

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated June 21, 2012 which denied the appellant's request for renewal of his qualification as a Person With Persistent Multiple Barriers (PPMB) pursuant to section 2, ss.(1), (2), (3) and (4) of the Employment and Assistance Regulation (EAR). The ministry determined that a medical practitioner confirmed that the appellant has a condition other than addiction and that his medical condition started 13 years ago and is expected to last 2 years or more. However, the ministry found that the information provided by the appellant's medical practitioner does not establish that his medical condition presents a barrier that precludes him from searching, accepting or continuing in any type of employment for any length of time as required by Section 2, subsection (4) 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 reconsideration included:

- A Medical Report for PPMB completed by a physician on July 14, 2008;
- A Medical Report for PPMB completed by a physician on April 14, 2010;
- The ministry's decision dated April 20, 2010 approving the appellant's request for PPMB designation;
- A Medical Report for PPMB completed by a physician on February 10, 2012;
- The ministry's decision dated April 13, 2012 denying the appellant's request for the PPMB designation;
- A copy of the appellant's Employability Screen with a total score of 12;
- A letter from the physician dated May 22, 2012 stating that the physician missed completing the expected duration of the appellant's conditions when completing the February 10, 12 application form;
- Request for reconsideration dated March 20, 2012.

The PPMB barriers to employment checklist was completed by the appellant's general practitioner on July 14, 2008. The application was approved by the ministry. The physician stated that she had known the appellant for over 6 months and that she has examined previous medical reports. The physician confirmed the appellant's primary medical condition as chronic low back pain since 1998 and allergies. This physician noted that the expected duration of the appellant's medical condition is more than 2 years and that the appellant is restricted to only do light manual labour.

The ministry approved the appellant's application for PPMB in 2010. The application was completed by another general practitioner who knew the appellant over 6 months. The physician noted the primary medical condition of the appellant as chronic LBP (low, back pain) mild degenerative disc since 1998. The physician confirmed that the appellant was unable to do regular heavy manual labour with repetitive lifting or twisting.

The latest medical report dated February 10, 2012 for PPMB designation was completed by the same physician who completed the 2010 application. The physician stated that the appellant's primary medical condition is chronic LBP (low back pain), degenerative disc disease since 1998 and his secondary medical condition is chronic dysthymia since childhood. The physician stated that the primary medical condition existed for over 13 years and is not episodic in nature. The physician confirmed that the appellant is restricted and unable to do heavy manual labour and repetitive bending, lifting or twisting motions.

The physician in a letter dated May 22, 2012 stated that the appellant's medical conditions are degenerative disc disease, which will not resolve with time and would be expected to last for more than 2 years and chronic dysthymia. The physician further stated that the appellant has mood disorder that persisted since childhood due to severe family of origin dysfunction. The physician confirms that it is unlikely that the appellant be able to completely overcome the trauma and neglect he suffered in his crucial formative years. The physician stated that she hopes this information gives the appellant an opportunity to proceed with a new application for PPMB.

The appellant received 12 score on the Employability Screen. The appellant received 0 for his age as he is between 50 to 65 years of age. The appellant received 0 as apart from his current application he was never on income assistance. The appellant's score on section 4 is 7 as he was on income assistance for more than 12 months in the past 3 years. The appellant's score is 1 for the highest level of education as he has grade 10 to 12, and his score is 4 on section 6 as he has none or very limited work experience working in paid employment over the last 3 years. The appellant's score is 0 for his ability to speak English.

In the request for reconsideration, the appellant's advocate submitted that the appellant is suffering from chronic LBP, degenerative disc disease since 1998, which significantly affects his mobility. The advocate submitted that the appellant is also suffering from chronic dysthymia, a mood disorder characterized by ongoing depression since childhood. These medical conditions place severe restrictions on his mobility, ability to work and ability to support himself. The advocate further stated that the appellant's medical conditions have

not changed and they are the same as 2008 and 2010 when the ministry approved PPMB designation. The appellant's advocate submitted that the appellant has been on PPMB for several years and that the appellant's application was approved in 2008 and 2010 under similar circumstances.

The appellant in the Notice of Appeal dated July 6, 2012 submitted that he believes that the ministry's decision is not supported by the evidence.

The ministry did not attend the hearing. After establishing that the ministry had been informed of the hearing and waiting for 15 minutes, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation (EAR).

At the hearing, the appellant's advocate stated that based on the ministry's approval in 2008 and 2010 it is unreasonable that the ministry denied the appellant's application for PPMB in 2012 with the same evidence that was presented in the last two applications. The advocate acknowledged that the issue in this appeal is the reasonableness of the reconsideration decision dated June 21, 2012. The advocate submitted that the reconsideration decision is unreasonable as the ministry denied the application because the physician did not confirm that the appellant is unable to participate in any type of employment for any length of time except in a supported or sheltered-type work environment. The advocate submitted that there is nothing on the PPMB form asking the physician to give an opinion on whether or not an applicant is able to participate in a supported or sheltered type of work.

The advocate agreed that the physician stated that the appellant is unable to do heavy manual labour and did not confirm that his medical condition is a barrier that precludes him from searching for, accepting or continuing in all type of employment. The advocate stated that any type of work must be based on the appellant's situation. In this case, the advocate said, the appellant is not able and does not have experience or education to do office work.

The appellant submitted that for 2 years in a row the ministry approved him for PPMB. This time they denied him without giving him any explanation. The appellant confirmed that he has been searching for employment and worked in different jobs in 2010 and 2011. He said that in 2012 he has not been employed although he went to the employment centre 3 times in May and June. The appellant stated that in 2012 he was well towards the bottom of the list and did not get an opportunity to be hired for any employment. The appellant said that he enjoyed few of the jobs he had in 2010 and 2011 and confirmed that he has not had any paid employment since January 2012.

The panel finds that:

- The appellant was designated a PPMB in 2008 and 2010;
- The appellant's employability screen score is less than 15;
- The appellant is diagnosed with degenerative disc disease and chronic dysthymia that would be expected to last for more than 2 years;
- The appellant is suffering from mood disorder that has persisted since childhood due to family dysfunction;
- The appellant is unable to do regular heavy manual labour with repetitive lifting or twisting;
- The physician has not confirmed that the appellant's medical conditions, including his mood disorder are barriers that preclude him from working in any type of employment that does not require heavy manual labour.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's determination that the appellant is not eligible for PPMB designation was a reasonable application of the applicable enactment in the circumstances of the appellant or is reasonably supported by the evidence.

Section 2 of the EAR provides eligibility for PPMB and states:

- (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.

The ministry's position in the reconsideration decision is that the appellant scored under 15 on the employability screen and that there is no indication that the medical condition described by the physician, constitutes a limitation or a barrier precluding the appellant from any type of employment.

The appellant argues that he was approved 2 times in a row and does not understand why the ministry decided not to approve his application this time. The appellant further argues that he always worked, mainly in constructions, and is unable to do the same because of his sore back. The appellant confirmed that he was employed for few months during 2011 and enjoyed one of his jobs. The appellant stated that he went to the employment centre, three times in 2012, in order to get an employment but he was far down the list and didn't get the opportunity.

Section 2 of the EAR provides that in order to be eligible for the PPMB status, a person who scores less than 15 on the employability screen must have a medical condition, confirmed by a physician, that has continued for at least 1 year and is likely to continue for at least 2 more years, and that precludes that person from searching, accepting and continuing in employment.

The appellant describes a number of medical conditions affecting his ability to perform hard manual work. The physician stated that she has been the appellant's medical practitioner for over 6 months and that she has examined the appellant's previous medical records and diagnosed the appellant with chronic LBP, degenerative disc disease and chronic dysthymia. The physician stated that the appellant is under her care and that the medical condition will not resolve with time and would be expected to last for more than 2 years. The physician noted "unable to do heavy manual labour and repetitive bending, lifting and twisting motions" as the appellant's restrictions.

The panel accepts the evidence of the appellant that he is suffering from back pain and is not able to do heavy manual labour. The panel notes that the only issue in this appeal is the reasonableness of the ministry's decision on June 21, 2012. The panel finds that based on the Medical Report, although the appellant's medical condition meets the criteria of duration, there is insufficient information to determine that it also meets the criteria of barrier to employment. The physician did not confirm that the appellant is unable to perform non-manual jobs nor confirm that the appellant is unable to work due to his childhood trauma. The panel finds that the ministry's decision that the appellant's diagnosed medical conditions do not preclude him from searching for, accepting or continuing in any type of employment was reasonable.

The panel determines that the ministry's reconsideration decision dated June 21, 2012 was a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the reconsideration decision under section 24(2)(a) of the EAA.