

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 15, 2012 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

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

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated January 6, 2012, which states, in part, that: the appellant's primary medical condition is disc degeneration L4-L5 with date of onset of 10 years ago and the treatment is "awaiting to have CT Scan; the prognosis sets out that the expected duration of the medical condition(s) is 2 years or more and that the medical condition is not episodic in nature. In the section of the Report regarding restrictions, the physician has noted "...restricted to lifting weights, can't sit for long time, can stand for 1 hour";
- 2) Series of employment plans signed by the appellant dated November 18, 2009, December 18, 2009, August 10, 2011, November 28, 2011, and January 26, 2012;
- 3) Client Employability Profile dated February 9, 2012, stating in part that the appellant's work experience/job retention is in the 'no employment limitations' category with stable employment history, full-time or permanent part-time or volunteer, with a check also in the 'severely limits employment options' category showing unemployed for over 3 years and in the disability area shows persistent disability, severely impacts on employment options;
- 4) PPMB Checklist dated February 9, 2012 stating in part that the appellant has been on assistance 12 of the last 15 months and that his score on the Employability Screen is "13" and that identified barriers to employment are that he had an operation of a herniated disc 10 years ago and was OK for about 5 years then other discs started to degenerate, his left leg "charlie horses" and makes the foot flop when walking, he can not sit, stand for longer than 1 hour, unable to sleep through the night, has pains in his legs that wake him 5-6 times per night;
- 5) Examination Report for CT of spine dated February 12, 2012 which states in part the impression is moderate lumbar spondylosis with probable old sequestered disc fragment, currently producing no significant impingement and no significant spinal stenosis, however bilateral foraminal stenosis, most pronounced at L4-L5 level as described;
- 6) Letter from the ministry to the appellant dated February 20, 2012 denying his application for PPMB;
- 7) Letter from the appellant received by the ministry on April 19, 2012 which states in part that he had a doctor appointment for results of C-Scan April 12, 2012 and waiting to see a neurosurgeon to see what options he has, and his left leg failed on walk home from doctor which caused him to fall and his back was out for a few days;
- 8) PPMB cover sheet received by the ministry on April 19, 2012; and,
- 9) Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant states that the ministry is stuck on the 13 out of 15 score so he does not qualify, that he has seen a neurosurgeon and there is nothing they can do because there is scar tissue pressing on the nerve sac and they do not operate on scar tissue. The appellant states that this means things are only going to get worse as time goes on. The appellant states that he will meet with a soft tissue specialist sometime in the future but he does not know when. This problem will be lasting well over 2 years, the rest of his life, and will only worsen the longer he lives.

In his Request for Reconsideration, the appellant states that the results of the C-Scan show every disc and vertebrae have a problem, and he is waiting to see a neurosurgeon to see if anything can be done to improve his back problems. The appellant states that the ministry did not have the results of the C-Scan when making its decision. The appellant states that his back problems are going to get worse as time goes on, that his left leg will eventually stop working, and that his back goes out any time anywhere without notice. The appellant states that when his back is out, he cannot stand, sit or walk without extreme pain.

At the hearing, the appellant stated that his back problems are persistent and they are not going to get better. The appellant stated that he has developed another problem because he has torn the tendon on his rotator cuff and it is hard to use his right arm. The appellant stated that he had an ultrasound on June 18, 2012 to see if there has been some tissue damage in his shoulder. The appellant stated he does not know what type of work he can get when he cannot stand or sit behind a desk for 8 hours. The appellant stated that the

documentation shows that he had surgery on his back and now every disc has an issue. The appellant stated that he has been told that his left leg will eventually stop working, that it will stop "charlie-horsing" and will shut down. The appellant stated that he had altered the scoring on the Client Employability Profile dated February 9, 2012 because he believes the ministry scoring on this is incorrect as he has been unemployed for over 3 years. The appellant stated that his back will go out on him and then he is pretty much bed-ridden; he might pick up something and then his back will be out for two weeks. The appellant explained that when his back is out, he cannot stand up straight, he cannot walk and he is not mobile. The appellant stated that usually he can get around, that he goes on a walk for about 6 blocks each day to keep moving. The appellant stated that he never knows when his back will go out, that he will have to crawl around on his hands and knees for about a week, then it takes another week of soaking in a tub until he is back to his normal functioning. The appellant stated that the neurosurgeon has told him that because the problem is caused by scar tissue on the nerve sac, there is nothing they can do because they will not operate for scar tissue. The panel admitted the appellant's oral testimony regarding the impact of his disc degeneration as further information regarding his diagnosed impairment and being in support of the information and records before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act, but did not admit the appellant's testimony regarding his recent problems with his shoulder as this was not before the ministry at reconsideration.

The ministry's evidence includes that the appellant has been in receipt of income assistance since November 2009 and has been on assistance for at least 12 of the past 15 months. The appellant's score on the employability screen is 13, and that this scoring has been determined after a discussion with the appellant. In the Medical Report-PPMB dated January 6, 2012, the physician reports that the appellant has disc degeneration L4-5; expected duration of this medical condition is 2 years of more and the treatment is awaiting results of CT scan. The physician indicates that the appellant is "...restricted to lifting weights, cannot sit for longer than 1 hour and can stand for 1 hour." The ministry states that there are many jobs in this category, including more sedentary or part-time work. No new information from a medical practitioner was provided speaking to any further restrictions based on the result of the CT scan.

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 applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

The criteria for being designated as a person with persistent multiple barriers to employment (PPMB) are set out in Section 2 of the EAR as follows:

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.

Under Section 2(2), the person must have been the recipient of one or more of a number of types of

assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(3) applies. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, 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 has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. However, the ministry argues that the evidence has not established that the appellant has met all the remaining applicable criteria of Section 2. As the appellant scored 13 on the employability screen, he must meet the requirements of Section 2(4) of the EAR. The ministry acknowledges that the appellant has a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry argues that the evidence does not establish that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment. The ministry points out that a medical condition is considered to preclude a 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 activities for any length of time, except in a supported or sheltered-type work environment. The ministry argues that although the appellant reports that when his back goes out he cannot stand, sit or walk without extreme pain, and that his back goes out anytime and anywhere without notice, there is no further description of how often his back goes out. The ministry also points out that there was no new information provided from a medical practitioner that speaks to any further restrictions based on the results of the CT scan.

The appellant argues that ministry is stuck on the 13 out of 15 score so he does not qualify, but he states that he has been unemployed for over 3 years and that he meets the medical requirements. The appellant points out that the results of the CT Scan show that every disc and vertebrae have a problem. The appellant argues that he has seen a neurosurgeon, that he has been told they do not operate on scar tissue and this means things are only going to get worse as time goes on. The appellant argues that his normal functioning is what has been described on the Medical Report, that he is limited with lifting and can only sit or stand for about an hour, but he puts his back out and will be bed-ridden and unable to walk for about 2 weeks at a time. The appellant argues that he does not believe there is employment that will allow him to take 2 weeks off every time his back goes out, or where he does not have to stand or sit for more than 1 hour.

The panel finds that the appellant's score on the employability screen has been determined by the ministry after discussions with the appellant, that his score of "13" has been established for the purposes of the appellant's current application, but that the score may be subject to change through updating in the future. The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated January 6, 2012, that the appellant suffers from a medical condition other than an addiction, namely disc degeneration L4-L5. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years. Regarding the nature of restrictions specific to the medical conditions, the physician states that the appellant is "... restricted to lifting weights, can't sit for long time, can stand for 1 hour." The Report for CT of spine dated February 12, 2012 states that the impression is moderate lumbar spondylosis with probable old sequestered disc fragment, currently producing no significant impingement and no significant spinal stenosis, however bilateral foraminal stenosis, most pronounced at L4-L5 level as described. The panel finds that the Report for the CT Scan of the appellant's spine confirms impacts to the appellant's spine but does not describe the resulting restrictions for the appellant, and the ministry's conclusion that the Report does not provide further information regarding restrictions to the appellant's abilities is reasonable.

The appellant stated that due to the condition of his back, if he lifts an item or bends a certain way it can "go out" which means that he cannot stand up straight, he cannot walk and he is bed-ridden for about 2 weeks. The appellant stated that he never knows when his back will go out, and he does not know of any employment that will allow an employee to take two weeks off because of a bad back and that will accommodate him when he cannot stand or sit for more than 1 hour. The panel finds that the ministry reasonably determined that there is not sufficient information to establish the frequency that the appellant experiences a deterioration in his condition and an increase his restrictions, and that this has not been documented in the Medical Report dated January 6, 2012. The ministry has pointed out that a medical condition is considered to preclude a 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 activities for any length of time, except in a supported or sheltered-type work environment. The panel finds that the evidence demonstrates that the appellant experiences some restrictions as a result of his medical condition, with lifting weights and with standing or sitting more than 1 hour, but that these restrictions do not preclude, or prevent, the appellant from searching for or accepting any type of employment, perhaps with modified or lighter duties. Therefore, the panel finds that the ministry's conclusion that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR, was reasonable.

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(2)(a) of the Employment and Assistance Act.