

### PART C – Decision under Appeal

The decision under appeal is the Minister's Reconsideration decision dated January 28, 2012 which held that the appellant did not meet the legislated criteria to qualify as a Person with Persistent Multiple Barriers to employment (PPMB) under section 2 of the Employment and Assistance Regulation. The ministry held that that the appellant's medical conditions did not preclude him from maintaining all types of employment. The ministry determined he met the criteria of 2(2) insofar as he had been in receipt of income assistance for at least 12 of the past 15 months. Because of his employability screen score of 12 his application was considered under the EAR section 2(4). The ministry was satisfied that the appellant's medical condition met the medical duration criteria of the EAR section 2(4)(a), but under the EAR section 2(4)(b) was not satisfied that his medical condition precluded him from searching for, accepting or continuing employment .

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2 and Schedule E

## PART E – Summary of Facts

The appellant and the ministry did not attend. After confirming that the appellant and the ministry were notified, the hearing proceeded under Section 86 (b) of the Employment and Assistance Regulation (EAR).

The evidence before the ministry at the time of reconsideration was comprised of :

1. Medical Report-PPMB dated February 4, 2011. The Medical Report confirms the appellant's primary medical condition as Chronic Myofacial Pain which is not expected to improve. The doctor with respect to restrictions specific to the medical condition states "difficult to perform anything other than light activity".
2. The ministry's PPMB Employment Checklist form dated December 2, 2011 attaches the above Medical Report-PPMB. The form lists the barriers to employment of the appellant that have been identified as Chronic Myofacial Pain and memory/retention problems due to brain damage. It also reports that a medical practitioner has confirmed a medical condition that has continued for at least one year and is likely to continue for at least two years, or has occurred frequently over the past year and is likely to continue on that basis for at least two years. The form attaches a Client Employability Profile dated December 1, 2011. In this profile, the ministry indicates the appellant has been unemployed for over 3 years, has a severe health condition and a persistent disability which severely impacts on employment options and collectively severely limits employment options. It also indicates the appellant is unclear of employment search methods yet has a realistic idea of employment potential and has some difficulty communicating and resolving conflicts which affects employment options. It also indicates that the appellant has no employment limitations because he holds a diploma/trade certificate, is fluent in written/spoken English, vehicle/public transportation is available and accessible, and he has adequate shelter. The profile provides a section for ministry comments. The comments note the appellant's current diagnosis of Chronic Myofacial Pain and the appellant's outline of the multiple and severe injuries he sustained by being dragged underneath a car for 2 blocks. The appellant suffered a major head injury, punctured both lungs and broke all his ribs, his arms and both shoulder scapulas. It outlines the report by the appellant that he was a welder prior to the accident and that after the accident it took him 3 years to rehabilitate via physiotherapy and that indicates he has one crushed disc and another pushing on a nerve. His leg goes numb and he is involved in pool therapy. He has tried going back to work. It notes the appellant's statement "I couldn't do the work, my body couldn't take it, I took 15-20 pills to try to work but I had to leave work early every day due to pain." Due to his brain injury he also states "... I can't retain information. I used to be able to add and subtract and read blueprints. I can't do it now. I had to ask a co-worker to read blueprints and take measurements.....I forgot how to write. I get my roommate to write things down. I try and pretend I can write. I can't spell...." The appellant tried a retraining program on computers, but could not retain any information and indicates his doctor will be completing his Person with Disabilities application in the new year. A section for ministry recommendations concerning employment plan activities was not completed.
3. December 20, 2011 a letter from the ministry to the appellant that informs him that his application for the PPMB category is denied.

4. January 24, 2012 the appellant's Request for Reconsideration. The appellant contends he has struggled with pain that is getting worse ever since he was run over by a car in 1997. He reports that he also struggles with panic attacks, migraines, back and upper body pain and memory loss.

He states he has "constant pain in upper joints, back, arms, ribs head on a day to day basis." He was able to work only because he took medications to relieve the pain. He reports he can only work a few hours before his body breaks down in pain. He refers to all the injuries he sustained in the accident which included serious and severe multiple lacerations, burns, fractures, heart bruising and double vision. The request for reconsideration included a 3 page letter dated April 27, 1997 from a medical practitioner that provides a detailed assessment of the appellant's injuries suffered from an accident as a pedestrian hit by a car.

In his Notice of Appeal dated August 22, 2011 the appellant states "I disagree because I have struggled for years trying to fit into the workforce. My body and brain are getting worse every year. I am in constant (sic) pain. Have remembering issues, panic attacks, etc. I can only work a few hours before my body breaks down with pain."

At the hearing, the Notice of Appeal was admitted into evidence under Section 22(4) of the Employment and Assistance Act as being in support of the original information and records before the ministry, at the time of its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the Appellant did not meet all the PPMB eligibility criteria in EAR Section 2, and specifically the requirement of the EAR section 2(4)(b) that the Appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment. The ministry held that the appellant's medical condition did not preclude him from searching for, accepting or continuing in employment maintaining all types of employment. The ministry determined he met the criteria of 2(2) insofar as he had been in receipt of income assistance for at least 12 of the past 15 months. Because of his employability screen score of 12 his application was considered under the EAR section 2(4). The ministry was satisfied that the appellant's medical condition met the medical duration criteria of the EAR section 2(4)(a), but under the EAR section 2(4)(b) was not satisfied that his medical condition precluded from searching for, accepting or continuing employment.

The following provisions of Section 2 of the EAR apply in this appeal:

**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, or

(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 the appellant scored 12 on the employability screen and, therefore, he must meet the requirements of the EAR section 2(4). The Ministry argues the appellant's doctor states the appellant's restrictions specific to his medical condition as "difficult to perform anything other than light activity" It submits there are many jobs in this category and that the appellant's medical condition and resultant restriction do not preclude him from searching for, accepting or continuing in employment. It further argues that although the appellant sustained severe multiple injuries as a result of a pedestrian/motor vehicle accident on January 1, 1997 and submitted a medical opinion and assessment of the injuries dated April 21, 1997, they did not speak to his current physical restrictions or his current ability to participate in all types of employment.

The appellant contends he has struggled with pain ever since he was run over by a car in 1997. A pain that is getting worse. He submits that he also struggles with panic attacks, migraines, back and upper body pain and memory loss. He contends that he was able to work only because he takes multiple medications daily to relieve the pain. He argues he can only work a few hours before his body breaks down in pain. The appellant refers to all the injuries he sustained in the accident that are outlined in a letter written at the time by prescribed professional. The injuries included serious and severe multiple facial and body lacerations, a closed head injury, skull, rib, sternum and spinal fractures, heart bruising and he required a tracheostomy for assisted ventilation. The appellant's position is that all of his medical conditions whether diagnosed or not are such that he has persistent multiple barriers that preclude him from searching for, accepting or continuing in employment.

Without further testimony from either the appellant or the ministry, the panel relies on the record.

The appeal record contained no copy of the appellant's employability screen and, therefore, the basis of the ministry's scoring of 12 using the established criteria and categories of response in Schedule E of the EAR. Further, the ministry's letter to the appellant dated December 20, 2011 did not communicate this precise score, but does refer to his score not meeting the requirements of the EAR section 2(3) and that his application would be assessed under the EAR section 2(4). Finally, in the ministry reconsideration decision the score of 12 was communicated to the appellant. In the absence, therefore, of any other information to the contrary, the panel relies on the appeal record.

In regard to the 15 year old medical-legal report submitted by the appellant in his request for reconsideration, the panel observes that it was a specialized report prepared for legal-medical purposes and that it does not speak to the impact on restrictions to employability regarding the appellant. The legislation requires that the appellant has a current medical condition confirmed by a medical practitioner that will continue forward for at least 2 more years. The Medical Report-Persons With Persistent Multiple Barriers is specifically worded and designed to disclose medical information for the purpose of assisting the ministry to assess the appellant's employability. The report, in regard to the appellant's employability states "Difficult to perform anything other than light activity. The appellant's testimony and claim of past injuries is in conflict with this current medical evidence and is not supported by a medical diagnosis as required by the legislation. The panel finds that the information provided by the ministry with respect to the appellant's employment background, skills and education together with that submitted concerning his medical condition from his physician establishes that the appellant has limitations in his employability. However, the panel finds that the medical report falls short of establishing that the appellant is precluded from any form of employment such as that in a suitable environment doing sedentary less physically active work.

The panel, therefore, finds that the ministry's determination that the appellant's medical condition is not a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in the EAR section 2(4)(b) was reasonable.