

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated August 23, 2017, which held that the Appellant did not qualify for renewal of the designation of a person with persistent multiple barriers to employment (PPMB) under Section 2 of the Employment and Assistance Regulation.

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 Subsection 2(3) based on her employability screen score of 12. The Ministry was satisfied that the requirement of Section(4)(a) was met as a medical practitioner (the Doctor) has confirmed that the appellant has a medical condition, other than addiction, that has continued for at least one year and is likely to continue for at least 2 more years.

However, the Ministry determined that the requirement of Section (4)(b) was not met as it was not satisfied that the Appellant's medical conditions preclude 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 Appellant has been in receipt of income assistance as a PPMB and reapplied for her PPMB qualification. The Appellant's employability screen score is assessed by the Ministry as 12.

In support of her renewal application for PPMB, the Appellant provided a "Medical Report - Persons with Persistent Multiple Barriers" (the Medical Report) dated May 9, 2017, completed by her Doctor. The primary medical condition is identified as "Degenerative arthritis of lower back with pain". No treatments are identified. The expected duration of the Appellant's medical condition is described as two years or more. The medical conditions are not reported to be episodic in nature. Where asked to describe the nature of any restrictions specific to the diagnosed medical condition, the Doctor has written "Unable to work due to chronic pain in lower back".

The information before the Ministry at the time of reconsideration also included the following: □

- **PPMB Medical Report form dated April 1, 2015** in which the Appellant's primary medical condition was listed as "Chronic depression and anxiety" with a secondary medical condition of "Low back arthritis". No treatments were identified. Related restrictions were described by the Doctor as "Unable to work due to low back pain";
- **PPMB Medical Report form dated February 12, 2013** in which the Appellant's primary medical condition was listed as "Severe low back arthritis with pain". No secondary medical condition was listed. No treatments were identified. Related restrictions were described by the Doctor as "Unable to work due to pain";
- **Employability Medical Report form dated February 12, 2013** in which the Appellant's primary medical condition was listed as "Severe low back arthritis with pain". No secondary medical condition was listed. The Doctor described related restrictions as "Unable to work due to severe LBP (lower back pain)";
- **PPMB Medical Report form dated February 28, 2012** completed by a nurse practitioner, in which the Appellant's primary medical condition was listed as "Multiple Degenerative Lumbar Changes". No secondary medical condition was listed. In the section of the form asking for a description of any treatments or remedial approaches, the nurse practitioner wrote "Discuss disability with (a particular medical practitioner)", and she described related restrictions as "Restrictions as per (the medical practitioner)". No information from the medical practitioner was included. The expected duration of the medical condition was identified as less than two years and not episodic in nature; and,
- **PPMB Medical Report form dated August 24, 2007** in which the appellant's primary medical condition was listed as epilepsy. No secondary medical condition was listed. Her treatment consists of medication and the medical practitioner described the outcome of treatment as "(reduced) seizure frequency". The expected duration of the medical condition was identified as a lifelong disorder which is episodic in nature, with seizures occurring 1 - 2 times a month, recurring in a "similar pattern but difficult to predict". The physician described related restrictions as "restricted type of jobs due (to) episodic loss of consciousness."

In the "Reason for Request" section of her Request for Reconsideration, dated August 16, 2017, the Appellant stated that the Doctor "was non-descriptive in his assessment of (her) medical conditions", and mentioned the following three medical conditions:

- Multilevel degenerative osteoarthritis ("lower back lumbar changes & right arm ect [stet]")
- Rheumatoid arthritis and osteoarthritis, and
- Degenerative spondylolisthesis and chronic sciatica nerve pain ("lower back")

In her Notice of Appeal, dated August 29, 2017, the Appellant reiterated that her medical practitioner neglected to describe or list all of her medical conditions in the Medical Report.

No additional submissions were provided by either the Ministry or the Appellant on appeal.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's Reconsideration Decision, which held that the Appellant did not qualify for PPMB because she had not met the requirement of Section 2(4)(b) of the EAR (which holds that her medical condition must, in the Ministry's opinion, preclude her from searching for, accepting, or continuing in employment), is reasonably supported by the evidence or a reasonable application of the legislation in the Appellant's circumstances.

Relevant Legislation - EAR Section 2

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; ...
- (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, ...
 - 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 she should re-qualify for PPMB because the Doctor neglected to provide enough information about her chronic medical conditions, which she identified in her Request for Reconsideration to be multi-level degenerative osteoarthritis, rheumatoid arthritis, degenerative spondylolisthesis and chronic sciatica nerve pain, and she continues to have medical conditions which preclude her from employment.

Ministry's Position

The Ministry has determined that the Appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months, thereby satisfying the requirements of EAR Section 2(2). The Ministry further identifies the Appellant's employability screen as 12, and as a result, determined that EAR Section 2(3), which requires an employment screen of at least 15, does not apply. Therefore the Ministry has assessed the Appellant under EAR Section 2(4).

The Ministry notes that when assessing eligibility for PPMB under Section 2(4)(b) of the EAR it expands on the meaning of "precludes", which the Ministry states in its Reconsideration Decision is commonly interpreted to mean "make impossible or prevent from happening". Within the context of the PPMB program, the Ministry states that it considers a medical condition to preclude a person from searching for, accepting or continuing in employment when, as a result of the medical condition, a person 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 further notes that, while the Doctor states that the Appellant is unable to work, he does not describe the nature or details of any restrictions arising from the Appellant's medical condition. In its Reconsideration Decision, the Ministry explains that it relies on descriptions of an applicant's restrictions to his or her medical condition(s) in order to make an informed determination as to whether the applicant is precluded from all types of employment other than employment in a sheltered-type environment. The Ministry further notes that an explanation of restrictions is helpful in enabling the Ministry to assess whether an applicant is able to work and if so, what type of work he or she can do. Based on the documents submitted, the Ministry finds that the Appellant's medical condition does not preclude her from searching for, accepting or continuing in employment.

Panel Decision

Section 2 of the EAR sets out the requirements for PPMB qualification. The requirements of Section 2(2) must be met, as must the requirements of either Subsections 2(3) or 2(4). The requirements of Section 2(3) apply where an applicant has an employability screen score of at least 15, otherwise, the requirements of subsection (4) apply.

As the evidence shows that the Appellant has been in receipt of income assistance under the *Employment and Assistance Act* for at least 12 of the preceding 15 months, the panel finds that the Ministry reasonably determined that the requirements of Section 2(2) were met.

The Ministry further determined that the Appellant's application must be assessed under Section 2(4) because Section 2(3) does not apply as her employability screen score is 12. The panel notes that the criterion under Number 2 of Schedule E of the EAR requires that the Ministry assign 1 point if, apart from the current application, the applicant has been on income or social assistance 1 to 3 times in the last 3 years. As the Appellant's current application, which is the subject of this appeal, was made in May 2017, the panel notes that the Ministry should have counted the number of times that the Appellant was on income assistance or social assistance since May 2014. The evidence shows that the Appellant was receiving income assistance continuously since before May 2014. Therefore, the panel finds that the Appellant had been on income assistance one time in the past 3 years before completing the 2017 application, and as a result her employability screen score should have been calculated 1 point higher at 13. However, the panel notes that the revised employability screen score would still not have been high enough to enable the Appellant to reach the 15 point threshold set out in EAR Subsection 2(3)(a)(i). As a result, the panel finds that, despite the Ministry's miscalculation of the employability screen point score, EAR Section 2(3) does not apply.

Regarding the Appellant's argument that the Doctor did not provide the Ministry with a full assessment of her medical conditions, the panel notes that the legislation requires that a medical practitioner must provide an assessment that a medical condition exists and will continue to exist. The panel finds that the Ministry reasonably relied on the Doctor's diagnosis of the medical condition of arthritis. The panel also notes that, in the absence of a diagnosis from a medical practitioner, there is insufficient evidence that the Appellant suffers from any of the specific medical conditions identified by her in the Request for Reconsideration (i.e. multi-level degenerative osteoarthritis, rheumatoid arthritis, degenerative spondylolisthesis and chronic sciatica nerve pain). In any event, whether those additional diagnoses are accurate does not impact the Ministry's decision as the Ministry has acknowledged that the Appellant has a medical condition as described under EAR Section 2(4)(a). The panel finds that the Ministry reasonably determined that the requirements of Section 2(4)(a) have been met.

The only basis for denial, therefore, was the requirement in EAR Section 2(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. In its Reconsideration Decision, the Ministry has determined that it does not have enough information to establish that the Appellant is precluded from searching for, accepting or continuing in employment. The Ministry goes on to explain that it relies on descriptions of an applicant's restrictions to his or her medical condition(s) in order to make an informed determination as to whether the applicant is precluded from all types of employment other than employment in a sheltered-type environment. The Ministry notes that the Doctor states in the Medical Report that the Appellant is unable to work, but does not describe the nature or details of any restrictions arising from her medical condition(s).

While the Doctor states in the Medical Report that the Appellant is unable to work, the panel notes that the legislation requires that the *Ministry* be satisfied that the applicant is unable to search for or apply for work or continue working based on the *Ministry's assessment* of the impediments to work imposed by the applicant's medical condition. Therefore it is the Ministry's role to determine whether the applicant is able to undertake work-related activities, not the medical practitioner's. To assist the Ministry in this role, the medical practitioner is expected to provide information about *how or in what way* the applicant's medical condition impedes or precludes him or her from working or looking for work.

In its Reconsideration Decision, the Ministry provides a summary of the 5 previous medical reports which form part of the appeal record (the PPMB medical reports dated April 1, 2015, February 12, 2013, February 28, 2012 and August 24, 2007 and the employability medical report dated February 12, 2013) and states "*The ministry notes that although (the Appellant's) previous medical reports ... describe the medical conditions of Depression, Anxiety and Epilepsy, these medical conditions are not listed in (the Medical Report). The ministry further notes that although your previous medical reports ... describe restrictions related to loss of consciousness, this type of restriction is not described in (the Medical Report).*" The panel acknowledges that the medical conditions of depression, anxiety and epilepsy are not listed in the Medical Report. However, the relevance of this statement is not evident as the medical condition in the Medical Report is arthritis, which is identified as the secondary medical condition in the April 1, 2015 medical report and the primary medical condition in both of the February 12, 2013 medical reports, and which was accepted by the Ministry in the Reconsideration Decision as the medical condition pursuant to EAR Section 2(3)(b)(i). The panel notes that only the August 24, 2007 medical report describes a restriction (loss of consciousness), and that none of the 2013 or 2015 medical reports identify any restrictions whatsoever. The panel also notes that there are no material differences between the information provided in the Medical Report and the information provided in either of the 2013 medical reports or the 2015 medical report, and that there is the same lack of information regarding restrictions in the Medical Report as there is in either of the 2013 medical reports or the 2015 medical report.

In the context of EAR Section 2(4)(b), the Cambridge Dictionary defines "*preclude*" to mean "*to prevent someone from doing something*". The panel finds that, in order to determine whether the Appellant's medical condition (arthritis) prevents someone (the Appellant) from doing something (searching for work, applying for work or continuing to work), the Ministry was reasonable in determining that it would require information about the nature and details of any restrictions that the Appellant's arthritis would have on her ability to undertake work-related activities.

Conclusion

The panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and confirms the decision pursuant to Sections 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*. The appellant's appeal, therefore, is not successful.