

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 25, 2012 which held that the appellant does not meet all of the requirements to qualify as Person with Multiple Barriers to employment (PPMB) under Section 2 of the Employment and Assistance Regulation (EAR). The ministry is satisfied that the evidence establishes that the appellant has been a recipient of Income Assistance for at least 12 months of the immediate preceding 15 calendar months, and that the appellant has a medical condition, other than addiction, confirmed by a medical practitioner, that has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry held that the evidence did not establish that the appellant's medical condition precludes him from searching for, accepting or continuing in employment, pursuant to Section 2(4) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

The evidence before the panel was provided in part in the appeal record and in part through oral evidence submitted at the hearing. In the appeal record, as part of the evidence, were copies of the following documents:

1. Medical Report - Persons with Persistent Multiple Barriers (PPMB) dated September 30, 2011, which identified the appellant's primary medical condition as "spinal stenosis" and informed that the expected duration of the medical condition is 2 years or more and that it is not episodic in nature; also, that the appellant is in treatment with medical marijuana and that the outcome for the treatment presented "no change". With respect to restrictions, the report indicated that the appellant has "difficulty with physical labor".
2. Letter from the appellant's vocational counsellor, dated December 22, 2011, informing the ministry that the professional had been working with the appellant for two months; that in her opinion, the appellant's main barriers to securing and retaining employment are largely "invisible", as chronic pain, depression and anxiety; that the appellant is struggling to find affordable, safe housing and meet his basic needs and that he has a limited support network; that those combined issues have increased his level of stress and have exasperated (*sic*) his health issues. The professional also stated that she thinks that retaining full-time employment in the long-term is not a realistic goal for the appellant and that she is working with him on developing a goal that is more suitable for him within his disability limitations. Finally, that in her opinion, part-time employment or self-employment is the best route for the appellant.
3. Copy of the form *Persons who have Persistent Multiple Barriers to Employment Checklist*, dated November 01, 2011, informing that the appellant's Score on Employability Screen is 11; that the appellant presented "Difficulty with physical labor" as a barrier to employment; and the ministry's decision dated November 14, 2011, which stated that the appellant "not precluded from all types of employment".
4. Copy of the Client Employability Profile, dated October 31, 2011.
5. The appellant's Reasons for Request for Reconsideration, dated December 12, 2011, stating that he suffers from severe spinal stenosis that affects 'all his life' and not just difficulties with physical labor; that his posture is constantly affected by this condition and his spine is curved like an "L"; that he suffers from sciatica pain, tingling or numbness caused by the irritation or pinching to the sciatic nerve; that he took conventional pain killers for many years, which caused a 'blinding ulcer' (*sic*) in his stomach among other unhealthy side effects; that now he is taking medical marijuana for which he has an authorized license by the Federal Government; that he is not able to find a place to work "where they will trust an official medical marijuana user to work for them". The appellant stated his emotional and depressive condition keeps him out of work and no company wants an unstable person; that his medical condition precludes him from all types of employment; finally, that because of his difficulties in finding regular employment due to medical marijuana use, he is looking to pursue self-employment, as it offers the flexibility to manage his health symptoms.
6. The appellant's Notice of Appeal in which he stated that the ministry did not look carefully into the reasons he presented when applying for PPMB; that the ministry officer gave a different name to his doctor; that the ministry insulted him, hurt his feeling, emotions (unintelligible).

Prior to the hearing, the appellant submitted an additional letter to this Tribunal, received February 7, 2012. The ministry did not object to the admission of this additional document. The panel reviewed the letter and admitted it pursuant to Section 22(4) of the Employment and Assistance Act as evidence in support of the information before the ministry when the decision being appealed was made. In this letter the appellant covered the following points:

- The ministry said his condition is precluding him "from some employment but in the Act that just says preclude from searching for, accepting or continuing in employment".
- The ministry did not consider the opinion of his medical practitioner.
- His condition does preclude him from accepting some jobs but he is not allowed to refuse employment; if he refuses he can be penalized.
- He is not employable right away; he will need more skill; he never said he wanted to stop or not continue in employment; he is talking with his employment counsellor about self-employment or training.
- He needs to acquire skills training in English.
- His employment screen is 12 but will become 13 at the end of March.
- He needs more skills and training and getting PPMB status will help him 'reach employment later and be out of the system.'

At the hearing, the appellant presented a submission that covered the following points:

- His doctor has told him that his physical problem also brings mental illness that is a barrier to employment.
- He has to use marijuana because other pain killers will not work, as they make him sick, upsetting his stomach.
- He is looking for a job, but some of the jobs he cannot accept because of his physical conditions or lack of skill/training.
- In his letter to the ministry he explained everything possible about his health condition; that his letter was not signed by a medical practitioner, but he has a professional witness who would testify about his barriers, and that any witness would be acceptable in other tribunals/courts.
- He wants to get employment that he will enjoy, that he has skill for and that his body can handle.
- It was not very professional for the ministry to change the name of his physician and that it affects the ministry's credibility.
- English is his second language.
- Concerning his Employability Screen, his score should be 12 instead of 11.
- Some places were interested in hiring him, but discriminated against him because he is using medical marijuana.
- His health problems started seven years ago; that his medical practitioner has known him for two years.

The ministry restated the position as it is set out in the reconsideration decision, reaffirming that the appellant's score on the Employability Skills was 11; that chronic pain and anxiety were not diagnosed by the medical practitioner; that the doctor listed spinal stenosis only and did not include any secondary medical issues. The ministry stated that the appellant's physician indicated that he is restricted from performing physically demanding work, but not restricted from light duties or sedentary employment. The ministry maintained that because the appellant did not meet all the requirements established in the legislation, he was not eligible for a Person with Persistent Multiple Barriers qualification.

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 requirements as set out on Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a Person with Persistent Multiple Barriers to employment. The ministry found that the evidence did not establish that the appellant's medical condition was a barrier that precluded him from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

Employment and Assistance Regulation – Section 2, 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 1 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.*

The ministry's position is that appellant did not meet all the legislative requirements to qualify as a Person with Persistent Multiple Barriers to employment, as set out in Section 2 of the Employment and Assistance Regulation. The ministry found that the appellant met the criteria of Section 2(2) - the appellant has been a recipient of Income Assistance for at least 12 of the past 15 months. The ministry argued that because the appellant scored 11 on the Employability Screen, and even if he scored 12 as the appellant argued, he must meet the requirements of Section 2(4) of the same legislation. The ministry found that criteria 2(4)(a)(i) had also been met - the appellant's medical practitioner indicated in the Medical Report that the appellant has a medical condition, other than addiction, that has continued for at least seven years and is likely to continue for at least two years or more. The ministry, however, argued 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; to be such a barrier, the medical condition would have to make the appellant unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment.

The appellant argued that he suffers from severe spinal stenosis that affects all aspects of his life and that he has difficulty not just with physical labor; that his posture is constantly affected by this condition and his spine is curved like an "L"; that he suffers "from sciatica pain, tingling or numbness caused by the irritation or pinching to the sciatic nerve"; that he took conventional pain killers for many years, which caused a bleeding ulcer in his stomach among other unhealthy side effects; that now he is taking medical marijuana for which he has an authorized license by the Federal Government; that he is not able to find a place to work because of discrimination against people who make use of medical marijuana; that his emotional and depressive condition keeps him out of work and that no company would want an unstable worker; that his medical condition precludes him from gaining all types of employment.

The panel finds that the evidence in the Medical Report demonstrated that the appellant's physician, who has known him for two years, has identified his primary medical condition as spinal stenosis, with no secondary medical condition set out. The appellant stated that he also suffers from sciatic pain, tingling or numbness caused by the irritation or pinching to the sciatic nerve and that he suffers from depression because of the primary medical condition. The appellant also argued that his vocational counsellor confirmed in her letter that he experiences chronic pain, depression, and anxiety and that her evidence should be relied upon as credible. However, the panel finds that evidence demonstrated that the appellant's medical practitioner did not identify any secondary medical conditions to spinal stenosis and, therefore, chronic pain, depression and anxiety have not been confirmed, in the opinion of a medical practitioner, to have continued for at least one year and to be likely to continue for at least 2 more years, as required by Section 2(4)(b) of the EAR.

In the Medical Report, the physician noted the appellant's restrictions due to his medical condition as being "difficulty with physical labor". The appellant argued that his medical condition - spinal stenosis - affects all aspects of his life on a daily basis and makes it difficult to work at any occupation, not just at one involving physical labor; that he suffers from severe chronic pain and conventional pain-killers caused a bleeding ulcer; that he started taking medical marijuana for pain because the severity of his spinal disease required medication to "kill the pain, to relax the muscles and something which stimulates the neuron to diminish the neurological trouble muscle weakness, numbness and sexual function problem. The medical marijuana helps all those need" (*sic*); that all of these symptoms confirm that he meets the qualification for a Person with Persistent Multiple Barriers. The ministry stated that the appellant's primary medical condition does prevent him from maintaining physically demanding work, but that the appellant should be able to manage sedentary or light-duty employment and, therefore, concluded that his condition did not preclude him from all types of employment.

The panel finds that the evidence provided by the appellant demonstrates that although his condition causes him to experience chronic pain, the treatment with medical marijuana he has been receiving is helping him to control the pain and other symptoms of his medical conditions; therefore, the panel finds that that the ministry's conclusion that appellant should be able to manage sedentary or light-duty employment is reasonable.

Although the appellant affirmed that he is having difficulties in finding regular employment due to the fact that employers who would otherwise be interested in hiring him would not do so because of his use of medical marijuana to treat his medical condition, the panel finds that there is no evidence in the file to support this allegation. Further, the pertinent legislation requires that the medical condition, not the treatment for the medical condition, be a barrier that precludes a person from searching for, accepting or continuing in employment.

Based on all of the evidence provided and under the prescribed legislation, the panel finds that the ministry reasonably determined that the appellant's medical condition is not a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to Section 2(4)(b) of the EAR, and thus the appellant did not meet all the eligibility criteria for the Persons with Permanent Multiple Barriers category under section 2 of the Employment and Assistance Regulation.

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(1)(b) and 24(2)(a) of the Employment and Assistance Act.