

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development (“Ministry”) dated October 30, 2012 which denied the Appellant’s application for qualification as a Person with Persistent and Multiple Barriers (“PPMB”) on the basis that he did not meet all of the statutory requirements of section 2 of the Employment and Assistance Regulation (“EAR”). The Ministry determined that the Appellant was a recipient of income assistance under the Employment and Assistance Act (“EAA”) for at least 12 of the immediately preceding 15 calendar months and that a medical practitioner confirmed that the Appellant has a medical condition, other than an addiction, that in the opinion of the medical practitioner has continued for at least 1 year and is likely to continue for at least 2 more years. However, the Ministry was not satisfied that the information provided established that the Appellant’s medical condition was a barrier that precluded him from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (“EAR”) section 2

PART E – Summary of Facts

The evidence before the Ministry at the time of its reconsideration included the following:

1. The Appellant's Request for Reconsideration dated October 23, 2012;
2. A Medical Report – Persons with Persistent Multiple Barriers dated September 2, 2010 ("Medical Report #1");
3. A Medical Report – Persons with Persistent Multiple Barriers dated July 18, 2012 ("Medical Report #2"); and
4. The Appellant's Employability Screen received by the Ministry on October 23, 2012;

At the hearing, the Appellant presented three new documents that he intended to rely on. The first document was a handwritten list setting out the number of days that he had worked for each month in 2012 as follows:

January – 0 days
February – 0 days
March – 0 days
April – 3.25 days
May – 2.5 days
June – 0 days
July – 4.75 days
August – 6.5 days
September – 1 day
October – 0 days
November – 0.5 days
December – 0 days

The Ministry did not object to this document being admitted as evidence. The Panel notes that in his Request for Reconsideration, the Appellant raises the issue of the number of days that he had been working and as such, the Panel finds that this document is in support of information that was before the Ministry at the time the decision being appealed was made and it is therefore admitted pursuant to section 22(4)(b) of the Employment and Assistance Act ("EAA").

The second document that the Appellant sought to introduce as evidence at the hearing was a grouping of 24 pay records for the 2012 calendar year from an employment agency for which the Appellant had worked. The Ministry did not object to these records being admitted as evidence. The Panel notes again that the issue of the Appellant's employment was raised by the Appellant in his Request for Reconsideration and as such the Panel finds that these records are in support of information that was before the Ministry at the time the decision being appealed was made and they are therefore collectively admitted pursuant to section 22(4)(b) of the EAA.

Finally, the Appellant sought to enter into evidence a Medical Report prepared by his physician dated January 2, 2013 and titled "Medical Report – Employability" ("Medical Report #3"). In this report, the Appellant's physician identifies the Appellant's primary condition as depression and his secondary medical conditions as alcohol dependence and chronic low back pain. The physician also makes the comment that the Appellant has longstanding chronic medical issues and that he is not suitable for employment at present. The Ministry did not object to this record being admitted at the hearing and

the Panel notes that the diagnosed medical conditions of depression and alcohol dependence in this report are consistent with those set out in Medical Reports #1 and #2. The Panel notes however that the diagnosis of the Appellant's chronic low back pain is a new medical condition that was not before the Ministry at the time the decision being appealed was made. The Panel finds that this report, insofar as it refers to the Appellant's diagnosed medical conditions of depression and alcohol dependence only, is in support of information that was before the Ministry at the time the decision being appealed was made and it is therefore admitted pursuant to section 22(4)(b) of the EAA.

Medical Report #1 indicates that the Appellant's primary medical condition is depression with the date of onset being at the age of 11 (approximately 40 years ago) and that the Appellant's secondary medical condition is alcohol dependence for which he is seeking treatment. The reported treatment includes new anti-depressant medication and attending weekly Alcoholics Anonymous meetings. The stated conditions have existed for more than 30 years and the expected duration of the conditions is 2 years or more. Under restrictions specific to the medical condition, the physician notes "Unable to focus and concentrate, low energy secondary to depression, willing to engage in treatment and anti-depressant medication – has attempted same in past. Continues to engage in AA meetings – has significantly reduced ETOH use."

Medical Report #2 indicates that the Appellant's primary medical condition is depression with the date of onset being approximately 40 years ago and that the Appellant's secondary medical condition is alcohol dependence. The reported treatment includes attending meetings regarding alcohol use and the physician who prepared the report notes that the Appellant is willing to see a counselor regarding his alcohol use and with respect to his depression and that he has taken anti-depressants in the past without much help. The stated condition is noted in this report to have existed for more than 30 years and the expected duration of the condition is 2 years or more. Under restrictions specific to the medical condition, the physician notes "Depressive symptoms – unable to focus/concentrate – fatigue, low energy."

The Employability Screen has a total score of 9. The Screening Results legend at the bottom of this document indicates that a score of 9 indicates that the Appellant would be immediately employable or employable with short-term interventions.

In the Request for Reconsideration, the Appellant says that he does not believe that it is fair or in the spirit intended by applying the Employability Screen to overrule the entire medical profession on the opinion of a Ministry employee who has never met him and who is not a medical professional. The Appellant states that he has been under the care of a doctor and has been making progress by attending counseling, volunteering and working 1-2 days each week with the goal of re-entering the work force. The Appellant states that it is premature to determine that he is "ready to go."

In the Notice of Appeal, the Appellant states that he does not believe that the reconsideration decision is a reasonable application of the legislation given his circumstances.

At the hearing, the Appellant stated that he felt that the Ministry misunderstood how much he had been working. The Appellant says that he has sent pay records to the Ministry each month and as such it knows how often he works. The Appellant noted that in his Request for Reconsideration, he wrote that he was "recently working 1-2 days a week" but told the panel that the information referred more to the month of August 2012 than to his general employment situation. The Appellant

contended that the Ministry should not base its decision to deny his PPMB application on his statement in the Request for Reconsideration but rather should consider his pay records and income tax returns which the Appellant maintained could be found in his Ministry file.

The Appellant referred to section 2 of the EAR and in specific, submitted that he had met the requirement of section 2(3)(c) which provides that "the person has taken all steps that the minister considers reasonable for the person to overcome barriers referred to in paragraph (a)." The Appellant stated that he was trying to comply by working and that he was trying to overcome barriers and problems and that he was making headway but that he had recently relapsed and was under considerable stress.

In response to a question, the Appellant stated that the Employability Screen was done over the phone and he considered it to be a prejudicial test.

The Ministry relied on the Reconsideration Decision and stated that the Appellant met the requirement of being a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. However, the Ministry noted that as his Employability Screen score was less than 15, the Appellant had to demonstrate that that he has a medical condition, other than an addiction, that is confirmed by a medical practitioner to have continued for at least 1 year and is likely to continue for at least 2 more years and that the medical condition in question, in the opinion of the Minister, must be a barrier that precludes the Appellant from searching for, accepting or continuing in employment. The Ministry confirmed that its decision to deny the Appellant PPMB designation was based on the Appellant's statement in the Request for Reconsideration that he was recently working 1-2 days a week. Finally, the Ministry commented that it did not rely on the Appellant's pay stubs in reaching the Reconsideration Decision as it only considers those documents submitted with the Reconsideration request and that request was not accompanied by the pay stubs.

In response to a question, the Ministry confirmed that it does not consider the entire contents of an applicant's Ministry file when undertaking a reconsideration, but rather it only looks at the information and records submitted with the Request for Reconsideration.

In response to a question the Ministry clarified that question 3 on the Employability Screen is intended for those applicants who may receive income assistance for shorter periods of time and then discontinue that before receiving assistance again. The Ministry further clarified that it is of the opinion that there are employment opportunities available to the Appellant which will allow him to continue to pursue counseling and volunteering.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry reasonably concluded that the Appellant did not meet all of the statutory requirements of section 2 of the EAR to be designated as a Person with Persistent and Multiple Barriers (“PPMB”) to employment. The Ministry determined that the evidence establishes that the Appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner. The Ministry was satisfied that the Appellant’s medical practitioner has confirmed that the medical condition has continued for at least 1 year and is likely to continue for at least 2 more years. However, the Ministry was not satisfied that the Appellant’s medical condition is a barrier that precludes the Appellant from searching for, accepting or continuing in employment.

The relevant legislation, section 2 of the EAR, provides 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;

(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.

[en. B.C. Reg. 368/2002.]

The Ministry takes the position that while the Appellant's physician has confirmed that he has a medical condition that has lasted for at least 1 year and that is expected to last at least another 2 years, the Appellant has scored less than 15 on the Employability Screen and he has not satisfied the requirement that his medical condition is a barrier that precludes him from searching for, accepting or continuing in employment.

The Appellant argues that the Ministry has attached too much emphasis to his statement in the Request for Reconsideration that he was recently working 1-2 days per week and that it should consider his pay records and income tax returns that are included in his Ministry file.

There is no dispute that the Appellant has a medical condition - depression - confirmed by a medical practitioner in each of the three medical reports. As the Appellant scored 9 on the Employability Screen, the requirements of s.2(4) of the EAR must be met in order for the Appellant to qualify for PPMB designation.

In Medical Report #1, the Appellant's physician indicates that the Appellant has suffered from depression since the age of 11 and that the expected duration of this condition is 2 years or more. Medical Report #2 provides a consistent diagnosis of depression. Medical Report #3 also notes the Appellant's diagnosed primary medical condition as depression and that it is moderate in nature.

In Medical Report #1, the Appellant's physician notes that the Appellant is unable to focus and concentrate and he has low energy secondary to his depression. In Medical Report #2, the Appellant's physician notes that he is willing to be seen regularly regarding his depression and that he has tried anti-depressants in the past without help. Medical Report #3 provides that the Appellant

has "longstanding chronic medical issues" and that he is "not suitable for employment at present!"

The onus is on the Appellant to demonstrate that his medical condition is a barrier that precludes him from searching for, accepting or continuing in employment. In the present case, the evidence demonstrates that the Appellant was able to look for, accept and continue with employment in 2012. This is reflected in the admitted handwritten list as follows:

January – 0 days
February – 0 days
March – 0 days
April – 3.25 days
May – 2.5 days
June – 0 days
July – 4.75 days
August – 6.5 days
September – 1 day
October – 0 days
November – 0.5 days
December – 0 days

While the Appellant stated in the Request for Reconsideration that he was "recently working 1-2 days a week", he clarified at the hearing that this statement only referred to August 2012 and this is supported by the figures set out in the list above. As such, the Panel finds that the Ministry's determination in the Reconsideration Decision that the Appellant was managing to work 1-2 days per week was not reasonable.

However, the evidence demonstrates that at the time of reconsideration, October 2012, the Appellant had been able to find and accept employment and that during April, May, July and August 2012, he was able to continue in employment working multiple days during each of those months. Further, the Panel finds that while Medical Reports #1 and #2 list the Appellant's restrictions secondary to his depression as inability to focus and concentrate, fatigue and low energy, the Ministry was reasonable in finding that these restrictions fell short of satisfying the legislative requirement of "precluding" the Appellant from searching for, accepting or continuing in employment. Finally, while Medical Report #3 sets out the Appellant's physician's comment that he is "not suitable for employment at present", the Panel notes that these stated restrictions are in reference to depression which is described as moderate as well as two further medical conditions, alcohol dependence and chronic low back pain, that are not under consideration given that section 2(4) of the EAR specifically precludes consideration of addictions as medical conditions and as the Appellant's back pain is a new diagnosis.

Giving consideration to all of the circumstances, the Panel finds therefore that the Minister's determination that the Appellant's medical condition was not a barrier that precludes him from searching for, accepting or continuing in employment and that the Appellant did not therefore satisfy s.2(4)(b) of the EAR was reasonable.

The Panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and confirms the decision.