

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated May 23, 2018, made by the Ministry of Social Development and Poverty Reduction (the ministry), which determined that the appellant does not qualify as a Person with Persistent Multiple Barriers to Employment (PPMB) because: (i) a medical practitioner indicated on her application that her condition is not likely to continue for at least 2 years as required by section 2(3)(b)(i) of the Employment and Assistance Regulation (EAR); (ii) the ministry is not satisfied that her medical condition is a barrier that seriously impedes her ability to search for, accept or continue in employment as required by section 2(3)(b)(ii) of the EAR; and (iii) the ministry is not satisfied that the appellant has taken all reasonable steps to overcome the barriers to employment as required by section 2(3)(c) of the EAR.

PART D – RELEVANT LEGISLATION

The relevant legislation is section 2 of the EAR.

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision consisted of:

- (1) An Employability Screen dated February 22, 2018, with a score of 17.
- (2) A Medical Report – PPMB (MR) dated February 22, 2018, completed by the appellant’s physician indicating that the appellant suffers from “Multiple foci of pain knees, back pain.” He confirms that the appellant’s condition has lasted approximately 4 years and that the expected duration is less than 2 years. He then writes: “Will be referred to Rheumatologist ...”. The appellant’s physician identifies the nature of any restrictions related to the appellant’s medical condition as: “pain with prolonged standing or walking ... soft tissue type of pain.”
- (3) A series of medical documents: (i) Prescriptions and receipts for compression stockings; (ii) A prescription written by the appellant’s physician dated April 21, 2018, in which he states: “The above named lady has been advised not to stand for a total of 2 hours/day in work. She needs to have only part time work, less than 3 hours per day.” (iii) A referral for a CT scan dated June 9, 2016; and (v) X-ray reports dated April 1, 2015 and June 2, 2008.
- (4) In her Reconsideration Application, the appellant’s daughter describes the appellant’s employment and medical history, impacts on her functioning and daily living activities and assistance provided by her family.

At the hearing the appellant provided a new document to the panel. This was a letter from the appellant’s physician stating: “The above named patient has low back and knee pain. She has been referred to a rheumatologist for assessment. Her condition, diagnosis and prognosis is pending the specialist assessment. She needs to be off work till her assessment is complete within, likely, 6 months. This note has been given upon her request to submit to whom it may concern.”

The ministry did not object to the new information. Notwithstanding the ministry’s position, the panel must be guided by section 22(4) of the *Employment and Assistance Act*, which states:

22(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

In this case, the panel finds that the physician’s note does not introduce any new information. Rather, it supports the information that was before the ministry in that it confirms her condition and that her prognosis is pending. The physician’s opinion regarding whether the appellant should or should not be working pending her diagnosis is not relevant to the question of whether she qualifies for PPMB. Accordingly, the panel admits the new information as evidence in the hearing.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision which determined that the appellant does not qualify as a PPMB because she has not met three of the statutory requirements.

The relevant legislation is section 2 of 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
- (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.

At the hearing the appellant confirmed that she is in the process of attending the appropriate specialists in order to receive a diagnosis and prognosis of her condition. She stated that it was her understanding that her physician indicated that her condition would last less than 2 years out of an abundance of caution pending her diagnosis by a specialist. She reiterated that her condition makes it extremely difficult for her to find work that she is capable of doing.

The ministry agrees that the appellant meets all the legislated criteria for PPMB status except for section 2(3)(b)(i) and (ii) and 2(3)(c).

2(3)(b)(i): likely to continue for at least 2 more years

The appellant's physician indicated on her application that her condition is not likely to last for 2 more years. Regardless of his reasons for doing so, this legislated condition is not met. The ministry has no discretion in this regard so that its decision that this criteria was not met was reasonable.

2(3)(b)(ii): seriously impedes ability to work

The ministry determined that the appellant's physician's statement that appellant cannot stand or walk for long periods did not establish that the appellant's ability to work was "seriously impeded" by her medical condition because she is not precluded from sedentary work. As there is nothing in the medical practitioner's reports indicating that the appellant could not work a sedentary job, the ministry's decision that this criteria was not met was reasonable.

2(3)(c): taken all steps to overcome the barrier

The ministry determined that there was not enough information for it to determine whether the appellant has taken all reasonable steps to overcome the barrier to her working. There is nothing in the information provided describing any efforts made by the appellant to overcome her barrier to work. Without this information, the ministry could not determine whether this criteria has been met so that the ministry's decision that this criteria was not met was reasonable.

Accordingly, the panel concludes that the ministry's decision that the appellant does not qualify for PPMB designation because she does not meet all the requirements of section 2(2) of the EAR was reasonably supported by the evidence before it, and confirms the ministry's decision.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Marcus Hadley	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/07/24

PRINT NAME On behalf of: Zelda Craig	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/07/24
PRINT NAME On behalf of: Carla Tibbo	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/07/24