

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 19, 2012 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year. However, the ministry was not satisfied that the medical condition is likely, in the opinion of a medical practitioner, to continue for at least 2 more years and that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(a) and 2(4)(b) of the EAR.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

## PART E – Summary of Facts

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

- 1) Letter from orthopedic surgeon to the appellant's physician dated October 25, 2011 stating in part that the appellant had an MRI on August 25 which shows a possible small tear and mild fluid in the joint; there has not been a significant change in his symptoms, he still has a lot of pain which is fairly focal; a brace is recommended to be worn at night and with any increased activities; otherwise the physician does not know what is going on and will refer the appellant for a second opinion;
- 2) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated November 18, 2011, which states, in part, that: the appellant's primary medical condition is "left wrist pain NYD" [not yet diagnosed] with a date of onset of October 2009; the prognosis sets out that the expected duration of the medical condition is less than 2 years or "unknown" and that it is not episodic in nature. In the section of the Report regarding restrictions, there is nothing added by the physician;
- 3) Copy of the Medical Report- PPMB dated November 18, 2011 with a note added regarding restrictions "decreased use of left hand";
- 4) Employability Screen print out dated December 9, 2011, noting a total score of "9";
- 5) Letter from the ministry to the appellant dated December 9, 2011 advising that he does not meet the requirements for PPMB; and,
- 6) Request for Reconsideration- Reasons.

At the commencement of the hearing, the appellant stated that he wanted to request an adjournment since he had not reviewed the brochure regarding the Tribunal's practices and procedures. When the panel reviewed the process for the hearing and provided an opportunity for any questions, the appellant agreed to proceed with the hearing.

The appellant stated that he was injured at work in October 2009 and by the next business day he was terminated from his job since he had recently returned to work from light duties as a result of another workplace injury. The appellant stated that he is left-handed and he has a hard time to pick things up with his left hand, even something like his toothbrush. The appellant stated that he has been waiting since October 25, 2011 for a referral by the orthopedic surgeon to another specialist to get a second opinion about his left hand. The appellant stated that it is not his wrist so much as the bottom of his hand, in the palm, that is painful and makes it difficult to grip things. The appellant explained that the physician who completed the Medical Report is his walk-in doctor that he has known for a year or two. The appellant stated that he has an old brace from an injury to his right hand that he has been using for his left hand, that he wears it all the time including through the night. The appellant stated that the brace does help since it immobilizes his wrist and hand and, with the strap over the palm, reminds him not to try to lift things with that hand. The appellant stated that with the brace he can write with his left hand but only very slowly. The appellant stated that the symptoms have been the same for two years, that he has had to use his right hand, which is still not 100% after an old injury, and he takes ibuprofen for the pain. The appellant stated that there is not much he can do until he gets an appointment with the new specialist, which he hopes will be soon.

In his Request for Reconsideration, the appellant adds that he has been suffering from this injury for more than 2 years now. The appellant states that his pain is most of the time unless he forgets and picks up something heavy, then he gets a pain like a hot skewer shooting through his palm, bottom right corner, which subsides after about an hour or so. The appellant states that he is left-handed and he is forced to use his right hand which is frustrating. In his Notice of Appeal, the appellant states that he was told by the ministry that if he applied for PPMB he would receive a brace for his left wrist and that he could earn up to \$500 per month without it being deducted from his support or shelter. The appellant states that he is still waiting for his next appointment with his doctor.

The ministry's evidence includes that the appellant has been in receipt of income assistance for at least 12 of the immediately preceding 15 calendar months. The appellant's score on the Employability Screen dated

December 9, 2011 is "9". The ministry acknowledges that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner has continued for at least one year. The Medical Report- PPMB dated November 18, 2011 identifies a primary medical condition of left wrist pain not yet diagnosed however, in the opinion of the medical practitioner, this condition is not likely to continue for at least 2 more years. In the original Medical Report, the physician does not set out any restrictions specific to the appellant's medical condition. In the amended Medical Report, the physician has made a note regarding restrictions "...decreased use of left hand." The ministry notes that the letter from the orthopedic surgeon dated October 25, 2011 indicates that the appellant continues to have significant wrist pain that is not yet diagnosed and he recommends that the appellant wear a brace at night or with any increased activity but does not specify any restrictions related to the appellant's medical condition.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is likely, in the opinion of a medical practitioner, to continue for at least 2 more years and that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(a) and 2(4)(b) of the EAR.

The criteria for being designated as a person with persistent multiple barriers to employment (PPMB) are set out in Section 2 of the EAR. Under Section 2(2), the person must have been the recipient of one or more of a number of types of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(3) applies. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, in the opinion of the minister, is a barrier that precludes the person from searching for, accepting, or continuing in employment.

The ministry's position is that although the appellant meets the requirements of Section 2(2) of the EAR, in that he has been the recipient of income assistance for at least 12 of the immediately preceding 15 calendar months, the evidence has not established that the appellant has met all the remaining applicable criteria. The ministry argues that since the appellant scored 9 on the employability screen, he must meet the requirements of Section 2(4) of the EAR. The ministry acknowledges that the appellant has a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year. However, the ministry argues that the evidence does not establish that the medical condition is likely, in the opinion of the medical practitioner, to continue for at least 2 more years. The ministry also argues that the evidence does not establish that the appellant's medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment. The ministry points out that the physician has indicated in the amended Medical Report-PPMB that the restrictions specific to the appellant's medical condition are "...decreased use of left hand." The ministry points out that the letter from an orthopedic surgeon dated October 25, 2011 also does not note any restrictions related to the appellant's medical condition but recommends the use of a brace to wear with any increased activity. The ministry argues that the decreased use of the appellant's left hand does not preclude him from all types of employment, that a more sedentary job with minimal use of his left hand is an option or the use of the brace during increased activity, as prescribed.

The appellant argues that the Medical Report dated November 18, 2011 was completed by his physician and, because he is still waiting for the referral to a second specialist, they have not yet figured out what is wrong with his wrist. However, the appellant argues that the symptoms have been the same for 2 years, that he cannot grip properly with his left hand and he experiences increased pain if he attempts to lift something heavy with his left hand. The appellant argues that he has been forced to use his right hand for most activities but it also is not 100% after an old injury.

The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated November 18, 2011 that the appellant suffers from a medical condition other than an addiction, namely "left wrist pain NYD [not yet diagnosed]" with a date of onset of October 2009. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year. However, the ministry argues that in the opinion of the medical practitioner the medical condition is not likely to continue for at least 2 more years. The Medical Report dated November 18, 2011 has a section dedicated to the prognosis for the diagnosed medical condition and a choice is given for the expected duration

of the medical condition of either less than 2 years or 2 years or more, and the physician has circled 2 years in the "less than 2 years" option and noted "unknown". The panel finds that the ministry reasonably concluded that there is not sufficient evidence from a medical practitioner to establish that the medical condition is likely to continue for at least 2 more years, as required by Section 2(4)(a) of the EAR.

In terms of restrictions associated with the appellant's medical condition, the physician has indicated in the amended Medical Report dated November 18, 2011 that the appellant's medical condition results in decreased use of his left hand. The letter from orthopedic surgeon dated October 25, 2011 states that the appellant still has a lot of pain which is fairly focal, that a brace is recommended to be worn at night and with any increased activities and that, otherwise, the physician does not know what is going on and that a referral will be made for a second opinion. The appellant states that he experiences increased pain if he tries to lift heavier items with his left hand, that he can use his left hand for writing but it is very slow, and that he has been forced to use his right hand which is also not 100%. The ministry has pointed out that the appellant may be able to manage less physically demanding work with minimal use of his left hand. The panel finds that the evidence demonstrates that the appellant experiences pain as a result of his medical condition and decreased use of his left hand but that this restriction does not preclude, or prevent, the appellant from searching for or accepting all types of employment, perhaps with modified or lighter duties. Therefore, the panel finds that the ministry's conclusion that the evidence does not demonstrate that the appellant's medical conditions are a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR, was reasonable.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.