

APPEAL #

**PART C – Decision under Appeal**

The appellant appeals the reconsideration decision of March 16, 2012 in which the ministry denied the appellant's application for qualification as a person with persistent multiple barriers to employment under section 2 of the *Employment and Assistance Regulation* because the ministry was not satisfied that the appellant's medical conditions preclude him from maintaining all types of employment.

**PART D – Relevant Legislation**

*Employment and Assistance Regulation*, section 2 ("EAR").

**PART E – Summary of Facts**

The evidence before the ministry at the reconsideration was a Medical Report – Persons with Persistent Multiple Barriers form (“PPMB Form”) completed by the appellant’s physician December 6, 2011 (2 pages) and a copy of the ministry Employability Screen for the appellant dated February 10, 2012 (1 page) showing a total score of 9.

The reconsideration decision notes that appellant has been a recipient of income assistance since June 2010. On the PPMB Form, the appellant’s medical practitioner indicated that the appellant’s primary medical condition is “degenerative arthritis.” No secondary medical conditions are indicated on the PPMB Form. The appellant’s physician indicated on the PPMB Form that the appellant’s medical condition of degenerative arthritis will continue for 2 years or more and that it is not episodic in nature. The appellant told the panel that he uses a back brace and takes extra-strength Tylenol and Absorbine Jr. to control the pain of his arthritis. Under the section “Restrictions” in the PPMB Form, the appellant’s physician wrote, “No lifting or carrying in job description – looking for work.”

The reconsideration decision notes that the appellant had indicated in his reconsideration request that he would be speaking with his physician on March 5 regarding “brain injury and arthritis”, but as stated in the reconsideration decision, “no new information was received as on March 16, 2012.” At the hearing, the appellant provided to the panel a copy of the ministry form, Medical Report - Employability, signed by the appellant on March 6, 2012 and completed and signed by the appellant’s physician on March 6, 2012 (1 page). On this form, the appellant’s physician indicated that the appellant has the primary medical condition of degenerative arthritis, onset 10 years, and the secondary medical condition of traumatic brain injury, onset 25 years. The appellant’s physician has checked the box “severe” in response to the question “how would you describe the overall medical condition?” The appellant’s physician wrote “unable to work” in the “restrictions” section on this form. The appellant told the panel he had provided this form to his ministry office on or about March 7, 2012.

The ministry did not object to the admission of this document. The ministry confirmed that the ministry had received this document on March 7 and/or 8, 2012 (it was faxed twice). The ministry also confirmed that this document was not forwarded to the reconsideration panel prior to the reconsideration decision date of March 16, 2012. The ministry speculated that the form was not forwarded to the reconsideration panel prior to the decision because it was not in a PPMB Form, or because the appellant had not indicated to the ministry office that the form amounted to further submissions related to the reconsideration process.

The appellant told the panel that he suffers from cognitive, emotional and physical problems as a result of his brain injury (described in detail in his written submissions on appeal, including that he feels overwhelmed with obligations, has terrible comprehension, gets stressed easily and feels unable to control his temper). The appellant told the panel that he believes his brain injury has been a real barrier to him sustaining employment for any length of time.

The panel admitted this additional evidence and oral testimony under s. 22(4)(b) of the *Employment and Assistance Act* as the panel finds that it is written testimony by the appellant’s physician in support of the information and records that were before the minister when the reconsideration decision being appealed was made.

APPEAL #

The panel makes the following findings of fact:

- The appellant has been a recipient of income assistance for at least 12 of the last 15 months;
- The appellant's physician has confirmed that he suffers from the medical conditions of degenerative arthritis and traumatic brain injury; and
- The appellant's physician has confirmed that his medical conditions have continued for one year and are likely to continue for at least two more years.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of March 16, 2012, denying the appellant's application for qualification as a person with persistent multiple barriers to employment under section 2 of the *Employment and Assistance Regulation* ("EAR") on the basis that the minister was not satisfied that the appellant's medical conditions preclude him from maintaining all types of employment.

Section 2 of the EAR governs the requirements to qualify as a person with persistent multiple barriers (PPMB) to employment. Under subsection 2(1), in order to qualify as a person who has PPMB to employment, a person must meet the requirements set out in subsection 2(2) and subsection 2(3) or 2(4). Subsection 2(2) requires that the applicant must be a recipient for at least 12 of the immediately preceding 15 calendar months of income assistance or hardship assistance under the *Employment and Assistance Act* (subs. 2(2)(a)). Subsections 2(3) and 2(4) provide the following:

(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 appellant's position is that the ministry's decision to deny his application for qualification as a PPMB to employment is unreasonable. The appellant says that he has been diagnosed with degenerative arthritis and traumatic brain injury, and that this is supported by the additional information provided by his physician in the Medical Report – Employability completed on March 6, 2012. The appellant says that the additional information provided by his physician in the Medical Report – Employability form supports his submissions, particularly where his physician has indicated

that he is "unable to work" as a result of his degenerative arthritis and traumatic brain injury.

The ministry's position is that the denial of the appellant's qualification as a PPMB to employment was reasonably supported by the evidence, noting that the information from the appellant's physician in the Medical Report – Employability was not before the reconsideration panel. The ministry says that the information provided does not establish that the appellant's medical conditions present a barrier that precludes him from searching for, accepting or continuing in employment. The ministry says that the appellant's physician wrote only that he is restricted from "lifting or carrying in job description" as was set out in the PPMB Form.

The ministry found that the appellant has been a recipient of income assistance for at least 12 of the preceding 15 months and meets the requirement set out in subsection 2(2)(a). The ministry found that the appellant scored a total of 9 on his employability screen and thus the provisions of subsection 2(3) do not apply to him. The ministry also found that the appellant's physician has confirmed that he suffers from the medical condition (other than an addiction) of degenerative arthritis, which medical condition has continued for one year and is likely to continue for at least two more years, meeting the requirements of subsection 2(4)(a). The panel finds that the appellant's physician has also confirmed that he suffers from the medical condition of traumatic brain injury and that the appellant's physician has indicated that, because of the traumatic brain injury, the appellant is unable to work.

In the reconsideration decision, the ministry says that "a medical condition is considered to preclude the recipient from searching for, accepting or continuing in employment when, as a result of the medical condition, the recipient is unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment." Based on the appellant's PPMB Form, the ministry determined that the appellant's medical condition of degenerative arthritis did not preclude him from maintaining all types of employment, on the basis that "there are many jobs that do not require lifting or carrying ... including sedentary work or light duties."

The ministry noted in the reconsideration decision that the appellant had indicated he would be speaking with his physician on March 5 regarding his brain injury. The appellant's additional information from his doctor of March 6, 2012 set out in a Medical Report-Employability form and confirming that he suffers from a traumatic brain injury and is unable to work, which the appellant provided to the ministry the next day (March 7, 2012), was not provided to the reconsideration panel by the ministry. The panel does not accept that it is reasonable that an appellant should have to explain to the receiving ministry office that the document submitted is related to a reconsideration request, particularly when the document contains relevant medical information amounting to a medical opinion from an attending physician. The panel notes that s. 2(4)(a) does not provide that a medical practitioner must use a particular form to set out the medical practitioner's confirmation of or opinion regarding a medical condition.

The panel finds that the ministry's determination that it was not satisfied that the appellant's medical conditions preclude him from participating in any type of employment for any length of time except in a supported or sheltered-type work environment is not supported by the evidence provided by the appellant and his physician that he has both degenerative arthritis and a traumatic brain injury, which causes him to be unable to work. Accordingly, the panel rescinds the reconsideration decision of March 16, 2012; the ministry's decision is overturned in favour of the appellant.