

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated 10 January 2019, which determined that the appellant is not eligible for persons with persistent multiple barriers (PPMB) designation because she did not meet all required criteria under Section 2 of the Employment and Assistance Regulation (EAR). The ministry determined that neither Section 2(3) or 2(4) were met.

The ministry determined that the appellant met Section 2(2) as she has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. As well, the ministry determined that the appellant scored 12 on the employability screen in EAR Schedule E, not meeting the required minimum of 15 under Section 2(3). As a result, the appellant was assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that, in the opinion of a medical practitioner, she has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years. Section 2(4)(b) was not met because, in the opinion of the minister, the appellant’s medical condition is not a barrier that precludes the appellant from all types of employment.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR), Section 2.  
Employment and Assistance Regulation (EAR), Schedule E.

## PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

1. Request for Reconsideration, dated 19 December 2019 in which the appellant stated that she has included original medical reports of her fibromyalgia diagnosis and depression, anxiety and migraines. She states that her doctor has indicated that her conditions are expected to continue for more than 2 years and have been ongoing for more than 2 years. The appellant indicates that she meets EAR sections 2(4)(a)(i) and (ii).
2. Rheumatologist's report dated 23 February 2016 indicating that the appellant's presentation is consistent with fibromyalgia.
3. Clinic Notes for medical visits from August 2015 to October 2015.
2. PPMB Medical Report, dated 3 October 2018, indicating that:
  - The physician is an internal medicine specialist who has been the patient's medical practitioner for 6 months or less and has not examined previous medical records.
  - The appellant suffers from Sleep Apnea (onset not indicated), Fibromyalgia (onset not indicated) and Obesity (onset not indicated).
  - Treatment includes CPAP (continuous positive airway pressure) to decrease apneic spells overnight
  - The condition is expected to continue for 2 years or more.
  - The medical condition is episodic in nature, occurs nightly and is expected to continue indefinitely without treatment.
  - The restrictions specific to the medical condition are "needs information read to me."
3. PPMB Employability Screen, indicating that the appellant's employability screen score is 12.

Additional information before the panel on appeal consisted of the following:

1. A Notice of Appeal dated 14 January 2019, in which the appellant provided the following information: *I do not agree, I have provided several documents to support my proof of medical decisions.*
2. A Written Submission dated 15 March 2019, in which the appellant explained the difficulties she experiences as a result of her medical conditions and the lack of success she has experienced with treatment options.

The ministry did not provide written submission on appeal.

### **Admissibility of Additional Information**

The information provided in the appellant's Notice of Appeal is accepted as argument.

The information contained in the Appellant Submission is admissible under s. 22(4) of the

*Employment and Assistance Act* as it is in support of the evidence before the minister at reconsideration. Specifically, the panel finds that the information provided by the appellant in her written submission is in support of the information and records before the ministry at reconsideration, as the information provided tends to go to the difficulties resulting from the appellant's medical conditions, which was raised at reconsideration. The panel therefore admits this information as evidence under section 22(4) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's reconsideration decision, which held that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all required criteria under Section 2 of the Employment and Assistance Regulation. More specifically, the issue is whether the evidence reasonably supported the following determinations or whether they were a reasonable application of the legislation in the appellant's circumstances:

The ministry determined that the appellant had not demonstrated that:

- Section 2(3) was met because the appellant scored 12 on the employability screen in Schedule E, and did not meet the required 15 or more under Section 2(3)(a)(i).
- Section 2(4)(b) was met, because in the opinion of the minister, her medical condition is not a barrier that precludes the appellant from searching for, accepting or continuing in employment

The Regulation provides:

### *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.

[en. B.C. Reg. 368/2002.]

### **Panel Decision**

PPMB qualification requires that a person must satisfy EAR section 2(1), 2(2) and either section 2(3) or 2(4). In this instance, the ministry accepted that sections 2(1) and 2(2) have been met. These determinations are not at issue in this appeal. The ministry then determined that because the appellant scored 12 on the Employability Screen in Schedule E, she does not meet the requirements of section 2(3); therefore, the appellant's PPMB application must be assessed under Section 2(4). The ministry determined that Section 2(4) was not met.

The ministry determined that, because the appellant's Employability Screen score is 12, and not 15 or more as required by section 2(3), the appellant must satisfy section 2(4). In assessing the reasonableness of this determination the panel notes that the appellant has not taken issue with the Employability Screen score, nor argued that it is incorrect or unreasonable in any way. The panel notes also that Employability Screen indicates that the appellant has "never" been on Social Assistance or Income Assistance in the past 3 years, resulting in a score of "0" on this question. However, the Clinic Notes indicate that the appellant was receiving benefits of some sort in another province in 2015. The panel notes that there is no further information as to the type of benefit that the appellant was receiving, making it impossible to determine whether this benefit was Social Assistance or Income Assistance. Furthermore, the panel finds that, even if this benefit were Social Assistance or Income Assistance, the resulting Employability Screen score would be 13 rather than 12. This would not satisfy the requirement for a score of 15 or more set out in section 2(3) of the EAR. The panel finds that the ministry was reasonable in determining that the appellant does not meet the requirements set out in section 2(3). The panel finds that the ministry was also reasonable in determining that the appellant must satisfy section 2(4) to qualify for PPMB designation.

Section 2(4)(a) of the legislation requires that a person has a medical condition, confirmed by a medical practitioner, that in the opinion of a medical practitioner has continued for at least one year and is likely to continue for at least two more years. The ministry has accepted, based on information provided in the PPMB Medical Report and Clinic Notes, that this criterion has been met. This determination is not at issue in this appeal. The panel notes that the appellant has indicated in the Appellant Submission, which the panel has admitted in its entirety, that she has an additional medical issue relating to a mass in her uterus. However, the appellant has

indicated that there is no diagnosis in relation to this issue at present and she has not indicated that there are any restrictions to employment arising from this condition. As such, the panel finds that this is not a “medical condition, other than an addiction, that is confirmed by a medical practitioner” that has continued for at least one year and is likely to continue for at least two more years as required by section 2(4)(a).

Section 2(4)(b) requires that, in the opinion of the minister, the medical condition(s) is a barrier that precludes the person from searching for, accepting or continuing in employment. The ministry found that this criterion was not met. The ministry noted that the PPMB Medical Report did not contain any description of any restrictions specific to the appellant’s medical conditions. The ministry also considered information contained in the Clinic Notes and concluded that this information did not speak to the nature of employment restrictions specific to the appellant’s medical conditions or symptoms. As well, the ministry noted in its consideration of this information that the records were two or more years old and did not reflect the appellant’s current level of functioning. The ministry concluded that the information provided did not establish that the appellant is precluded from searching for, accepting or continuing in employment.

In assessing the reasonableness of the ministry’s conclusion on this criterion, the panel must assess reasonableness in light of all of the admissible evidence available to the panel on appeal and not only the information that was before the ministry at reconsideration. The panel notes that the Appellant’s Submission does contain information relating to difficulties the appellant experiences due to pain and fatigue arising from her medical conditions. However, the panel finds that this information does not speak to the appellant’s employability or barriers to employment. The Appellant’s Submission speaks, instead, to the appellant’s difficulties with daily living activities, such as bathing housework and shopping. For instance, the appellant states that it can take hours to do small tasks, such as dishes and vacuuming and that tasks like showering can be too much for her to handle most days. The panel can, to some extent, anticipate that these restrictions to the appellant’s daily living activities might also impact her ability to work but it is not clear what the resulting impacts/restrictions would be. As a result, the panel finds that the information provided does not establish that the appellant is unable to work or unable to perform specific types of work, nor does it lead to the conclusion that the ministry’s conclusion on section 2(4)(b) is not reasonably supported by the evidence or a reasonable application of the legislation in these circumstances. The panel finds that the appellant has not established that her medical condition is a barrier that precludes her from searching for, accepting or continuing in employment. The panel finds that the ministry’s determination that the appellant’s application does not meet section 2(4)(b) is reasonable.

### **Conclusion**

The panel concludes that the ministry’s reconsideration decision, which determined that the appellant does not qualify as a person with persistent multiple barriers to employment because she did not meet all required criteria under Section 2 of the EAR, is reasonably supported by the evidence and a reasonable application of the legislation in the appellant’s circumstances. The panel confirms the ministry’s reconsideration decision. The appellant is not successful in her appeal.

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**PART G – Order**

THE PANEL DECISION IS <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY (Check one)
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 checked="" type="checkbox"/> and/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**

SIGNATURE OF CHAIR	DATE (YYYY MMM DDD) 2019 04 08
PRINT NAME Jennifer Smith	

SIGNATURE OF MEMBER	DATE (YYYY MMM DDD) 2019 04 08
PRINT NAME Connie Simonsen	
SIGNATURE OF MEMBER	DATE (YYYY MMM DDD) 2019 04 08
PRINT NAME Diane O'Connor	