consent form to be forwarded to the office or for the reconsideration officer to speak to the GP before the decision was due. Therefore, a decision was made based on the information provided.]

Also attached to the Request for Reconsideration are:

- An Employment Program of BC Action Plan, effective 10 November 2016.
- Post-surgical instructions for complex jaw surgery, signed by a dental surgeon on 29 July 2016.
- A card indicating an appointment with a physician at a health authority mental health clinic scheduled for 30 June 2017

Notice of Appeal

In her Notice of Appeal, dated 17 March 2017, the appellant writes under Reasons for Appeal, “I have been dealing with ongoing issues causing mental distress, chronic pain for over two years and will continue for more than two years from today. I require a support person to help me advocate for myself. My doctor is willing to provide information and nobody called me and left a message “

The hearing

At the hearing, the appellant and her advocate expressed their frustration with the appellant's GP. She stated that the GP seemed to be confused between indicating that the appellant's wrist condition had continued for at least 2 years and whether it would continue for 2 more years, and had therefore refused to change the information in the Medical Report – PPMB where she had indicated that the expected duration of the medical condition was less than 2 years. The appellant and her advocate also stated that the GP, thinking that PPMB related only to physical restrictions to employability, did not indicate that the appellant's anxiety was a relevant medical condition, despite the appellant suffering from this condition for many years, had been taking the maximum dose of anti-anxiety medication without much relief, and has been referred by the GP to see a psychiatrist in the near future. The appellant also mentioned that the GP had not included in the Medical Report – PPMB that she is prone to having sudden headaches, so severe that it makes her sick, and therefore unable to function when this happens, including when working.

The appellant also described her frustration with her wrist medical situation, with different specialists making different diagnoses as to the cause and recommending conflicting treatment approaches. She stated that while the cortisone treatments provide some relief, it lasts for maybe a week, and she can see the physician who administers the shots only once every 8-10 weeks. She also explained that she will soon be having nose reconstruction surgery to correct for a broken nose caused by her ex-partner some years ago.

She feels that she has nowhere to turn now – because of her conflict with the GP, that doctor is no longer her family physician. She explained that she first went to that GP when she became pregnant, as her former family physician did not manage deliveries. This former family physician had treated her for years and knew her well, but his clinic has since closed and he has retired. As a result, she is so far been unable to access her complete previous medical records.

In answer to a question, the appellant confirmed that she had taken a one-week computer course as part of her Employment Program of BC Action Plan. After the first day, her wrist was in such pain that she was sent to a physiotherapist, who outfitted her with a wrist brace, She stated that she was the able to get through the remaining 4 days of the course, but it was only 4 hours/day, with breaks.

The appellant brought to the hearing a set of notes from the GP, but no copies. When advised that the panel did not have a facility to make copies, the appellant read from the latest note, in which the GP reviewed her recent history with the appellant, and stated that it would be improper to report that the appellant's wrist condition had lasted for more than two years ("That would be lying."). The panel did not accept the advocate's offer to have the notes copied and forwarded to the panel and the ministry.

The ministry stood by its position at reconsideration.

Admissibility of new information

The panel finds the information provided by the appellant in her testimony at the hearing is in support of the information and records before the ministry at reconsideration, as it tends to corroborate the information set out in her reconsideration submission. The panel notes that while the reconsideration submission reviewed the appellant being diagnosed with anxiety and having severe headaches, this information had not been confirmed by a medical practitioner at the time of reconsideration.

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 sections 2(4)(a) and (b) of the EAR. More specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or are a reasonable application of the legislation in the circumstances of the appellant:

- the information provided did not establish that the appellant met the criteria set out in section 2(4)(a) of the EAR, that to qualify for PPMB a person must have a medical condition, other than an addiction, that in the opinion of a medical practitioner is likely to continue for at least 2 more years, and
- as set out in section 2(4)(b) of the EAR, that in the opinion of the minister the medical condition is a barrier that precludes the person from searching for, accepting or continuing in employment.

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.

Analysis

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 7, 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.

The ministry then explained that when determining if the nature of the employment is as minimal or insignificant as to effectively “preclude” the recipient from employment, the following factors should be used when assessing eligibility:

- is the focus of the work on socialization where the activities are highly supported or supervised (e.g., recycling workshop)
- is the recipient limited by the medical condition to very minimal hours on an infrequent basis (e.g., 1-2 hours of babysitting once or twice a month)
- Is the recipient's involvement very sporadic or casual (e.g., occasional lawn mowing or housekeeping; or delivering flyers once a month)
- Is the work more likely to be considered volunteering and compensation, if any, minimal (e.g., covers the costs of volunteering)

Medical condition and duration

The ministry found that a medical practitioner has confirmed that the appellant has a medical condition other than an addiction.

At the hearing, the appellant expressed her frustration that the GP, mistakenly believing that only physical factors are considered in determining PPMB eligibility, had not also identified her anxiety as part of the medical condition restricting her employability. The panel notes that section 2(4) requires that the medical condition be confirmed by a medical practitioner. While her anxiety was mentioned in her reconsideration submission, as it was not identified by her GP or any of her specialists, the panel finds that the ministry was reasonable in limiting the medical condition under consideration as the wrist condition identified in the medical report – PPMB.

In the Medical Report – PPMB, the GP identified the appellant's medical conditions as chronic wrist pain (R) (onset – April 2016) and lateral epicondylitis (R) (onset – April 2016). As it was then a year after the reported onset of her medical conditions, the ministry accepted that her condition has continued for at least year, as required in the first half of section 2(4)(a)(i) of the EAR.

While the ministry was satisfied that the appellant's medical condition had continued for at least 1 year, the ministry noted the GP had indicated that the duration of her medical condition is less than two years, and no further information from the GP concerning the expected duration of the medical condition was and also in submitted with the Request for Reconsideration.

At the hearing, the appellant stressed that as her wrist condition, despite all the specialists she has seen and treatment she has been given, has not improved over the past year and she cannot see it resolved anytime soon. However, having argued this point with her GP to no avail, the appellant requested that the panel give consideration to the GP continuing to be confused between indicating that the appellant's wrist condition had continued for at least 2 years (admittedly not the case, but 2 years between onset and application is not an issue) and whether it would continue for 2 more years – the option provided in the Medical Report – PPMB.

The panel cannot accede to the appellant's request in this respect, as the legislation clearly provides that the 2 year prognosis requirement must be in the opinion of a medical practitioner. As the only opinion before the ministry at reconsideration was that provided by the GP in the Medical Report – PPMB that the medical condition would continue for less than 2 years, the panel finds that the ministry was reasonable in determining that the appellant's application does not meet the eligibility requirement set out in section 2(4)(a) of the EAR.

Medical condition as a barrier precluding employment

In its decision, the ministry determined that the information provided does not demonstrate that the appellant's medical condition presents a barrier that precludes her from searching for, accepting or continuing in employment. In reaching this decision the ministry reviewed the information provided in the Medical Report – PPMB, the consult reports from the specialists, and the information submitted with the appellant's request for reconsideration, including her reconsideration submission (see Part E above).

Referring to this information, including the restrictions reported by the GP in the Medical Report – PPMB (“Can’t use right hand to carry anything over 10 lbs., can’t do repetitive motion like washing floors/cleaning houses (which is her current job),” the ministry found that this information suggests it may be possible for the appellant to continue to perform light physical work while undergoing treatment for her chronic right wrist and elbow pain.

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 this case, while the appellant's specialists have provided information on symptoms, diagnoses and treatment options for the appellant's wrist condition, the only source of

independent and professional information regarding restrictions to the appellant's employability is that set out in the medical report – PPMB.

In describing her restrictions, the GP focuses on the appellant's inability with heavy and repetitive physical effort – carrying anything over 10 pounds or washing floors/cleaning houses. This leaves the impression that the appellant would be capable of work requiring less physical activity, such as in an office environment. For the minister to be satisfied that this criterion is met, the panel considers it reasonable for the ministry to expect that any description of restrictions to employability would address those relating to *any* type of employment, not just that requiring heavier effort, but also work involving less physical activity.

As the ministry noted, the determination as to whether a medical condition is a barrier that precludes the person's ability to search for, accept or continue in employment is at the discretion of the minister. Based on the foregoing, the panel finds that the ministry was reasonable in finding that this requirement, as set out in section 2(4)(b) of the EAR, has not been met.

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.