

APPEAL #

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of March 27, 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* on the basis that sufficient information was not provided for the ministry to conclude that the appellant's medical conditions preclude him from searching for, accepting or continuing in 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 15, 2011 (2 pages) and a copy of the ministry Employability Screen for the appellant dated February 15, 2012 (1 page) showing a total score of 11.

The ministry did not attend the hearing. The panel received confirmation from the Tribunal that the ministry had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the ministry’s absence.

The reconsideration decision notes that the appellant has been a recipient of income assistance for at least 12 of the past 15 months (he has been collecting income assistance since July 2007). On the PPMB Form, the appellant’s medical practitioner indicated that the appellant’s primary medical conditions are “Hepatitis C and substance abuse” onset “since 1995 -16 years” and his secondary medical condition is an inguinal hernia, onset June 2011. The reconsideration decision notes that the appellant’s physician originally completed the PPMB Form without indicating the onset of the hernia, but that the physician amended the PPMB Form in March 2012, prior to the reconsideration decision at the appellant’s request. The appellant’s physician indicated on the PPMB Form that the appellant’s medical conditions will continue for 2 years or more. The physician’s initials appear beside the “less than 2 years” box which had been checked and then crossed out. As noted in the reconsideration decision, the appellant’s physician changed this on the PPMB Form prior to the reconsideration decision. On the PPMB Form in the section describing treatment and outcome for the appellant’s medical conditions, the appellant’s physician has written “psychotherapy”. The appellant’s physician added “general fatigue” under additional comments of the prognosis section. The appellant’s physician did not write anything in the space for describing the nature of any restrictions specific to the medical conditions.

The appellant told the panel that, as a result of his Hepatitis C, he suffers from cracked skin, which can get infected. The appellant also told the panel that he is extremely fatigued and suffers intense joint pain, but that he is unable to take pain medication (such as acetaminophen) because of his Hepatitis C. The appellant told the panel that his liver condition has become worse in the past few years. These facts are also noted in the reconsideration decision. The appellant says that the score on the employability screen should be higher because, although he graduated from high school, his math skills are at a grade 10 level. However, the appellant agreed that changing this answer on the employability screen would not increase his score to 15. The appellant says that while participating in a treatment program, he has been advised that he is not in a position to look for or accept work at this time.

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 Hepatitis C and an inguinal hernia;
- The appellant’s physician has confirmed that his medical condition (Hepatitis C) has continued for one year and is 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 27, 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 sufficient information was not provided for the ministry to conclude that the appellant's medical conditions preclude him from searching for, accepting or continuing in 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 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 decision to deny his application for qualification as a PPMB to employment is unreasonable. The appellant told the panel that the ministry should consider that his extreme fatigue and pain results in his inability to search for, accept or continue in employment.

The appellant did not provide confirmation to the panel of the nature of the advice he received from

the treatment program that he is not in a position to look for or accept work at this time (for example, when he received this advice, how the assessment was made, or for how long this would continue). The appellant agreed that he did not have information from his doctor confirming that his medical conditions prevent him from searching for, accepting or continuing in employment.

In the reconsideration decision, the ministry stated that neither the appellant nor the appellant's physician "have been able to provide sufficient information to confirm" that the appellant is precluded from searching for, accepting or continuing in employment, as is required by subsection 2(4)(b) of the EAR.

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 11 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 of Hepatitis C that has existed for several years and is likely to continue for at least 2 more years, meeting the requirements of subsection 2(4)(a).

The panel finds that the appellant has not provided evidence to support his position that his medical condition precludes him from searching for, accepting or continuing in employment – there is no information before the panel from the appellant's physician or from the treatment program to confirm the information. The panel finds that the ministry's determination that the ministry did not have sufficient information to conclude that the appellant's medical condition precludes him from searching for, accepting or continuing in employment as required by subsection 2(4)(b) of the EAR is reasonably supported by the evidence. Accordingly, the panel confirms the reconsideration decision of March 27, 2012.