

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated 17 April 2013 in which the Ministry determined that the appellant does not qualify as a person with persistent multiple barriers (PPMB) as the information provided does not establish his medical condition presents a barrier that precludes him from searching or accepting or continuing employment and therefore he does not meet all the required conditions set at section 2 of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

- The appellant has been a recipient of income assistance for at least 12 of the last 15 months.
- A medical report dated 22 August 2012 by the appellant's physician stating that:
 - The appellant suffers from chronic mechanical back pain and early arthritis of right hip;
 - The appellant does not take any pain medication and is not undertaking therapy;
 - His medical condition is expected to last 2 years or more;
 - He has some degenerative disc changes of uncertain significance on x ray;
 - His medical condition fluctuates but the frequency of occurrence is unknown;
 - In terms of work, "no restrictions necessary – may have limitations due to discomfort – hands appear work hardened. Is awaiting opinion from rheumatologist. Hip arthritis is early stage."
- An undated Employability Screen form indicating the appellant scored 11.
- A two-page Client Employability Profile dated 27 December 2012 indicating the appellant stated that he had issues bending, lifting and had shoulder pain, numbness in hands and feet, lack of sleep due to pain and has difficulty standing once he has been sitting for any length of time. It also mentions the appellant indicated he had cysts on liver and kidney issues causing him discomfort.
- In his request for reconsideration dated 26 February 2013, the appellant indicates that he has chronic back pain, depression and that he is not taking pain medication due to liver and kidney conditions as well as hepatitis C. He states that his "pain is get past the point of dealing with without pain med[ication]s". Shoulder pain makes it hard for him to sleep at night and that he hasn't been able to get dentures making his jaw hurts when he eats.

In his Notice of Appeal dated 3 May 2013, the appellant writes that he has extreme pain in his back, his hip, down his right leg, shocking pain in hands, that he is unable to wake without pain and that he has a lack of power in his legs and back. He also mentions that his doctor is not helping him.

At the hearing the appellant indicated that he would really like to go back to work but that is not possible because where he lives there is no employment that involves only light work. He is in pain and cannot do any heavy lifting or hard work. He has suffered from medical problems for over 10 years and is concerned that his physician is not looking at his full medical record and underestimates his condition. He indicated he had prescriptions for pain medication but he does not want to take it because he does not have the means to buy the recommended prescription as they are very expensive and further because he is concerned that it may deteriorate his overall medical condition because of his kidney and liver problems.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision was either a reasonable application of the legislation or reasonably supported by the evidence. Specifically, that the appellant does not qualify as a person with persistent multiple barriers (PPMB) because the information provided does not establish his medical condition or present a barrier that precludes him from searching or accepting or continuing employment and therefore does not meet all the required conditions set at section 2 of the EAR.

Section 2 of the EAR states the conditions necessary to qualify as a PPMB:

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,...

(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 argues that section 2 (2) and (4) of the EAR apply in this matter. The ministry agrees that the appellant meets the requirements under subsection (2) as he has been a recipient of income

assistance for at least 12 of the immediately preceding 15 months but not those of subsection (3)(a) as he has not scored 15 on the employability screen but only 11. Thus, the ministry argues that only subsection (4) applies and agrees that the appellant meets the conditions under subsection (4)(a) that in the opinion of a medical practitioner, the appellant has a medical condition, other than an addiction, that has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry argues that the appellant's medical condition does not preclude him from searching for, accepting or continuing in employment, as confirmed by his doctor who writes at page 2 of the medical report "no restrictions necessary – may have limitations due to discomfort" and that the ministry is in no position to overrule the doctor's opinion. The ministry further argues that light employment could be available to the appellant in other locations than where he presently lives and that could be accessible for him.

The appellant argues that his medical condition is such that he cannot find any employment in the area where he lives as the only employment available may include heavy lifting or harder work and no light work is available and he is not ready to consider moving to another area. He states he is in chronic pain and that he cannot take the recommended medication to alleviate that pain because of fear of serious and significant side effects. He argues that his doctor has not carefully reviewed his record and that he underestimated his medical condition.

The ministry determined that the appellant meets the criteria set at s. 2(2) and 2(4)(a) of the EAR. The appellant does not dispute the ministry decision determining he did not meet s. 2(3)(a)(i) of the EAR because he scored under 15 of the Employability Screen and the panel also finds the ministry decision is reasonable in the circumstances. Finally, the panel finds the evidence supports the ministry's determination that the appellant's medical condition does not preclude him from searching for, accepting or continuing in employment since the medical report clearly states that his medical condition does not impose any restriction but only that he may have limitations due to discomfort. Additionally, the disc changes are described as being of uncertain significance and the arthritis is described as early. Therefore it was reasonable for the ministry to conclude that the appellant did not meet the condition set at s. 2(4)(b) of the EAR.

The panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.