

APPEAL NUMBER
2020-00095

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated March 12, 2020 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 as required by section 2(2)(a) of the EAR and, as required by section 2(2)(c), has an additional barrier, described in subsection(3), that seriously impedes the appellant's the ability to search for, accept or continue in employment.

The ministry found that it is unable to determine that in the opinion of a health professional, the appellant has a medical condition that has continued for at least 1 year and is likely to continue for at least two more years, and that the appellant's medical condition seriously impedes the ability to search for or accept or continue in employment, as required by section 2(2)(b) of the EAR.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR) – section 2.

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

1. Application PPMB (the application) section 1– signed by the appellant's physician. The application indicated that the following about the appellant's medical conditions:
 - The appellant's medical conditions are elbow pain, family stress and depression.
 - They have existed for 3 years.
 - The expected duration is unknown and they are not episodic in nature.
 - The restrictions are chronic left elbow pain (refrain from weight-bearing) and family stressors.
 - The additional documents listed by the physician as enclosures were not included and the ministry was unable to locate them in the appellant's file.
2. Application PPMB section 2 – signed and dated December 9, 2019 – which indicated that the appellant has accessed emergency health, mental health or addiction services multiple times in the past 12 months.
3. Request for Reconsideration, signed and dated February 6, 2020, which indicated that the appellant thinks the legislative criteria have been met.
4. Release of Information, signed and dated February 6, 2020- which gives access to an advocate.

Evidence on Appeal

1. Notice of Appeal (NOA), signed and dated March 26, 2020, which stated that the additional documents were not submitted due to a lack of time for submission.
2. Letter from the advocate to a physician (one other than the physician who completed the PPMB application), signed and dated February 6, 2020. The advocate indicated that "it is my impression that depression and a chronic left elbow injury significantly restricts [the] ability to interact, concentrate short-term memory, executive function, and lifting and carrying with left arm on an ongoing basis such that these conditions constitute a significant barrier to employment for at least 2 years into the future". The letter included a questionnaire for the physician to complete.
3. Questionnaire (the questionnaire) from the advocate to a physician to complete, signed and dated April 20, 2020, which stated the following:
 - Does your patient have severe depression and left elbow injury? Answer: "[They have] major depression disorder – moderate with anxious distress".
 - Has your patient [had] these conditions for more than a year? Answer: "[They have] been having the symptoms for two years – according to the patient".
 - Is your patient waitlisted to see a psychiatrist? Answer: "[They] saw the psychiatrist on April 11, 2020".
 - Do your patient's medical conditions significantly restrict ability to interact, concentrate, short-term memory, executive function and lifting and carrying with the left arm on an ongoing basis? Answer: "[They have] low energy and concentration decline – history of panic attack and low mood".
 - Are these conditions expected to last more than two years into the future? Answer: "Depression is a chronic mental problem with ongoing remission and exacerbation".
 - Is your patient's medical condition severe enough to present a significant barrier to employment for at least 2 years? Answer: "Yes".
4. Psychiatric assessment dated April 11, 2020. The document was not signed or dated. In part, the assessment indicated the following:
 - A history of the presenting illness as indicated by the appellant.
 - No past psychiatric history.

- No substance use history.
 - No past medical history.
 - No past surgical history.
 - No current medications.
 - A brief family history was provided.
 - No social history.
 - Mental State Exam: mood was euthymic, affect was reactive, thought form was linear, no homicidal or suicidal ideation, no sign of response to internal stimuli, no auditory or visual hallucination and the patient was oriented to time, place and person.
 - Summary/Formulation: low mood, concentration and energy are decreased, admits to anhedonia, worries a lot, lays awake at night worrying, history of panic attacks, appetite is low and patient agreeable to taking medication.
 - Medication was prescribed and a follow up to be conducted in 12 weeks from April 11, 2020.
5. Letter from the ministry dated May 7, 2020, which indicated that the if the above stated evidence on appeal had been before the ministry at the time of the reconsideration decision, it may have determined that the appellant met the criteria for PPMB designation.

Admissibility of Additional Information

A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

In this case, the panel determined that the NOA is admissible, in accordance with s. 22(4) of the *Employment and Assistance Act*, as it presents the appellant's argument.

The panel determined that the letter from the advocate to a physician is admissible, in accordance with s. 22(4) of the *Employment and Assistance Act*, however the panel place little weight on the letter because it presents a medical opinion and conclusion from the advocate and it is unknown if the advocate is a health professional.

The panel determined that the questionnaire completed by a physician on April 20, 2020 is admissible, in accordance with s. 22(4) of the *Employment and Assistance Act*, as it presents a medical opinion and/or conclusion that is relevant to the matters related to the decision under appeal.

The panel determined that the psychiatric assessment conducted on April 11, 2020 is admissible, in accordance with s. 22(4) of the *Employment and Assistance Act*, as it presents a medical opinion and/or conclusion that is relevant to the matters related to the decision under appeal.

The panel determined that the letter from the ministry dated May 7, 2020 is admissible, in accordance with s. 22(4) of the *Employment and Assistance Act*, as it presents an opinion and/or conclusion that is relevant to the matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision to deny the appellant PPMB qualification because, it was unable to determine that

- a) in the opinion of a medical practitioner the appellant has a medical condition that has continued for at least 1 year and it is likely to continue for at least two more years, and
- b) that the appellant's medical condition impedes the ability to search for or accept or continue in employment, as required by section 2 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) In this section, "health professional" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) chiropractor,
- (ii) medical practitioner,
- (iii) nurse practitioner,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) registered nurse or registered psychiatric nurse,
- (vii) registered psychologist, or
- (viii) registered social worker,

(b) a registered clinical counsellor in good standing with the BC Association of Clinical Counsellors, or

(c) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

(2) A person qualifies as a person who has persistent multiple barriers to employment if the person

(a) is a recipient of income assistance or hardship assistance,

(b) has a health condition that is confirmed by a health professional and that,

(i) in the opinion of the health professional,

(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) faces one or more additional barriers described in subsection (3).

(3) For the purposes of subsection (2) (c), an additional barrier is any of the following:

(a) any of the following circumstances if, in the opinion of the minister, the circumstance seriously

impedes the person's ability to search for, accept or continue in employment:

- (i) currently experiencing homelessness or having experienced homelessness in the past 12 months;
 - (ii) currently experiencing domestic violence or having experienced domestic violence in the past 6 months;
 - (iii) needing English language skills training;
 - (iv) not having basic skills for employment;
 - (v) having a criminal record;
 - (vi) having an education below grade 12;
 - (vii) having accessed emergency health, mental health or addiction services multiple times in the past 12 months;
 - (viii) being a Convention refugee as determined under the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*, or having been such a refugee in the past 24 months, or being in the process of having a claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act (Canada)*;
 - (ix) being a person who was a child in care or received similar care under an enactment of another Canadian jurisdiction;
- (b) a circumstance that the minister considers to be a circumstance that seriously impedes the person's ability to search for, accept or continue in employment.

The Appellant's Position

The appellant argued that they have medical conditions (depression and left elbow pain) that impede the ability to search for, accept or continue in employment. In response to the ministry's reconsideration decision, the appellant provided additional information on appeal that indicated that the appellant's depression has lasted for more than one year and will likely continue for at least two more years, and that that the appellant's depression impedes the ability to search for or accept or continue in employment, as required by section 2 of the EAR.

The Ministry's Position

Based on the evidence provided at the time of reconsideration, the ministry's was unable to determine that in the opinion of a medical practitioner the appellant has a medical condition that has lasted for at least 1 year and that it is likely to continue for at least two more years, and that the appellant's medical condition impedes the ability to search for or accept or continue in employment, as required by section 2 of the EAR.

The ministry noted that a health condition is considered to seriously impede a person's ability to search for or accept or continue in employment when as a result of the health condition, the person is unable to participate in any type of employment that would enable independence from income assistance. As such, the ministry determined that the appellant's elbow pain limits weight bearing activities and acknowledges the condition of depression but determined that there is insufficient evidence from the physician to concluded that these medical conditions seriously impede employment.

The Panel's Decision

The legislation requires that to qualify as a Person with Persistent Multiple Barriers qualification an individual must meet specific requirements set out in section 2(2) of the EAR. In this case, the ministry denied PPMB qualification because it determined that the requirements of section 2(2)(b)(i) were not met. Specifically, the ministry found that the appellant failed to provide sufficient evidence that in the opinion of a health professional they have a medical condition that has lasted at least one year and is likely to continue for at least two years.

In the PPMB application the physician indicated that a medical condition has lasted three years. In the questionnaire, the physician indicated that according to the appellant the depression has lasted more than one year which is consistent with the information in the PPMB application and consistent with the psychiatric assessment which outlined the appellant's history of depression. In the questionnaire, the physician also indicated that depression is an ongoing condition with periods of remission and exacerbation. The psychiatric assessment confirmed that the appellant has a history of depression, outlined the various ways in which it manifests, and the impact depression has had on the appellant and the ability to function. This included, but was not limited to, low moods, low energy and inability to sleep. The PPMB application indicated that the appellant's conditions are not episodic in nature. The panel concluded that though depression can have periods of remission, the entirety of the evidence suggests that, to date, the appellant has not experienced periods of remission and that the depression is ongoing. Considering the foregoing, and specifically the newly admitted evidence, the panel finds that the ministry was unreasonable in determining that in the appellant's case the requirements of section 2(4)(b)(i) were not met.

The ministry also determined that the requirements of section 2(2)(b)(ii) were not met. Specifically, it determined that at the time of reconsideration, there was "insufficient evidence to conclude that those medical conditions seriously impede employment". The psychiatric assessment submitted on appeal confirmed that the appellant has a history of depression, outlined the various ways in which it manifests, and the impact depression has had on the appellant and the ability to function. Additionally, the questionnaire completed by a physician indicated that the appellant's medical condition presents a significant barrier to employment for at least two years. The panel also notes that, in its May 7, 2020 letter, the ministry indicated that if it had the information that was submitted on appeal, the ministry may have determined that the appellant met the legislative criteria for PPMB qualification. Considering the foregoing, and specifically the newly admitted evidence, the panel finds that the ministry was unreasonable in determining that in the appellant's case the requirements of section 2(4)(b)(ii) were not met.

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) of the EAR were not met, was not reasonably supported by the evidence and was not a reasonable application of the applicable legislation. The panel rescinds the ministry's decision. The appellant is successful at appeal.

APPEAL NUMBER
2020-00095

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)

2020/06/04

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/06/04

PRINT NAME

Anne Richmond

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/06/04