



### PART C – Decision under Appeal

In a reconsideration decision dated 19 April 2012, the Ministry denied the Appellant a person with persistent multiple barriers to employment category (PPMB) because it determined he did not meet the criteria, specifically it determined his employability screen score was not 15 or higher, as per EAR Section 2(3)(a)(i) and it determined that the information provided did not establish that the Appellant's medical conditions present a barrier that precludes him from searching for, accepting or continuing employment as per EAR Section 2(4)(b).

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2  
Employment and Assistance Regulation (EAR) Schedule E



## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included:

- A Medical Report – PPMB completed by a general practitioner (GP) and dated March 1, 2012.
- A Client Employability Profile completed by the Ministry and dated March 15, 2012.
- A reason for request for reconsideration completed by the Appellant and dated April 4, 2012.

In the March 1, 2012 Medical Report - PPMB the GP states the Appellant's primary medical condition as L5 spondylosis and his secondary medical condition as chronic right shoulder pain and chronic reflux. The GP describes the Appellant's condition as ongoing with the expected duration of the medical condition as at least years or more. Under treatments, the GP states physiotherapy helps, medication temporarily helps and an exercise program and self- management is also mentioned as treatments. Under restrictions, the GP notes the Appellant has restricted physical activity and needs ongoing therapy that is not readily available in a remote location.

The Client Employability Profile states the following factors affect the Appellant's employment options:

- The Appellant has been unemployed 1 -2 years.
- The Appellant has unclear employment search methods yet has a realistic idea of employment potentials.
- The Appellant has inadequate transportation arrangements.
- The Appellant has minor or short term health problems.
- The Appellant may be limited to certain types of occupations or require special accommodations.

The comments in the Profile state there is no physiotherapy available in the Appellant's community and that the Appellant lives with his mother and has no ability to move out of the community. The community has a gym and the Appellant has indicated he would like to try it to assist in healing. The comments continue that the Appellant states his back condition is managed with heat and pain medications but he does not like the side effects.

The recommendation in the Profile state that the Appellant would like to get into a retraining program because he can no longer do any physical employment.

In the reason of request for reconsideration, the Appellant states some factors were missed in the reconsideration decision that were clearly stated in the PPMB phone interview application. He notes that because of his lower back pain, he is not able to stand or sit for more that 1 -2 hours then must do "pain management techniques" and these techniques can take 30 -45 minutes to relieve the pain.

As to his shoulder condition, he says not only physical work but daily living activities can cause extreme pain. The pain is in his dominant right arm so the constant use aggravates the injury. The pain limits him to 4 -5 hours of sleep causing irritability, lack of focus and concentration and short term memory loss.

Lastly, he states the small village where he lives is isolated and has no public transportation. Because he does not have a car he cannot get anything accomplished. He concludes he can no

longer work at the only skill he has as a finishing carpenter.

In the reconsideration decision the Ministry states the Appellant has been a recipient of income assistance (IA) for at least 12 of the immediate preceding 15 calendar months and that the Appellant's employability screen score is 12.

At the hearing the Appellant stated the doctor's comment regarding "restricted physical activity" does not fully explain the constant pain in the shoulder of his dominant right arm because it is "bone on bone". Furthermore, because of his bad back, he cannot sit for more than an hour or two at a time and then must do his pain management techniques three or four times a day. He does these techniques rather than relying on painkillers. He says the village where he lives has only physical jobs available. He added that he won't mind retraining however he doesn't believe a potential employer would tolerate the necessary down time during the work day to control his pain.

At the hearing the Ministry submitted that because the Appellant's employability screen score was 12, not the legislated minimum of 15, the Appellant's impairments must preclude him from searching for, accepting or continuing in employment and from the evidence this was not evident.

The Panel finds the following facts from the evidence presented:

- The Appellant has been diagnosed with a primary medical condition as L5 spondylosis and his secondary medical condition as chronic right shoulder pain and chronic reflux.
- The GP confirms the Appellant's medical conditions will likely continue for at least 2 years.
- The Appellant has been a recipient of IA for at least 12 of the immediate preceding 15 months.
- The Appellant's most recent Employability Screen score is 12.
- The GP confirms the Appellant has restricted physical activity and needs ongoing therapy.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant a person with persistent multiple barriers to employment category (PPMB) because it determined he did not meet the criteria, specifically it determined his employability screen score was not 15 or higher, as per EAR Section 2(3)(a)(i) and it determined that the information provided did not establish that the Appellant's medical conditions present a barrier that precludes him from searching for, accepting or continuing employment as per EAR Section 2(4)(b).

The criteria for a PPMB category is set out in the EAR Section 2 as follows:

*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 has determined the Appellant has met EAR, Section 2(2) however he is also required to meet the criteria as defined under EAR Section 2(3) or 2(4). Because the Appellant's Employability Screen score was 12, it precludes him from meeting the criteria of a score of at least 15 as specified in EAR Section 2(3) therefore the Panel finds the Ministry reasonably applied the applicable legislation, EAR Section 2(4) in this case.

The Ministry has determined that the Appellant has met EAR Section 2 (4)(a) however the Ministry argues the submitted information does not establish that the Appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment under EAR Section 2 (4)(b).

The Appellant argues his pain from his medical conditions precludes him from working in his trained position and where he lives precludes him from getting the necessary therapy.

The GP concludes the Appellant has restricted physical activity. There is no information as to the ability of the Appellant to perform work other than physical labor. The Appellant has stated he would get into a retraining program.

The Panel finds from the lack of information from the GP regarding the Appellant's ability to perform non-labor work and the Appellant's ability to retrain, that the Ministry reasonably concluded that the Appellant did not meet the criteria that his medical condition is a barrier that precludes him from searching for, accepting or continuing in employment.

The Panel finds the Ministry decision was reasonably supported by the evidence and confirms the decision to deny the Appellant a PPMB category.