

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”) February 18, 2013 reconsideration decision in which the Ministry determined that the Appellant did not meet all of the criteria to qualify as a Person with Persistent Multiple Barriers (“PPMB”) and specifically that, in the Minister’s opinion, the Appellant’s medical condition is not a barrier that precludes him from searching for, accepting or continuing in employment as required by section 2(4)(b) of the Employment and Assistance Regulation. The Ministry did determine that the Appellant met the other requirements to qualify as a PPMB.

PART D – Relevant Legislation

Employment and Assistance Regulation (“EAR”) Section 2.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its records that:

- The Appellant has been receiving income assistance since July 18, 2007.
- The Appellant's employability screen score is 11.

2. Medical Report for PPMB dated October 30, 2012 and completed by a doctor who has been the Appellant's general practitioner for over 6 months, and who reported:

- The primary medical condition as generalized anxiety disorder onset about 2000.
- The secondary medical condition as alcohol abuse in remission.
- The expected duration of the medical conditions is 2 years or more.
- Treatment is (i) rehabilitation and outcome is alcohol free in 1-2 years and (ii) medication with some improvement.
- Restrictions specific to the medical conditions as "limited in his ability to interact with others & meet expectations such as time deadlines".

3. Appellant's reconsideration request with a February 12, 2013 letter from the same doctor who stated the following about the Appellant:

- Has generalized anxiety disorder and a significant tremor, which is exacerbated when under pressure or scrutiny.
- Because the nature of his work (upholstery) involves fine motor work, he needs a steady hand and there are often significant time pressures. This has been impossible with his significant symptoms.
- Attempting to improve his symptoms with medication; however, so far the medications have not helped to the point where he is employable.
- Has a severe condition which is causing significant symptoms of a prolonged duration and seem to be resistant to therapy.
- "Should be considered disabled because of his medical condition".

4. Appellant's statement in his reconsideration request in which he wrote that he:

- Finds it almost impossible to conduct his profession (upholstery) of 25 years due to nervousness, shaking and anxiety.
- Finds it impossible to concentrate fully or constantly on any hands on activity.

In his March 12, 2013 notice of appeal, the Appellant wrote that, at that point in time, he believes he is unable to communicate and perform work to any appropriate standards. The Appellant attached a Medical Report for PPMB dated March 8, 2013 from the same doctor who reported:

- The primary medical condition as GAD [generalized anxiety disorder] onset about 2000 and the secondary medical condition as alcohol abuse in remission.
- The medical conditions are severe, are expected to last more than 2 years and are not episodic in nature.
- The restrictions are as set out in his February 12, 2013 letter which he attached.

At the hearing, the Appellant described how he shakes like crazy every day, even after taking his medications. At this time, he is taking 3 pills every day, but his doctor has suggested he can increase that dosage if needed. The Appellant said that the medications don't seem to be working and he doesn't know if they are the right ones. The Appellant also stated that he does not know why he starts shaking. Sometimes he won't answer his door, even when he knows who is there, because he starts shaking. He has volunteered in a warehouse and can work on his own, but he said, that if he is

working with other people he gets high anxiety and then just tries to do what he has been instructed to do. He will also sit in the parking lot before going in because he will be shaking. The Appellant also said that if he knows he has to go out the next day, he gets little sleep. If his children come for dinner or if he goes to them for dinner, his hands will be so shaky he will drop food from his fork.

The Appellant said that after he finished school he took an upholstery course and did that until he had to stop because of his condition. For many upholstery jobs, he had to do hand stitching, but his work declined because he couldn't do the work well anymore and clients were not satisfied. The Appellant stated that he cannot write, can only print and he cannot use a computer. He tried getting a job assembling items with lightweight packaging; however, because of his shaking, he had trouble working with machinery and he was not called back.

The Appellant also described back problems and how that limits what he can work at. The Panel finds that this testimony about the Appellant's back is information about a new medical condition not in the evidence that was before the Ministry at reconsideration and therefore the Panel does not admit the testimony about the back problems.

As for the rest of the Appellant's testimony and the March 8, 2013 medical report, the Panel admits these, pursuant to section 22(4) of the Employment and Assistance Act, as providing information about the Appellant's reported medical conditions and restrictions, and as being in support of the evidence that was before the Ministry at the time of reconsideration.

At the hearing, the Ministry reviewed and relied on its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant's PPMB employability screen score is 11.
2. The Appellant's primary medical condition is generalized anxiety disorder and his secondary medical condition is alcohol abuse in remission.
3. The Appellant's doctor reported the following restrictions:
 - Limited in his ability to interact with others and meet expectations such as time deadlines.
 - Significant tremor, exacerbated when under pressure or scrutiny.
 - Severe conditions causing significant symptoms of a prolonged duration.
 - Medications have not helped to the point of being employable.
 - Should be considered disabled because of his medical condition.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant did not meet all of the criteria in section 2(4) of the EAR to qualify as a PPMB, and specifically that, in the Minister's opinion, the Appellant's medical condition is not a barrier that precludes him from searching for, accepting or continuing in employment as required by section 2(4)(b) of the EAR.

Applicable Legislation

The following sections of the EAR apply to the Appellant's circumstances in this appeal:

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)

(4) The person has a medical condition, other than an addiction that is confirmed by a medical practitioner and that

(b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

The Parties' Positions

The Ministry's position is that because the Appellant has an employability screen score of 11, his application is assessed under section 2(4) of the EAR. The Ministry considered the doctor's evidence and then determined that there are many jobs in which time constraints do not affect performance and many jobs that do not need perfect fine motor skills. The Ministry also wrote that in the Minister's opinion, the Appellant's medical conditions and resultant restrictions do not preclude him "from searching for, accepting or continuing in all types of employment including part-time work". Therefore, the Ministry was not satisfied that the Appellant was eligible to be qualified as a PPMB.

The Appellant's position is that his doctor has confirmed that he should be considered disabled because of his medical conditions. His symptoms have not improved with medications to the point where he is employable. Also, the type of work that he was doing for 25 years (upholstery) requires fine motor skills for which he needs a steady hand, and there are often significant time pressures. The Appellant argued that his doctor reported that this has been impossible with his significant symptoms. He tried working in a facility requiring the use of machinery and was unable to continue.

The Panel's Findings

The only issue in this appeal is whether the Appellant met the requirements in section 2(4)(b) of the EAR. That section provides that to be eligible for PPMB designation the Appellant's medical condition must be a barrier precluding him from "searching for, accepting or continuing in employment". In its reconsideration decision the Ministry wrote that the Appellant's restrictions do not preclude him from searching for, accepting or continuing in "all types of employment, including part-time work". The Panel notes that this statement does not accurately reflect the language in the regulation, nor what was intended by the legislation. The Panel finds that section 2(4)(b) when applied to the Appellant's circumstances means that the issue is whether his medical condition is a barrier with respect to employment other than upholstery work.

The Panel also notes that this regulation uses the word "or". Therefore, it finds that the Appellant is not required to demonstrate that he has met all 3 of elements in section 2(4)(b) - searching for,

accepting or continuing in employment - only that he is precluded from doing one of the three. The information from the Appellant's doctor provides evidence of how the Appellant's medical conditions have and will affect his employment, in other words his ability to continue in employment.

The Appellant testified about how he shakes every day, how dealing with people and stressful events causes him to shake, and how the shaking affects his ability to use his hands even to write, handle utensils or use a computer. The Appellant's doctor also reported that the Appellant has a significant tremor, which is exacerbated under pressure or scrutiny. For upholstery work, he needs a steady hand and often faces significant time pressures which is impossible with the Appellant's significant symptoms. Most notably, the doctor stated that the Appellant's medical condition limits his ability to interact with others or to meet expectations such as deadlines, that medications have not helped to the point where the Appellant is employable, and that the Appellant should be considered disabled because of his medical condition. The Panel finds that all of this evidence from the doctor not only confirms that the Appellant is unable to continue in his former type of employment, but that his medical condition is a barrier precluding him from employment. Therefore, based on the evidence and especially the evidence from the doctor, the Panel finds that it was not reasonable for the Ministry to conclude that the Appellant's medical condition was not a barrier that precludes him from searching for, accepting or continuing in employment.

Conclusion

Having reviewed all of the evidence and the regulations applicable to the Appellant's circumstances, the Panel overturns and rescinds the Ministry's decision in favour of the Appellant because that decision was not reasonably supported by the evidence and was not a reasonable application of the applicable enactments.