

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation's (ministry) reconsideration decision dated June 7, 2018 which held that the appellant is not eligible for Persons with Persistent Multiple Barriers (PPMB) qualification pursuant to section 2 of the Employment and Assistance Regulation (EAR). The ministry found that the appellant has been in receipt of income assistance for at least 12 of the past 15 months as required by section 2 (2) (a), she does not qualify for PPMB under section 2 (3) of the EAR because her employability screen score was less than 15, and that in the opinion of a medical practitioner the appellant has a medical condition other than an addiction that is likely to continue for at least two years as required by section 2 (4) (a). However, the ministry was not satisfied that:

- the evidence establishes that the appellant's medical condition other than an addiction presents a barrier that precludes him from searching or accepting or continuing in employment, as required by section 2 (4) (b) of the EAR.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation – EAR- Section 2

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of reconsideration consists of:

- Medical report (MR) – Employability dated May 12, 2017, which lists the primary medical condition (PMC) as ‘Fibromyalgia/Neuropathy, Dermatitis’ (onset ‘long-standing’) and the secondary medical condition (SMC) as ‘depression’ (onset ‘long-standing’), it is indicated that the expected duration of the medical condition is 2 years or more and that the medical condition(s) is not episodic in nature. In the restrictions section, the GP wrote “Dermatitis- impossible to wash hands, use cleaners, etc. – have to use gloves. Chronic pain, fatigue, stiffness, limited mobility from fibromyalgia/depression”.
- Medical report (MR) – Employability dated May 13, 2015, which lists the PMC as ‘Fibromyalgia/Depression’ (onset not listed) and the SMC was not listed, it is indicated that the expected duration of the medical condition is 2 years or more and that the medical condition(s) is not episodic in nature. In the restrictions section, the GP wrote “Neuropathic pain. Very depressed. Poor balance. Mobility poor”.
- Medical report (MR) – Employability dated November 15, 2013, which lists the PMC as ‘Fibromyalgia’ (onset not listed) and the SMC as foot-pain, Eczema (onset not listed), it is indicated that the expected duration of the medical condition is 2 years or more and that the medical condition(s) is not episodic in nature. In the restrictions section, the GP wrote “Neuropathic pain constantly. Mobility affected. Poor balance”.
- Medical report (MR) – PPMB dated April 19, 2018, which lists the PMC as ‘Fibromyalgia/Neuropathy’ (onset 1970’s) and the SMC as Anxiety/Depression (onset 1970’s), it is indicated that the expected duration of the medical condition is 2 years or more and that the medical condition(s) is not episodic in nature. In the restrictions section, the GP wrote “Patient can’t work or do much at home either”.
- Employability Screen with a score of 13.
- Client employability profile dated April 14, 2018.
- Radiology consultation report dated April 14, 2014 – Medical Imaging Report (MIR) of left foot.
- Radiology consultation report dated April 14, 2014 – MIR of right ankle.
- MIR of Lumbar Spine dated July 31, 2015.
- MIR of Cervical Spine dated July 16, 2016.
- MIR of Lumbar Spine dated March 12, 2018.
- Request for Reconsideration (RFR), signed and dated May 18, 2018, and in part stated the following:
 - “I have difficulty managing daily life as it is”.
 - “I get sporadic nerve pain in my left thigh and, down the right leg”.
 - “I have chronic edema in my fore-feet as well as my ankles”, which makes it difficult to drive.
 - “I find it difficult to sit or stand for any period of time”.
 - “My fibromyalgia has controlled my sleep, day, energy, posture, agility [and] everything about my body”.
 - “I also get severe cramps in random areas of my lower legs and feet – the pain is paralyzing and the effects may last for days”.
 - “I have limited use of my shoulders and receive corticosteroids in my hips”.

Evidence On Appeal

- Release of information, signed and dated June 15, 2018.
- Notice of Appeal (NOA), signed and dated June 12, 2018, which in part stated “My multiple physical and mental conditions make it hard for me just to cook meals, go to the store and sometimes my self-care. If I can’t get milk half [of] the time without asking for help, how do I even job search”.

- Prior to the hearing the appellant submitted the following information:
- 4 pictures of her feet, with the statement “Pic[tures] of my feet on random days”.
- 2 notes from the appellant’s physician. One note is dated December 14, 2016 and stated “This [patient] has trouble standing/suffering for long time (>10 minutes). The second note is dated April 22, 2014 and stated “This [patient] has chronic pain of feet/ankles and hip bursitis and cannot stand for longer than 10 minutes and cannot tolerate cold temperature”.
- Copy of a handicap parking permit which expires August 31, 2020.
- A note for the appellant’s physician signed and dated June 27, 2018 and stated “This [patient] has metatarsalgia, neuropathy [and] fibromyalgia.
- A note from the appellant which stated that the June 27, 2018 physician’s note “confirms that [she has] metatarsalgia, neuropathy and fibromyalgia. Please note that metatarsalgia is very painful, constant and is not curable or treatable.

Evidence At the Hearing

At the hearing the appellant’s witness stated that over the past year she has observed the following with the appellant:

- Swollen feet, which makes it difficult to walk.
- After driving for 1.5 hours, her feet swell up.
- She has ‘charley-horse’ – like pain that starts in the foot and radiates up the leg.
- She needs rest for a few hours before she is mobile.
- She does not sleep well at night due to pain.

At the hearing the appellant stated, in part, the following about herself:

- It is too painful to drive as she cannot press the pedals. She owns a car but has to have someone else drive it as she cannot.
- Her feet even swell up when she sits as a passenger.
- She got a handicap parking permit so she could park as close to the store as possible as walking is difficult due to pain. Walking puts pressure on the nerves in the feet.
- There is zero-load-bearing on her feet.
- The pain comes on very fast after walking 3-5 minutes and even faster if carrying any weight like a purse or a jug of milk.
- She graduated from nursing school but in December 2010 she had a fall which left her partially paralyzed and in intense pain.
- When renewing her first aid certificate, the pain of being on her knees while conducting chest compressions was so unbearable that the appellant hid her face from others in the class.
- She eventually lost her nursing license.
- She cannot walk on slopes or climb stairs without the aid of a handrail.
- She has been complaining about pain since 2005 or 2006 and needs a muscle-nerve test.
- She cannot move her legs when on all fours.
- She has been complaining about pain and swelling in her feet since 2011.
- She has femoral nerve pain in the left leg.
- The nerve damage is outside of her spinal cord and therefore not treatable whereas nerve damage in the spinal cord is treatable.
- She has had fibromyalgia since adolescence but it was ‘re-traumatized’ with her fall in December 2010.
- She cannot entertain or will suffer for days after.
- When feet swell the toe nails dig into the skin which causes infections.
- She has had right foot trauma since age 17 or 18.
- The GP is given only one small line to describe her restrictions on the Medical Report – PPMB.
- She cannot stand in line at the food bank or at the ministry office.
- She has sock neuropathy. That is the sock causes heat and cramping which lasts for days. This means she cannot wear socks even in the winter and therefore cannot leave the house in winter.
- She deserves PPMB and is restricted in the help she can get.

In response to questions, the appellant stated the following:

- Her GP has been her doctor for 12 years.
- The handicap parking permit was submitted to demonstrate that she requires parking that is close to the store because she cannot walk long distances.
- Her roommate cleans up the house, gets supplies when she cannot and does extra chores around the house.

At the hearing the ministry relied on its reconsideration decision and added that The Medical Report – PPMB and the Medical Reports – Employability focus on daily living activity restrictions rather than focusing on those related to employability. The ministry also added the 3 notes from the GP provided on appeal only speak of the appellant’s medical conditions and state that she cannot stand for longer than 10 minutes but do not speak to restrictions to employment.

Admissibility of Additional Information

The ministry did not object to the admissibility of the additional information.

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.

In this case, the panel determined that the 4 pictures of the appellant’s feet, the copy of the handicap parking permit, the appellant’s note and the 3 notes from the appellant’s physician or reference to those items provided additional detail or disclosed information that was in support of the information or corroborated the information addressed in the reconsideration. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*. However the panel places little weight on the additional evidence as it does not specifically or in detail speak to restrictions to employment the appellant faces due to her medical conditions.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision to deny the appellant PPMB qualification on the grounds that the information provided did not establish that the appellant's medical condition was a barrier that precluded her from seeking, accepting, or continuing employment as required by section 2 (4) (b) of the EAR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 2 of the EAR sets out the eligibility requirements which are at issue on this appeal 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.

The Appellant's Position

The appellant argued that due to her medical conditions and the pain she experiences, she has difficulty managing daily life and cannot work.

The Ministry's Position

The ministry's position is that the information provided does not establish that the appellant's medical conditions preclude her from searching for, accepting or continuing in employment pursuant to section 2 (4)(b) of the EAR. Specifically, the appellant's GP does not describe the nature of restrictions that are specific to the appellant's medical condition. Therefore it has not been established that the appellant is restricted from searching for, accepting or continuing in all types of employment or in a program that will work with her to overcome her barriers.

The legislation requires that in order to qualify for the designation of a Person with Persistent Multiple Barriers an individual must meet specific requirements as outlined. The ministry concedes that the appellant meets the requirements of section 2 (2) (a) and (4) (a), but concluded that the appellant does not meet the requirements of section 2 (4) (b) of the EAR. The Medical Report – PPMB and the supporting medical reports established that the appellant has a medical condition but the information provided by the GP regarding the appellant's restrictions to employment stated only that the "[patient] can't work or do much at home either". If the appellant's medical conditions cause restrictions which precluded her from participating in employment, it is then reasonable to expect that information regarding restrictions is provided.

The ministry noted that in the past Medical Reports - Employability noted above, the GP used phrases such as 'chronic pain, fatigue, stiffness, limited mobility from fibromyalgia/depression, poor balance and mobility poor', to describe the restrictions the appellant faced which temporarily precluded her from searching for, accepting or continuing in employment and that the Medical Report – PPMB did not use such language.

The panel notes that the appellant's oral testimony also focussed on her daily living activities and did not speak specifically how her medical conditions restrict her ability to work in all types of employment.

Given the above, the panel finds that the ministry reasonably concluded that the evidence does not establish that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment as required by section 2 (4) (b) of the EAR.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Person with Persistent Multiple Barriers qualification because the requirements of Section 2 (4) (b) of the EAR were not met, was reasonably supported by the evidence and a reasonable application of the applicable legislation. The panel confirms the ministry's decision. The appellant is not successful at appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL

CONFIRMS THE MINISTRY DECISION

RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/07/04

PRINT NAME

Kalwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/07/04

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/07/04