

1Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 28, 2024, which determined the appellant was not eligible for Person with Persistent Multiple Barriers Designation.

Specifically, the ministry determined the appellant did not meet the following criteria:

- health condition has continued for at least one year and is likely to continue for at least two more years, or has occurred frequently in the past year and is likely to continue for at least two more years; and
- one or more additional barriers.

Part D - Relevant Legislation

Employment and Assistance Regulation (Regulation), section 2

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The hearing was held by videoconference on July 8, 2024. Two advocates attended the hearing with the appellant, her social worker and her surgeon.

Summary of Relevant Evidence Before the Minister at Reconsideration

Ministry records show the appellant is a recipient of income assistance.

Persons with Persistent Multiple Barriers Application (application) (March 25, 2024)

Barriers to Employment

The appellant provided the following information.

When asked to indicate the barriers that seriously impede her ability to search for, accept or continue employment, the appellant states, volatile, uncontrollable diarrhea, sleep deprivation from frequent trips to the bathroom.

Additional information:

Mental anguish and anxiety about leaving the house due to reliance on a bathroom.

The appellant’s family doctor provided the following information (February 29, 2024).

Health Assessment

Health Condition	Date of Onset
Short bowel syndrome	December 2023
Type 2 diabetes	January 2024

The doctor states the expected continuation of the health condition is less than two years. It is not episodic in nature. The condition has lasted less than three months.

Regarding restrictions, the doctor writes the applicant is recovering from a total colectomy. She requires constant access to a bathroom and is unable to spend extended time in a work place. Partial recovery is expected in mid to long-term, but symptoms will persist.

Letter from the Ministry to the Appellant (April 2, 2024)

The ministry states it denied the appellant’s application for Persons with Persistent Multiple Barriers designation and included the reasons for the denial.

Request for Reconsideration (April 30, 2024)

The request contains the following note from the appellant’s family doctor (April 18, 2024).

The doctor writes that the appellant’s condition is expected to improve over the next several years, but that the condition is expected to remain a barrier despite improvement and there is sufficient reason to believe it will remain a problem under Section 2(2)(b)(i)(A) of the Regulation.

Additional Information

Notice of Appeal (June 18, 2024)

The appellant states that she respects the policies being followed and feels her best defense is to demonstrate a day in her life as it speaks for itself. No one would choose to live like this and in hindsight, had she known this would be her quality of life post surgery, she would have declined as the colon cancer would come with an end.

She provides a record of food intake and the number of times she has to go to the bathroom. She states each trip to the bathroom is diarrhea with an urgency of immediate to a few minutes of knowing it is going to happen. Each time requires a clean-up she wouldn't want to face anywhere other than in her own home. It is extremely messy and requires two to three handfuls of toilet paper that frequently results in her hands and wrists affected with stool.

-sample of food intake and bathroom trips

Date	Time	Food intake	Bathroom
June 7	5:00 pm	Pasta	5:35 pm
			6:30 pm
			8:00 pm
			10:55 pm
			12:45 am
June 8	2:00 am	Chicken strips	4:30 am
			8:00 am
	9:00 am	Tea and toast	9:30 am
	Noon	Sneezing accident	noon
	Change of clothes and shower		
	2:00 pm	Kraft dinner	2:15 pm
			3:30 pm
			5:00 pm
	7:00 pm	Chicken/rice/vegetables	7:30 pm

			8:00 pm
			11:15 pm
June 9			1:45 am
			3:30 am
	Coughing, sneezing accident		5:00 am
	Change of underwear		6:30 am
	9:00 am	Eggs and toast	9:45 am
			10:30 am
			noon

The appellant adds that especially right after her surgery (and on occasion now), she has to wear adult diapers. Changing them can result in a mess. The rare urge to "pass gas" is terrifying as most times there's more to it. She has tried Imodium and Metamucil and finds it only slightly changes the consistency of the diarrhea but not the frequency or the urgency. Although her documentation indicates food choices have nothing to do with the "outcome", her surgeon referred her to the outpatient dietitian.

As well, the appellant states when she has to leave her home for medical appointments she has to refrain from all food and liquid for 10-12 hours prior. Her doctors have been very supportive in allowing phone appointments, and her social worker has come to her home with necessary paperwork.

The appellant states she is not looking for a permanent disability designation as that would remove all hope that her life will return to something more manageable.

At Hearing

At the hearing, the appellant stated her health condition has been going on for two or three years. Before COVID blood started showing up in her stool. She had surgery on December 7, 2023. The appellant added that her surgeon provided some options to assist with her condition, including additional surgery. However, this surgery would have to be done in another city.

As well, the appellant stated that she doesn't sleep for more than one or two hours at a time.

Regarding her type 2 diabetes, the appellant's blood levels are being managed and nothing further needs to be done at this time. However, she states because of the diabetes, it's dangerous not to eat and drink for long periods of time.

At the hearing, the appellant had two advocates, her social worker and her surgeon. The appellant's surgeon stated that the appellant does not have short bowel syndrome. Her loose stools are caused by a very short rectum. They added that her health condition started years ago - as of February 2022, the appellant already had loose stools. Surgery was scheduled to prevent colon cancer but then colon cancer was already discovered. They have offered the appellant options for treating her health condition such as medication and further surgery. However, there are issues with these options. The medications are extremely expensive. They don't know if the appellant is eligible for the additional surgery, it is a higher risk surgery, and would involve a significant mental burden.

At the hearing, the ministry relied on its record and added that its main concern was that the health condition had not continued for one year. The ministry also explained that an additional barrier must be something in addition to the health condition (e.g., live in a remote area, transportation). That the appellant is housebound is related to the health condition and not an additional barrier.

Admissibility

The panel determined the additional information in the appellant's Notice of Appeal and her testimony at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

The panel also determined the additional information provided by the surgeon at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

The ministry did not submit any further evidence at the hearing and had no objections to the inclusion of appellant's evidence.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant did not meet the following criteria:

- health condition has continued for at least one year and is likely to continue for at least two more years, or has occurred frequently in the past year and is likely to continue for at least two more years; and
- one or more additional barriers.

Appellant Position

The appellant states, volatile, uncontrollable diarrhea and sleep deprivation from frequency of trips to the bathroom are barriers that seriously impede her ability to search for, accept or continue employment. As well, she suffers from mental anguish and anxiety about leaving the house due to reliance on a bathroom.

Ministry Position

The ministry states section 2(2) of the Regulation explains that to qualify as a Person with Persistent Multiple Barriers all four of the following criteria must be met:

1. The person must be a recipient of income assistance or hardship assistance.
2. The person must have a health condition (confirmed by a health professional) that has continued for at least one year and is likely to continue for at least two more years, or, has occurred frequently in the past year and is likely to continue for at least two more years.
3. The health condition must be considered a barrier that seriously impedes the person's ability to search for, accept, or continue in employment.
4. The person must face one or more additional barriers, as described in subsection 2(3), that in the opinion of the ministry seriously impedes the person's ability to search for, accept, or continue in employment.

The ministry states as the appellant is in receipt of disability assistance, her application meets the eligibility criteria set out in section 2(2)(a) of the Regulation. The ministry also finds that the appellant's health condition seriously impedes her ability to search for, accept, or continue in any type of employment. Therefore, her application meets the eligibility criteria set out in section 2(2)(b)(ii) of the Regulation.

However, the ministry argues the application does not meet the eligibility criteria set out in section 2(2)(b)(i) of the Regulation. Although the doctor confirms the appellant's medical condition is expected to remain a barrier for at least two more years, as the earliest date of onset is December 2023, neither of the appellant's medical conditions have continued for at least one year. Also, as neither of the appellant's medical conditions are episodic, the ministry is unable to establish that they have occurred frequently (more than one time) in the past year.

The ministry also finds the application does not meet the eligibility criteria set out in section 2(2)(c) of the Regulation. This legislation states it must be established that the person faces one or more additional barriers as described in subsection 3 of section 2 of the Regulation. Additional barriers, in the wording of the Regulation, means something other than the medical condition. In the application, the appellant listed only her medical condition as a barrier. Therefore, the ministry is unable to determine that she faces one or more additional barriers and that the barrier seriously impedes her ability to search for, accept, or continue in employment.

Panel Analysis

Since the ministry has already accepted that the appellant meets two of the criteria (recipient of income assistance and impediment to search for any type of employment), the analysis focuses on the remaining two criteria - continuation of health condition and additional barriers.

Regulation, Section 2(2)(b)(i)- Continuation of Health Condition

Section 2(b)(i)(A) of the Regulation states the person must have a health condition confirmed by a health professional and, in the opinion of the health professional, has continued for at least one year and is likely to continue for at least two more years.

The panel notes in the application, the appellant's doctor (a health professional) shows the date of onset for short bowel syndrome as December 2023 and the date for type 2 diabetes as January 2024. However, in the request for reconsideration the doctor writes that the appellant's condition is expected to improve over the next several years, but that the condition is expected to remain a barrier despite improvement and there is sufficient reason to believe it will remain a problem under the Section 2(2)(b)(i)(A) of the Regulation.

At the hearing, the appellant's surgeon (a health professional) stated that the appellant does not have short bowel syndrome. Her loose stools are caused by a very short rectum

and as of February 2022, the appellant already had loose stools. Surgery was scheduled to prevent colon cancer but then colon cancer had already been discovered.

The panel finds the information provided by the appellant's doctor in the request for reconsideration, along with the information provided by the appellant's surgeon at the hearing (i.e., very short rectum and loose stools as of February 2022), demonstrates that the appellant has a health condition confirmed by a health professional that has continued for at least one year and is likely to continue for at least two more years.

As section 2(2)(b)(i) of the Regulation requires that either subsection A or B are met and the panel has determined, subsection A was met, the panel finds the appellant meets the criteria under section 2(2)(b)(i) of the Regulation. With the additional information from the surgeon at the hearing, the panel now finds the ministry determination that section 2(2)(b)(i) of the Regulation was not met, unreasonable.

Regulation, Section 2(2)(c)- Additional Barriers

Section 2(2)(c) of the Regulation requires that the barrier seriously impedes the person's ability to search for, accept or continue in employment, and faces one or more additional barriers described in section 2(3) of the Regulation. The barriers listed are: homelessness, domestic violence, needing English language training, not having basic skills for employment, criminal record, education below grade 12, accessed emergency health, mental health or addiction services multiple times in the past 12 months, being a refugee or being a person who was a child in care.

The panel notes in the application, when asked to indicate the barriers that seriously impede her ability to search for, accept or continue employment, the appellant states, volatile, uncontrollable diarrhea, sleep deprivation from frequent trips to the bathroom.

The panel also notes the appellant states she suffers from sleep deprivation and in her application states she suffers from mental anguish and anxiety about leaving the house due to reliance on a bathroom. However, the panel does not consider the sleep deprivation and mental anguish to be additional barriers, but instead part of her health condition.

As no additional barriers, were indicated, the panel finds Section 2(2)(c) of the Regulation was not met.

The panel notes Section 2(2) of the Regulation requires all criteria to be met. As the requirements under Section 2(2)(c) was not met, the panel finds the ministry reasonably

determined the appellant is not eligible for Persons with Persistent Multiple Barriers designation.

The panel acknowledges the appellant's difficult situation but is bound by the legislation.

Conclusion

In conclusion, the panel finds the ministry decision, which determined that the appellant is not eligible for Persons with Persistent Disabilities designation was reasonably supported by the evidence. The panel confirms the ministry's decision.

The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance Regulation

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 ...
 - (ii) medical practitioner
- (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.

APPEAL NUMBER 2024-0232

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)

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

Part H – Signatures

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2024/07/09

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2024/07/09

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2024/07/09