

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 6, 2013, which held that the appellant did not meet all of the applicable statutory requirements of section 2 of the Employment and Assistance (EA) Regulation to qualify as a Person with Persistent Multiple Barriers (PPMB) to employment. The ministry was satisfied that the evidence establishes the appellant has been a recipient of income assistance for at least 12 of the proceeding 15 months and that a physician has confirmed that his medical conditions have continued for at least one year. However, the ministry was not satisfied that the appellant's score on the employability screen was 15 or greater, that in the opinion of the physician the appellant's medical condition has occurred frequently in the past year and is likely to continue for at least two more years, or that the appellant's medical conditions are a barrier that precludes 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**

Evidence before the ministry at the time of reconsideration consisted of:

1. A copy of the ministry PPMB denial letter to the appellant dated April 24, 2013.
2. A copy of the appellant's PPMB Medical Report dated December 18, 2012.
3. An undated copy of the appellant's Employability Screen.
4. A copy of a letter to the appellant from the Workers' Compensation Appeal Tribunal (WCAT) dated April 17, 2013.
5. A copy of the appellant's Request for Reconsideration dated May 22, 2013.

In the PPMB medical report the physician states that the appellant has been diagnosed with a primary condition of back pain at T 11, 12 and L 1, 2 and a secondary medical condition of right hand weakness. Treatment has included Carpel tunnel surgery December 2012, outcome weak right hand; right shoulder surgery no date provided, followed by physiotherapy, outcome weak. The physician reports that these conditions have existed for 2 years and that the prognosis is that the expected duration of these conditions is less than two years. Under additional comments the physician writes - WCB has not accepted back injury or right knee. The physician reports that the appellant's medical conditions are not episodic in nature and no restrictions resulting from the appellant's medical conditions are reported.

On the Ministry Employability Screen the appellant's scores were as follows

	Appellant's score
• Age is between the age of 25 and 49	0
• Apart from this application the appellant has never collected Income Assistance (IA).	0
• Total amount of time on IA in the past 3 years	7
• Grade 10 to 12 education	1
• Employed from 3 to 12 months during the last 3 years	1
• Good working knowledge of English	0
Total score	9

In Section 3 of the appellant's Request for Reconsideration he reports he is waiting for more surgeries on his knee and shoulder, has already had 3 surgeries on right knee and both wrists, has lots of pain in his back and knee every day, his doctor has told him that he can't work again in any warehouse jobs and all he knows is warehouse work. The appellant also writes that he has been on assistance more than 12 months, his doctor says he will never be the same, when he fell he damaged his shoulder, both wrists, both knees and his back as a result of falling 3 stories (25 feet) off forks on a forklift and he is unable to kneel or lift anything light or heavy.

After the ministry Reconsideration Decision was made and prior to the hearing the appellant reported the following in the Reasons section of his Notice of Appeal dated June 11, 2013. The appellant writes that he can't work as he had very bad fall and is in lots of pain every day and that the doctor says he can't work because of the fall. The appellant concludes by reporting that he has a very bad back and knee from his fall, and doesn't understand why he is not eligible.

At the hearing the appellant presented a photo copy of the following documents: Work Safe BC (WCB) Physician Report dated December 21, 2011; WCB Physician Report dated March 20, 2012; WCB Physician Report dated June 6, 2012; WCB Physician Report dated June 25, 2012; WCB Physician Report dated December 28, 2012; Page 2 of a WCB Intake Assessment Report - print date June 22, 2010; Page 1 of 6 WCB

Memo dated January 9, 2013; Page 1 of WCB Claim Review Action Plan dated December 5, 2012; Ministry Medical Report Employability dated March 20, 2012, and a Ministry Medical Report Employability dated June 25, 2012. While the appellant chose not to reference any particular piece of the additional evidence he submitted at the hearing, he did present argument as to why he believes his medical conditions preclude him from working which are addressed later in Part F of this decision. The appellant reported that his file with WCB was now closed and that he was seeking legal advice regarding any further actions that might be taken. The appellant also asked for an explanation of how the scores on the ministry Employability Screen were derived. This was responded to by the ministry and appeared to satisfy the appellant.

The ministry stood by the record adding that the next steps the appellant will be required to take include completing an employment plan, and employment assessment, job training if required and assistance as required with searching for, accepting or continuing in employment.

The panel found that the additional reports submitted by the appellant at the hearing to be in support of information and records that were before the ministry at the time of reconsideration and admitted them under Section 22(4) of the Employment and Assistance Act. The ministry did not object.

The panel makes the following findings of fact from the evidence presented:

- The appellant has been in receipt of income assistance for at least 12 of the preceding 15 calendar months.
- The appellant's score on the Employability Screen is 9.
- The appellant's physician has diagnosed his primary medical condition as back pain T 11, 12 and L 1, 2, and a secondary medical condition of right hand weakness.
- Treatment has included Carpel tunnel surgery December 2012, outcome weak right hand; right shoulder surgery, no date provided, followed by physiotherapy, outcome weak.
- The physician report states that these medical conditions have existed for 2 years and that the prognosis is that the expected duration of these medical conditions is less than two years

**PART F – Reasons for Panel Decision**

The issue in this appeal is whether the ministry's reconsideration decision which denied the appellant's request to qualify as a PPMB was a reasonable application of the legislation or was reasonably supported by the evidence. The ministry was satisfied that the evidence establishes the appellant has been a recipient of income assistance for at least 12 of the preceding 15 months and that a physician has confirmed that his medical conditions have continued for at least one year. However, the ministry was not satisfied that the appellant's score on the employability screen was 15 or greater, that in the opinion of the physician the appellant's medical condition has occurred frequently in the past year and is likely to continue for at least two more years, or that the appellant's medical conditions are a barrier that precludes him from searching for, accepting or continuing in employment. In arriving at their decision the ministry relied upon the following legislation:

**EA Regulation****Persons who have persistent multiple barriers to employment**

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.

The panel finds no dispute raised by either party that as the appellant's score on the Employability Screen was less than 15 he did not meet the requirement set out under 2(3) of the EA Regulation and his application was therefore considered under section 2(4) of the EA Regulation.

The ministry's position is that the appellant does not meet any of the legislative criteria set out above in section 4(a) or (b) and is therefore not eligible to qualify as a PPMB to employment. The appellant's position is that his medical conditions have continued since 2010, are likely to continue for at least two more years, and that these conditions preclude him from any kind of employment.

As to the requirements set out in section 2(4)(a) of the EA Regulation the appellant argued at the hearing that he has presented documental medical evidence which indicates that his medical conditions have existed since 2010 and are likely to continue for at least two more years.

The panel finds that while the appellant argued in his oral testimony at the hearing and in his written submissions presented in both his Request for Reconsideration and his Notice of Appeal, that the expected duration of his medical conditions is two years or more, none of the documental medical evidence presented supports his position. The panel further finds that while the additional documental evidence submitted by the appellant at the hearing does provide additional detail regarding his medical conditions and does support the uncontested fact that they have continued for at least one year, none of the additional reports state that his medical conditions are likely to continue for at least two more years or conflict with any of the information provided by the physician who completed the appellant's PPMB medical report on December 28, 2012. In this report the physician clearly states that the expected duration of the appellant's medical conditions is less than two years. The panel therefore finds that the ministry reasonably determined that the appellant did not meet the statutory requirements set out above in 2(4)(a) of the EA Regulation.

As to the requirements set out in section 2(4)(b) of the EA Regulation in Section 3 of the appellant's Request for Reconsideration he argues that he is waiting for more surgeries on his knee and shoulder, has already had 3 surgeries on right knee and both wrists, has lots of pain in his back and knee every day, his doctor has told him that he can't work again in a warehouse and all he know is warehouse work. In his Notice of Appeal the appellant further argued that he can't work as he had a very bad fall and is in lots of pain every day and that the doctor says he can't work because of the fall.

At the hearing the appellant stated that he has tried to go back to doing physically demanding work on a number of occasions but was not able to last more than a day or two. The appellant further argued that he is still waiting for more surgeries and because of his physical restrictions and employment skills is unable to work.

The panel finds that the appellant's PPMB medical report does not support his arguments. The PPMB medical report places no restrictions on the appellant specific to his medical conditions and makes no mention of any further planned surgeries. While the panel acknowledges that the appellant reports that he has tried unsuccessfully to return to physically demanding work, no evidence was presented to suggest he is incapable of being successfully employed in less physically demanding occupations.

The panel therefore finds that the ministry reasonably determined the appellant's medical conditions are not a barrier which preclude him from searching for, accepting or continuing in employment and the statutory requirements set out above in 2(4)(b) of the EA Regulation have not been met.

For these reasons the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.