

APPEAL #

### PART C – Decision under Appeal

The appellant appeals the reconsideration decision of June 18, 2012 in which the Ministry of Social Development (Ministry) denied the appellant's application for renewal of his designation as a person with persistent multiple barriers to employment (PPMB) under section 2 of the *Employment and Assistance Regulation* on the basis that neither the appellant nor his physician provided sufficient information to confirm 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 included 3 versions of the Medical Report – Persons with Persistent Multiple Barriers form (“PPMB Form”) completed by the appellant’s physician on May 29, 2012, March 6, 2012, and June 3, 2010 (each PPMB Form is 2 pages). The evidence also included a copy of the Ministry Employability Screen (“EScreen”) for the appellant (1 page) showing a total score of 9 (there is no date on the EScreen), as well as a confirmation of earnings dated June 14, 2012, from the non-profit society with which the appellant works on a limited basis. The appellant provided written submissions on appeal, which the panel admitted under section 22(4)(b) under the *Employment and Assistance Act* as written testimony in support of the information and records before the minister when the decision being appealed was made. In his submissions, the appellant wrote that he works about 10-12 hours a month for the non-profit society, raking up garbage on the sidewalks.

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 October 1984). On the EScreen, the answer to question 3 (“Apart from your current application, how many times have you been on income or social assistance anywhere in Canada in the last 3 years?”) is checked as “1 to 3 times”, with a score of 1. The answer to question 6 on the EScreen (“What is the total amount of time you have spent in paid employment over the last 3 years?”) is “More than 12 months”, which gives a score of 0. In his submissions on appeal, the appellant says that the score on the EScreen should be higher because he has been on assistance continuously for the past 3 years (as opposed to “1 to 3 times in the past 3 years”), so he should have received a score of 3 on question 3, which corresponds to the answer “More than 3 times”, and that the answer to question 6 should be “none or very limited work experience”, with a corresponding score of 4. The appellant described his work with the non-profit society, writing that he works on average 4 hours per shift, 2 or 3 times per month, and that the work is light-duty, raking up litter and trash.

On all 3 of the PPMB Forms, the appellant’s medical practitioner indicated that the appellant’s primary medical condition is Hepatitis C, which he contracted in 1999, and that his secondary medical conditions are COPD and asthma, as well as substance abuse, which has affected the appellant for 11-13 years (the 2010 PPMB Form says 11 years, the other 2 PPMB Forms state 13 years). The appellant’s physician indicated on the May 29, 2012, and on the June 3, 2010 PPMB Forms that the appellant’s medical conditions will continue for 2 years or more.

In all 3 PPMB Forms, the appellant’s physician wrote “not suitable for moderate/heavy labour X 2yrs” and recommended treatment for substance abuse in the space for describing the nature of any restrictions specific to the medical conditions. The reconsideration decision noted the appellant’s submissions that the appellant uses more than 4 inhalers most of the time and that one of these is a “nitro-mist” inhaler and that most employers are not prepared to have this “nitro-mist” inhaler at their workplaces.

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, COPD and asthma; and
- The appellant’s physician has confirmed that his medical conditions (Hepatitis C, COPD and asthma) have continued for one year and are 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 June 18, 2012, denying the appellant's application to renew his 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 to renew his qualification as a PPMB to employment is unreasonable. The appellant stated in his submissions that the EScreen should be rescored – that he should receive higher scores on question 3 and question 6.

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 9 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 conditions of Hepatitis C, COPD and asthma, and that these conditions have existed for several years and is likely to continue for at least 2 more years, meeting the requirements of subsection 2(4)(a).

In considering the appellant's submissions regarding his score on the EScreen, the panel finds that the answer to question 3 should not be changed – the question asks how many times the applicant has been on income or social assistance in the last 3 years, not whether the amount of time is continuous (this is addressed in question 4). Based on the appellant's submissions regarding the work he does with the non-profit society, the panel finds that the answer to question 6 "What is the total amount of time you have spent in paid employment over the last years?" should not be "more than 12 months", but that it should be "under 3 months" with a corresponding score of 2. However, the panel notes that this does not increase the appellant's score on the EScreen to 15 and the panel finds that the Ministry's determination that the provisions of subsection 2(3) do not apply to him is reasonable.

The panel finds that the appellant has not provided evidence that his medical conditions preclude him from searching for, accepting or continuing in employment – there is no information before the panel from the appellant's physician or from the appellant to confirm that he is precluded from searching for, accepting or continuing in employment, only the appellant's physician's remarks on all 3 PPMB Forms that the appellant is not suitable for moderate or heavy labour. The panel finds that the Ministry's determination that the Ministry did not have sufficient information to conclude that the appellant's medical conditions preclude 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 June 18, 2012.