

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated August 11, 2017 made by the Ministry of Social Development and Poverty Reduction (the ministry) which determined that the appellant was found to be ineligible for persons with persistent multiple barriers (PPMB) pursuant to 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 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-PPMB dated May 30, 2017 that was completed by a medical practitioner. It identifies the appellant's medical conditions have existed for 35 years, are not episodic in nature, and are expected to last more than 2 years.
- The Medical Report describes the primary medical condition as "TMJ joint dysfunction/chronic pain," with a date of onset of 1980. The medical practitioner, describes the treatment/remedial approaches that have been tried to date or expected in the future as the appellant had 4 jaw surgeries, Oxycodone for pain that "hasn't helped appreciatively over time." As for describing any restriction the medical practitioner writes "Pt. has lancinating pain in her face, unpredictable in nature. It affects here ability to perform basic ADLs."
- Included with the Medical Report were two written letters from medical practitioners one with a medical assessment following surgery six weeks prior (dated September 3, 2015) and the other describing a pre-operation medical assessment (dated October 29, 2014).
- Previous medical files were also reviewed:
 - Medical Report – PPMB (March 2, 2017). Medical practitioner stated primary medical condition: chronic TMJ Pain Syndrome. Secondary medical condition: depression/anxiety. Restrictions: "Pt. has required chronic narcotics for jaw pain, affecting moods [and] focus."
 - Medical Report – PPMB (February 6, 2013). Medical practitioner stated primary medical condition: chronic TMJ Pain. Secondary medical condition: depression. Restrictions: "Restricted jaw motion, chronic pain."
 - Medical Report – PPMB (December 22, 1010). Medical practitioner stated primary medical condition: chronic pain/arthritis of temporomandibular joint. Secondary medical condition: depression/anxiety. Restrictions: "Requires chronic use of pain killers to control jaw pain. Affects her concentration and attention."
 - Medical Report – PPMB (October 28, 2008). Medical practitioner stated primary medical condition: chronic pain syndrome/osteoarthritis of Temporomandibular joint. Secondary medical condition: depression/anxiety. Restrictions: "Patient requires continuous narcotic use to control paint [which] limits concentration, attention span. Causes irregular sleep patterns [causing] chronic fatigue."
 - Medical Report – PPMB (August 30, 2006). Medical practitioner stated primary medical condition: Endogenous depression/PTSD. Secondary medical condition: TMJ disorder/chronic pain. Restrictions: "Difficulty [with] memory, concentration."
- Submitted with the Request for Reconsideration:
 - Appellant's self-report dated July 27, 2017 describing medical history, medical conditions, impacts to physical and mental function, and restriction to daily living activities.
 - A medical practitioner letter that is undated and is an addendum to the self-report confirms referral to rheumatology and plastic surgeon.

Admissibility of New Information

The medical practitioner's letter originally provided to the ministry at reconsideration was from a locum physician with not much knowledge of the appellant; when her regular physician returned, the appellant said she obtained a letter from him, dated September 6, 2017 and provided that to the ministry.

The appellant submitted a September 6, 2017 letter from her medical practitioner (the letter) containing a notation "that her chronic pain prevents her from regular work and participation in normal activities" and "I don't see health and pain issues are likely to improve significantly in the future." This letter had been provided to the ministry, but the ministry had not sent it to the Tribunal because the ministry representative said that it was not before the ministry at reconsideration. The panel disagreed on the admissibility of the September 6, 2017 letter that was read by the appellant, but the majority decision was that the evidence was not admissible under section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's conclusion to deny the appellant PPMB designation was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstance 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 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*;
- (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.

Appellant's position:

The appellant's position is that her medical condition precludes her from any work and should qualify her for PPMB status due to severity of chronic pain she experiences daily. The lancinating nerve pain on her face increases as the day progresses and experiences soft tissue flare ups, that are still unknown (possibly lupus or fibromyalgia) prevent her from performing daily living activities.

Ministry's position:

The ministry's position is that the information provided in the May 30, 2017 Medical Report – PPMB, TMJ joint dysfunction/chronic pain, does not demonstrate 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 30, 2017 report. Based on the medical condition included in the May 30, 2017 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's 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 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 of 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 30, 2017 Medical Report – PPMB does indicate the primary medical condition as TMJ joint dysfunction / chronic pain with at date of onset of 1980; however, does not include an explanation of restrictions that describes the nature of any employment restriction specific to the appellant's medical conditions.

The panel gives weight to the evidence of a continuing condition that has deteriorated over time. At reconsideration, the Minister had two letters from a specialist, dated October 29, 2014 and September 3, 2015 that indicate the appellant had chronic pain with one indicating a need for opiates for pain stability. The Minister also had the May 30, 2017 Medical Report – PPMB report that stated the appellant has had four jaw surgeries, has TMJ joint dysfunction, chronic pain, and unpredictable lancinating pain in her face and these all impact her ability to perform basic activities of daily living. On July 27, 2017, the appellant submitted a letter to support her request for reconsideration that her right-sided face nerve pain increased as the day progressed, headaches on a regular basis, is secluded at home since talking and eating aggravates her jaw, and she wakes up intermittently through the night. She has head and face pain 24hours a day 7 days a week. In the last few month, she has been experienced random, excruciating soft tissue pain. It usually attacks her shoulders/hand but has also moved to her knees and ankles. When the flair ups occur, it is impossible for her to get dressed or do any of the normal daily activities which ought to be simple.

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 2(4)(b) and to deny the appellant PPMB designation was not reasonable 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.