

PART C – Decision under Appeal

This is an appeal of a decision of the Ministry of Social Development (“the ministry”) dated August 30, 2012. The ministry found that the appellant was no longer eligible for designation as a Person With Persistent Multiple Barriers to employment (PPMB). The ministry relied on section 2(3) of the Employment and Assistance Regulation (EAR) finding, firstly, that the appellant’s Employability Screen report did not meet the required score of 15. Secondly it found that the appellant did not have an up-to-date report from a medical practitioner to satisfy the requirements of 2(4) EAR.

PART D – Relevant Legislation

Interpretation Act section 29

Employment and Assistance Regulation section 2

PART E – Summary of Facts***Evidence before the ministry at the time of its reconsideration:***

- A medical report for PPMB pertaining to the appellant completed by Dr R, chiropractor. On page one of the report a date of March 23, 2010 is indicated; on the second page a date of April 13, 2010 is written. Both the ministry and the appellant refer to the April 13, 2010 report, therefore the panel accepts this as the proper date. The report provides the following information:
 - As the primary medical condition Dr R listed “Chronic cervical and lumbo sacral.” As a secondary condition he listed “Myofascial neuritis.”
 - Dr R opined that the condition would last two years and listed restrictions to range of movement and sitting.
 - The report is signed on page two by Dr R. In section 5 of the PPMB report Dr R inserted his name in the blank which is pre-printed:

“I _____ am a physician registered with the College of Physicians and Surgeons of British Columbia and licensed to practice clinical medicine in BC.”
 - Beneath this statement are two statements with check boxes in front of them. The first permits the signatory to check “I am a general practitioner.” The second states “I am a specialist in _____.” In the blank Dr R wrote “Chiropractic” but did not check the box preceding it.
- A medical report for PPMB dated March 23, 2012, completed by Dr R and containing the same diagnoses and restrictions as his 2010 report. It is signed in the same fashion as the 2010 report.
 - The report is not specifically referenced in either the ministry's original decision nor the reconsideration decision. The panel was first made aware of this form at the hearing in the submission of the appellant. The ministry representative acknowledged, however, that it had received this report previously and the original decision-maker was aware of it. The ministry also acknowledged an error in the reconsideration decision in that the 2012 report was not referenced.
- An undated ministry Employability Screen relating to the appellant. It has seven categories which assess a client's functional abilities and assign corresponding scores. The appellant's score was 12.

Evidence presented at the hearing:

- The appellant submitted that he had been on assistance for five years and previously submitted reports from Dr R, which were accepted by the ministry.
- The ministry stated that it had previously accepted Dr R's PPMB reports because it thought he

was a member of the BC College of Physicians and Surgeons. When it inquired with the College it discovered that Dr R was not registered with them. Previously it had not questioned this fact based on how Dr R had signed the report.

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision dated August 30, 2012, which found that the appellant was no longer eligible for designation as a Person With Persistent Multiple Barriers to employment (PPMB) pursuant to section 2(3) and (4) EAR was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 29 of the IA states:

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner"

Section 2 of the EAR states:

- 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 one 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.

Appellant's argument

The appellant, through his advocate, made the following arguments:

- Between the original decision and the reconsideration decision the ministry gave different reasons for denial. In the original decision, the ministry did not accept the 2012 PPMB report as it was from a chiropractor, which it did not consider to be a medical practitioner. In the reconsideration decision, PPMB status was denied due to the lack of a 2012 report. The ministry was in error not to consider the 2012 report in its reconsideration decision.
- The appellant submitted a 2012 report as required. It was completed by Dr R and provides sufficient evidence to satisfy the PPMB criteria.
- The appellant has a legitimate expectation that the ministry would continue to rely on Dr R's reports, consistent with the Legitimate Expectations Doctrine as discussed in *Baker v. Canada (Minister of Immigration)*. Specifically, the appellant had a legitimate expectation that the ministry would continue to accept his chiropractor's evidence, consistent with its previous practice.
- Neither the *Employment and Assistance Act* nor *Regulation* provide a definition of "medical practitioner."

Ministry's argument

- The ministry admits that it relied on Dr R's reports previously but it did so under the apprehension that Dr R was a member of the BC College of Physicians and Surgeons as indicated by the information he supplied on page two of the PPMB report. Once it realized its mistake it could no longer accept his evidence.
- The EAR requires the PPMB medical report to be prepared by a "medical practitioner." The definition in the *Interpretation Act* does not include chiropractors but rather those registered with the BC College of Physicians and Surgeons and licensed to practice medicine. This definition applies to the EAR and the situation at hand.

Reasoning

Section 2(1) of the EAR requires that subsection (2) and subsection (3) or (4) be satisfied in order to qualify for PPMB.

Subsection (2) requires that the appellant have been on some form of ministry assistance for 12 of the previous 15 months. This criterion is not in dispute.

To qualify, the appellant must also meet the criteria set out in either subsection (3) or (4). Subsection (3) relates to the Employability Screen set out in EAR *Schedule E*. It also includes the medical test provided in subsection (4) with the additional criterion that:

(c) the person has taken all steps that the minister considers reasonable for the person to overcome the barriers referred to in paragraph (a)

The appellant's Employability Screen score totaled 12, whereas EAR section 9(3)(a) requires a score of 15. The appellant did not challenge the ministry's finding in this regard. The panel finds the ministry was reasonable in denying PPMB status under this subsection.

The criterion under dispute is set out in subsection (4) and is restated here for clarity:

- (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 one 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.

As stated above, the ministry had previously accepted the opinion of Dr R regarding the appellant's medical condition but, upon finding that Dr R was not registered with the BC College of Physicians and Surgeons, no longer accepted his evidence.

The appellant argues two things: first, that medical practitioner is not defined in the EAA or EAR and second, by virtue of accepting Dr R's evidence previously, the appellant has a legitimate expectation that the ministry continue to accept his evidence.

Dealing first with the definition of medical practitioner, the panel finds the ministry was reasonable to apply the definition contained in the *Interpretation Act* in the absence of a specific definition contained in either the EAA or EAR. This is normal practice with statutory interpretation.

The definition of medical practitioner is contained in section 29 of the *Interpretation Act*:

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the *Health Professions Act* to practise medicine and to use the title "medical practitioner"

The panel accepts the ministry's evidence that it inquired with the College of Physicians and Surgeons and found that Dr R was not registered there. This was not disputed by the appellant. The panel finds that the ministry was reasonable to conclude that Dr R was not a medical practitioner as defined in the *Interpretation Act*.

This leads to the second contention raised by the appellant: that regardless of Dr R's status relative

to the definition of medical practitioner, the appellant has a legitimate expectation that the ministry will continue to accept Dr R's evidence. The appellant raised the Doctrine of Legitimate Expectation and referenced *Baker v. Canada (Minister of Immigration)*.

The panel finds this argument weakened by two aspects. First, the ministry did not rely on Dr R's previous reports with the knowledge that he did not meet the definition of medical practitioner. Rather, it relied on the declaration contained on the second page of the PPMB report which, at face value, indicated that Dr R was in fact a member of the College of Physicians and Surgeons. It was not until the ministry inquired with the College that it discovered this was not the case and no longer accepted his evidence.

Secondly, the appellant is asking that the Doctrine of Legitimate Expectation be applied to a substantive right as opposed to a procedural matter. An example of the latter would be the information or forms required by the ministry prior to rendering a decision. It does not apply to the substance of the decision which must, of course, comply with the appropriate legislation: the EAA and EAR in this case.

As a result the panel finds that the ministry reasonably found that the appellant does not have a right to continue receiving a benefit from the ministry once it realized it was providing it in error. To do so would be inconsistent with the decision-maker's statutory mandate.

Accordingly, the panel finds the ministry was reasonable to discontinue relying on Dr R's evidence once it realized that he was not a medical practitioner according the *Interpretation Act*, despite the fact that it had relied on his evidence previously.

The panel confirms the ministry's decision, finding it was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.