

PART C – Decision under Appeal

In a reconsideration decision dated 19 July 2012, the Ministry denied the Appellant a person with persistent multiple barriers to employment category (PPMB) because it determined he did not meet all the criteria, specifically it determined that the information provided did not establish that the Appellant's medical condition presents 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

Preliminary Matter: The Ministry requested that a ministry trainee attend the hearing as an observer. The Appellant did not object therefore the Panel proceeded with the hearing with the observer present.

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 November 12, 2009.
- A Client Employment Profile dated November 25, 2009.
- A letter from the Ministry to the Appellant dated December 14, 2009.
- A PPMB Employment Checklist and Screen dated December 14, 2009.
- A Request for Reconsideration dated July 3, 2012.
- A letter from the Ministry to the Appellant dated June 20, 2012.
- A PPMB Employment Checklist dated June 7, 2012.
- A Medical Report- PPMB completed by a general practitioner (GP) and dated May 23, 2012.

In the Notice of Appeal the Appellant states he has 2 slipped discs, degenerative disc disease and has recently been in an accident resulting in a crushed vertebrae and an acute compression fracture.

In the Request for Reconsideration, the Appellant states with his disability he is finding it extremely difficult to find work because his options are limited. He says he would like extra time to pursue the job search.

In the letter of December 14, 2009, the Ministry informs the Appellant that he has met the criteria for PPMB based on the assessment and information received in 2009. The letter states the status is effective January 1, 2010 and that his employability status will be reviewed within 2 years.

In the letter of June 20, 2012, the Ministry informs the Appellant that he has not been approved for PPMB status because his employability score was 12 and therefore EAR, Section 2(3) was not met. Furthermore EAR, Section 2(4) was not met because it determined his medical condition does not preclude all types of employment.

In the Employability Checklist dated June 7, 2012, the Ministry notes the Appellant broke his neck in 2006 and that he says he is unable to turn or bend his neck the full extent. The Checklist also states Appellant has difficulty lifting objects over 15 pounds and can only function about 2 hours at a time before he is fatigued.

The Employability Screen and Profile specifies a score of 12 for the Appellant.

The Medical Report- PPMB dated May 23, 2012 states the Appellant has degenerative disc disease onset in 2006. Under treatment the GP states the Appellant tried and discontinued the use of narcotics and notes a CT scan of the neck is pending in July 2012. The GP confirms the expected duration for the condition is 2 years or more. Under restrictions, the GP states the Appellant cannot lift and has pain with doing manual labour.

At the hearing the Appellant stated he is unable to work and he is "buggered for life". He says he

does not feel justly treated by the Ministry and cannot understand why the Ministry has decided his medical status has changed or improved. The Appellant clarified that the recent accident that further damaged his vertebrae had occurred after May 23, 2012, the date his GP completed the Medical Report-PPMB.

The Panel finds the Appellant's written and oral testimony regarding the recent damage to his vertebrae inadmissible because it is new information that was not in support of the information before the Ministry at the time of reconsideration as required in the EAA, Section 22.4.

At the hearing the Ministry stated, based on the restrictions specified by the GP (the Appellant cannot lift and has pain with doing manual labour) it did not determine that the Appellant was unable to participate in any type of work situation for any length of time and a more sedentary type of employment may be possible. The Ministry confirmed the PPMB Employability Checklist dated June 7, 2012 is in error when it specifies it as a new request rather than a renewal.

The Panel finds the following facts from the evidence presented:

- The Appellant met the criteria for PPMB as of January 1, 2010.
- The Ministry reviewed the Appellant's employability status in early 2012.
- The Appellant has been diagnosed with degenerative disc disease.
- The GP confirms the Appellant's medical conditions will likely continue for at least 2 years.
- The Appellant's most recent Employability Screen score is 12.
- The GP confirms the Appellant has pain when performing manual labour.
- The Appellant's recent accident and resulting injuries are not reflected in the Medical Report-PPMB dated May 23, 2012.

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 all the criteria, specifically 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) and must also meet the criteria as defined under EAR Section 2(3) or 2(4). Because of the fact that the Appellant's most recent 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.

The Appellant argues he is unable to work and his medical conditions have worsened, since first being approved for PPMB status in 2010.

The GP states the Appellant cannot lift and has pain associated with manual labour. There is no information as to the ability of the Appellant to perform work other than labor work from the GP. The legislation states the medical condition must be a barrier that precludes the Appellant from searching for, accepting or continuing employment. The Panel finds from the lack of information regarding the Appellant's ability to perform other work other than manual labour that the Ministry reasonably concluded that the Appellant did not meet the criteria as defined in EAR, Section 2(4) 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.