

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated June 19, 2018, which determined that the appellant no longer meets the criteria to qualify for the Persons with Persistent Multiple Barriers (PPMB) category under section 2(4)(b) of the Employment and Assistance Regulation (EAR).

The ministry was not satisfied that the appellant's medical condition precludes her from searching for, 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

Relevant Evidence Before the Minister at Reconsideration

Ministry Records

April 14, 2015 - Medical Report – PPMB - completed by a prescribed professional

Medical Conditions

- The primary medical condition is musculoskeletal pain.
- The secondary medical condition is fibromyalgia.

Restrictions

- Right hip pain/multiple musculoskeletal pain restricts her movement/walking uphill/downhill, climbing, and prolonged standing.

October 2, 2015 - Medical Report – PPMB - completed by a prescribed professional, the appellant's doctor

Medical Conditions

- The primary medical condition is fibromyalgia.
- The secondary medical condition is arthralgia.

Restrictions

- Has continuous pain.
- Has decreased range of motion.
- Difficulty walking and lifting.

February 2, 2018 - Letter from the ministry to the appellant

- advising that clients who qualify for PPMB have their status reviewed every two years, her review is due, and the ministry requires some information (i.e., the Medical Report - PPMB).

March 6, 2018 - Medical Report – PPMB - completed by appellant's doctor

Medical Conditions

- The primary medical condition is fibromyalgia.
- The condition has existed for ten years.

Prognosis

- The expected duration of the medical condition is two years or more.
- The appellant gets exacerbations every two weeks.

Restrictions

- Can't lift or carry.
- Difficulty making above shoulder height.

Employability Screen form (no date) with a total score of 12.

May 1, 2018 – Letter from the ministry to the appellant

- advising that she no longer meets the criteria for the PPMB category.

The reasons for the denial are:

- The appellant's score on the employability screen is less than 15; therefore the minister does not consider that the appellant has barriers that seriously impede her ability to search for, accept or continue in employment as required under the EAR, section 2(3).
- The appellant's medical practitioner has not confirmed that her medical condition has occurred frequently in the past year and is likely to continue for at least two more years as required under the EAR section 2(4)(a)(ii).
- In the opinion of the minister, the appellant's medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment as required under the EAR section 2(4)(b).
- The ministry does not have sufficient verification as to how the appellant's restrictions preclude her from searching for, accepting or continuing in employment. Therefore in the opinion of the minister, the appellant's medical condition is not a barrier that precludes her

from searching for, accepting, or continuing in employment as required under the EAR section 2(4)(b).

Appellant

June 8, 2018 - Reason for Request for Reconsideration

The appellant has fibromyalgia, with exacerbations. She has difficulty moving/walking and problems sleeping and mobilizing. The appellant has constant pain.

Below is a list of things that are harder everyday.

- walking
- standing
- sleeping
- remembering
- strength
- carrying
- bending
- kneeling

Ministry

June 19, 2018 - Information in Reconsideration Decision

- The appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months.
- A medical practitioner has confirmed that the appellant has a medical condition other than addiction.
- The appellant has a medical condition that has continued for at least one year and is likely to continue for at least two more years.

Additional Information

Appellant

June 26, 2018 - Notice of Appeal

“Because there, are most days I cant [sic] even move I dont [sic] sleep I’m in Pain everyday I cant [sic] stand cant [sic] sit for long periods of time. My sickness is only getting worse.”

The panel considered the information in the Notice of Appeal as argument.

At the hearing, the appellant provided further argument. She stated that her doctor hasn’t fully captured her current medical situation. She is trying to find a job where she can sit. She has applied for work that will allow her to sit, but has been unsuccessful as these jobs require computer skills, which she doesn’t have. She is being considered for a program to assist her to gain these skills. However, she is getting worse and needs help until she finishes.

Ministry

At the hearing, the ministry relied on its reconsideration decision. The ministry stated that it acknowledges the appellant’s restrictions with carrying or lifting, but finds these restrictions do not preclude her from working in all types of employment.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's reconsideration decision, dated June 19, 2018, which determined that the appellant no longer meets the criteria to qualify for the Persons with Persistent Multiple Barriers (PPMB) category under section 2(4)(b) of the Employment and Assistance Regulation (EAR), was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

The ministry was not satisfied that the appellant's medical condition precludes her from searching for, accepting or continuing in employment, as required by section 2(4)(b) of the EAR.

Section 2 of the EAR sets out the requirements for PPMB qualification.

As the appellant's employability score is 12, the ministry considered the appellant's application under the EAR, subsections 2(2) and 2(4) as subsection (3) does not apply to a score of less than 15.

The ministry was satisfied that the requirements of subsection (2)(2) were met.

As well, the ministry was satisfied that the eligibility criteria under 2(4)(a)(i) was met.

Relevant Legislation

Employment and Assistance Regulation

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.

Ministry Position

The ministry's position is that the appellant's medical condition (based on the information provided by the appellant's doctor) does not preclude her from searching for, accepting or continuing in employment.

Appellant Position

The appellant's position is that her doctor has not captured her current situation sufficiently. Most days she can't move, doesn't sleep, is in pain everyday, and can't sit for long periods of time. Her sickness is getting worse.

Panel Decision

Under 2(4)(b) of the EAR, the appellant must have a medical condition that, in the opinion of the minister, is a barrier that precludes her from searching for, accepting or continuing in employment.

In the medical report, dated March 6, 2018, the appellant's doctor confirmed that the primary medical condition is fibromyalgia, the condition has existed for ten years, and the expected duration of the medical condition is two years or more. The appellant gets exacerbations every two weeks. The appellant can't lift or carry and has difficulty above shoulder height.

The ministry argues that the appellant's medical conditions do not preclude her from searching for, accepting or continuing in employment as is required under section 2(4)(b) of the EAR. The ministry argues that although the appellant's doctor describes restrictions to movement and walking, these restrictions do not establish that the appellant is precluded from all types of employment "such as stationary or sedentary work."

The appellant argues that the information in her medical reports do not fully capture her medical situation. She provided statements (in writing and at the hearing) describing daily pain and restrictions with physical and mental functions caused by her medical condition.

The panel acknowledges the difficulties caused by the appellant's situation. However, the panel finds there is insufficient evidence to establish that, the appellant's medical condition precludes her from searching for, accepting or continuing in employment. The most recent medical evidence indicates restrictions with lifting, carrying, and working above shoulder height but restrictions with sedentary activities are not reported. In addition, the appellant stated that she is searching for suitable work.

Therefore, the panel finds that the ministry reasonably determined that the requirement of section 2(4)(b) of the EAR was not met.

Conclusion

For this reason, the panel finds the ministry's reconsideration decision was reasonably supported by the evidence, and confirms the decision. Therefore, the appellant's appeal is unsuccessful.

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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/July/17

PRINT NAME

Anil Aggarwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/17

PRINT NAME

Margaret Koren

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/17