

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated April 2, 2012, which denied the appellant's application for designation as a Person with Persistent Multiple Barriers, (PPMB), as they state the appellant did not meet the requirements pursuant to section 2(4)(b) of the Employment and Assistance Regulations, (EAR), that he was not precluded from searching for, accepting, or continuing employment in all types of employment.

PART D – Relevant Legislation

Employment and Assistance Regulations, (EAR) Sections 2(2) and 2(4).

PART E – Summary of Facts

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

- Letter dated January 18, 2008 from the appellant's physician regarding the appellant's diagnoses.
- Medical Report – Employability completed by physician on March 18, 2008. This report indicates the appellant's medical condition is chronic severe muscular-skeletal pain, and under restrictions states "severe body aches and pains – disabling. No specific mention is made of employment restrictions.
- Medical Report – Employability not dated by physician, but signed by appellant on July 7, 2009. This report indicates the appellant's medical condition is chronic neck, back and arm pain, and notes no restrictions on the form. No specific mention is made of employment restrictions.
- Medical Report – Employability completed by physician on January 4, 2011. This report indicates the appellant's medical condition is chronic pain, insomnia, depression. Under restrictions, the physician notes the appellant is unavailable for labour type positions. This report does mention employability, stating that the appellant is not able to pursue labour type of work.
- Medical Report – Employability completed by physician on October 27, 2011. This report states the appellant suffers from degenerative disc disease and arthritis. Under restrictions, the physician states the appellant is quite physically disabled by burden of pain symptoms. Worse sitting/standing more than 30 minutes. Worse any lifting. No labour jobs. This report does mention employability, stating that the appellant is not able to pursue labour jobs.
- Client Employability Profile, completed by the ministry on January 11, 2012.
- Employability Screen completed by ministry on January 11, 2012.
- PPMB Employment Checklist, dated January 11, 2012.
- PPMB Working Checklist, dated January 11, 2012.
- Authorization and Waiver of Confidentiality for advocate to represent the appellant.
- Medical Report – Employability completed by physician on November 30, 2011. This report states the appellant's medical condition is chronic pain, arthritis and that some improvement has resulted from medications. The physician notes that the appellant is unable to perform any physically active form of employment.
- Statement dated March 5, 2012, drafted by the advocate and signed by the appellant.
- Statement dated March 20, 2012, drafted by the advocate and signed by the physician.

The advocate had faxed a two page submission to the ministry and to the Tribunal on May 7, 2012, related to this appeal. The panel determined that the information contained in the submission was in

support of information available at the time of reconsideration, and was therefore admissible pursuant to section 22 (4) of the EAA.

The appellant's position at the hearing was evidence related to his physical condition. His advocate asked him several questions to draw out the information. In summary, his position is that he cannot do sedentary work, because when he did some, as a telephone sales person in 1994, he was disruptive to other workers as he had to get up often. He stated his condition is worse now, with more arthritis in all his joints, and he can't focus on things. He stated he takes pain medication 3 to 4 times per day. He suffers more today because of his condition. If he had PPMB designation, he could have up to \$500 in exempted earnings per month, but he stated he could only make maybe \$200 to \$300 per month because he would lose focus. He stated he had been in the navy for six years as an electronics and munitions person, but when he had got out he could not get a job in this field as he did not have the math skills for it. He indicated that he had been a barber and cut hair from 1982 to 1994, but could not do that now because of his physical condition.

The ministry's position at the hearing was based upon the evidence before the ministry at the time of reconsideration. The ministry stated that the physician reports on employability do not state that the appellant cannot do all types of work. The ministry concurs that the physician reports do indicate that the appellant cannot do some kinds of work, but do not say that he can do no work. The ministry stated that is what is needed in section 2 of the EAR to meet the criteria for eligibility.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant is not eligible for designation as a Person with Persistent Multiple Barriers pursuant to the EAR because he has not met the eligibility requirements as set out in Section 2(4)(b) of those regulations.

Section 2 of the PPMB Act states:

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.

(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.

(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 a 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. (B.C. Reg. 263/2002)

The appellant met the requirements of section 2(2).

As the appellant scored 12 on the employability screen, therefore section 2(3) does not apply.

The appellant met the requirements of section 2(4)(a).

The case hinges upon section 2(4)(b), and whether or not, in the opinion of the minister, the appellant has a medical condition, that is confirmed by a medical practitioner, that precludes the person from searching for, accepting, or continuing employment in all types of employment.

As noted in the evidence before the ministry at the time of reconsideration, there were five Medical Reports – Employability and one physician summary related to the appellant dating from January 18, 2008, to November 30, 2011. The content of these reports, each relate to the employability of the appellant, is summarized below:

The physician letter, dated January 18, 2008, lists a number of medical traumas or conditions that the appellant had experienced, but this report did not mention the appellant's employability.

The Medical Report – Employability dated March 18, 2008, indicates the appellant's medical condition is chronic severe muscular-skeletal pain, and under restrictions states "severe body aches and pains – disabling. No specific mention is made of employment restrictions.

The Medical Report – Employability dated July 7, 2009, indicates the appellant's medical condition is chronic neck, back and arm pain, and notes no restrictions on the form. No specific mention is made of employment restrictions.

The Medical Report – Employability dated January 4, 2011, indicates the appellant's medical condition is chronic pain, insomnia, depression. Under restrictions, the physician notes the appellant is unavailable for labour type positions. This report does mention employability, but only states the appellant is not able to pursue labour type of work.

The Medical Report – Employability dated October 27, 2011, states the appellant suffers from degenerative disc disease and arthritis. Under restrictions, the physician states the appellant is quite physically disabled by burden of pain symptoms. Worse sitting/standing more than 30 minutes. Worse any lifting. No labour jobs. This report does mention employability, but only states the appellant is not able to pursue labour jobs.

The Medical Report – Employability dated November 30, 2011, states the appellant's medical condition is chronic pain, arthritis and that some improvement has resulted from medications. The physician notes that the appellant is unable to perform any physically active form of employment. This report does mention employability, but only states the appellant is not able to pursue any physically active form of employment.

The advocate and the appellant argued that the ministry had not placed sufficient weight on the appellant's written submission dated March 5, 2012, nor the physician's statement of the same date.

In the March 5, 2012 statement, the appellant makes frequent references to his employability. He states he is precluded from accepting or continuing any employment other than a few hours a week at a very accommodating schedule. He agrees with his doctor's assessment that he is unable to perform any active forms of employment. He adds, however, that due to the nature of his disability, he is unable to continue in any employment, physical or sedentary. He states his ability to stay seated and work at a sedentary job is even more limited than it was when he last tried it in 1994.

He indicates in this statement that his physicians have verified that he cannot work, and that he should not be required to look for work. He believes this is substantiated by the paperwork the ministry gave him for his reconsideration request. The panel found this statement to be an inaccurate representation of what the physician reports stated, as noted above.

The appellant's statement then quotes a paragraph from the ministry's Client Employability Profile dated January 11, 2012. This statement by the ministry worker is quite detailed about the appellant's long medical history, but at no point in this statement does the ministry worker indicate the position that the appellant is not able to perform any work. The appellant's statement indicates the ministry worker's assessment substantiates why he cannot be gainfully employed due to his physical condition. The panel finds that this appears to draw a conclusion that was not contained in the ministry statement. Certainly it indicates that the appellant has suffered, and does suffer, from a complex set of physical conditions, but in this statement, the ministry does not specifically conclude that he cannot be gainfully employed.

The statement signed by the physician dated May 7, 2012, states that he is familiar with the appellant's medical condition. It indicates that the limitations described by the appellant are consistent with the appellant's medical condition and that he would expect a man in his condition to

experience the limitations described. That part of the statement was drafted by the advocate for the physician to consider. The physician added that he knows that the appellant suffers from chronic pain that is quite debilitating and has been hard to treat. He noted that the appellant has been compliant with medical advice. The physician signed the statement noting that it had been prepared by the appellant's advocate, that he had made any changes he felt were appropriate, and that he had adopted and signed the statement as his own. The panel finds that this statement by the physician does not specifically indicate that the appellant is not employable. It states the physician is familiar with the appellant's medical condition, and that the limitations are consistent with those medical conditions, but the physician does not say, in this statement, that the appellant cannot work.

In the May 7, 2012 submission, the advocate, on behalf of the appellant, raised the Hudson case, and the idea that "considerable weight" should be given to the appellant's information unless there is a "legitimate reason" not to do so. The advocate goes on to say that in this instance there is good reason to give considerable weight to the appellant's information. The panel examined the positions of the ministry and of the appellant in light of Hudson.

Section 2 (3) establishes an employment threshold for applicants with employability screen scores of at least 15, that there is a barrier that "seriously impedes" the person from searching for, accepting or continuing in employment. As the appellant has a score below 15 in the employability screen, Section 2 (3) does not apply in this case. Section 2 (4) uses the term "precludes" in relation to the person's ability to work. The panel concluded that the word "preclude" is reasonably viewed as denoting an absolute inability to work, and this interpretation is supported when contrasted with the language "seriously impedes" as noted in Section 2 (3). Section 2(4) requires that the minister be satisfied that an applicant is precluded from employment and, in making this determination, the minister may consider the evidence of both the appellant and the medical practitioner. In the case of the appellant, the panel finds that the appellant's evidence of the degree of restrictions he faces is not supported by any of the three Medical Reports completed in 2011. All three Medical Reports identify limitations with physically active or labour types of work. As previously noted, the panel found that the May 7, 2012 submission signed by a medical practitioner did not state that the appellant is not employable. Given the number of medical reports completed in 2011 and their overall consistency, the panel does not find the ministry unreasonable in relying on this evidence and determining that it has not been established that the appellant is precluded from all types of work.

The panel recognizes that the appellant has suffered, and continues to suffer, from a number of medical conditions, but the panel finds that the ministry reasonably determined the test of the requirement in section 2 (4) (b), that the appellant is precluded from being able to search for, accept or continue in employment, has not been met.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.