

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's ("the ministry") Reconsideration Decision dated April 17, 2013 which held that the appellant did not meet all of the statutory requirements of section 2 of the Employment and Assistance Regulation ("EAR") to be designated as a Person with Persistent and Multiple Barriers ("PPMB"). While 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, it was not satisfied that:

- (a) the 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 or has occurred frequently in the past year and is likely to continue for at least 2 more years; and
- (b) that the medical condition is a barrier that seriously impedes the appellant 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 March 18, 2013 ("RFR");
2. A Medical Report – Persons with Persistent Multiple Barriers dated February 20, 2011 ("Report #1");
3. A Medical Report – Persons with Persistent Multiple Barriers dated January 23, 2013 ("Report #2");
4. The appellant's undated Employability Screen;
5. A letter from the ministry to the appellant dated March 8, 2011 advising the appellant that he is approved for the PPMB designation;
6. The appellant's Client Employability Profile dated February 5, 2013; and
7. A letter from the ministry to the appellant dated February 22, 2013 advising the appellant that he no longer meets the criteria for the PPMB designation.

Medical Report #1 indicates that the appellant suffers from left sided patella femoral syndrome and low back pain with the date of onset for both being 1998. The reported treatment includes orthotics, supportive shoes and it also notes the condition of plantar fasciitis. The expected duration of the conditions is 2 years or more, they are described as severe and chronic and not episodic in nature but rather they are described as chronic for 10 years and permanent. Under restrictions specific to the medical condition, the physician notes "severe and chronic pain both hips, feet, left knee and back. Restricts standing, sitting, walking, bending, lifting, carrying objects (max 5-10 lbs)."

Medical Report #2 indicates that the appellant suffers from left sided patella femoral syndrome and left sided plantar fasciitis with the date of onset for both being 1998. The reported treatment includes orthotics, good footwear, quad exercises and weight loss. The stated conditions are noted in this report to have existed for 14 years and the expected duration of the conditions are noted to be less than 2 years. Under the heading of Prognosis, the physician indicates that the conditions are not episodic in nature and under restrictions specific to the medical condition, the physician notes "no heavy lifting, prolonged walking, standing, repetitive bending."

The Employability Screen has a total score of 15 which, applying the legend at the bottom of the document would indicate that the appellant is "Employable with Longer-Term Interventions."

The Client Employability Profile indicates that the appellant has no employment limitations with respect to his education and training ("post-secondary"), transportation ("vehicle/public transportation available and accessible"), child care ("not applicable"), criminal record ("not applicable") and shelter ("adequate shelter"). Under the heading "Affects Employment Options," the Profile indicates that the appellant's communication skills are affected in that he has some difficulty communicating and resolving conflicts. The listed factors that are found to severely limit the appellant's employment options include work experience/job retention ("unemployed for over 3 years"), employment search skills ("severe lack of employment search and planning skills"), literacy ("unable to speak, read or written English"), health ("severe health condition") and disability ("persistent disability, severely impacts on employment options").

In the RFR, the appellant says that he believes that the listed restrictions do not cover more than a two year period and that his condition will last more than two years as it has already lasted for more

than fourteen years. The appellant continues that he believes that the listed restrictions are not complete as it does not list the restrictions noted in the previous report. Lastly, the appellant has attached to his RFR a list of medications he is taking for diabetes and high blood pressure.

In the Notice of Appeal, the appellant states that he has had pain in his left knee for many years, that he has pain on his right side between the ribs and that he has pain on the top of his left shoulder.

At the hearing, the appellant's representative stated that the appellant is 52 years of age and that he has suffered from left patella-femoral syndrome and plantar fasciitis since 1998. He noted that the appellant was approved by the ministry for PPMB designation in 2011. The appellant's representative referred to Medical Report #2 which confirms the physical condition noted above and he cited the family physician's comments in that report that the appellant was restricted from heavy lifting, prolonged walking and standing and repetitive bending and he noted further that the physician provided in the report that the duration of the appellant's condition was less than two years which differed from the physician who completed Medical Report #1 who was of the opinion that the appellant's medical condition would continue for two years or more.

The appellant's representative stated at the hearing that the appellant continues to experience severe pain which not only impacts the appellant's ability to search for employment but that it effectively bars him from accepting a range of jobs which require walking, lifting and bending. He continued that the appellant is unable to access adequate treatment such as physiotherapy because it is too expensive. The appellant's representative stated that the appellant recently became qualified to work as a sales representative and that he had employment interviews scheduled.

In response to a question, the appellant stated that he experiences pain every morning when he wakes up but that he had not attended physiotherapy in more than six years although he was aware that he was entitled to 10 physiotherapy treatments per year with the cost being subsidized in part by the provincial government. The appellant added that he does attend the gym and the pool and that he had at one time worn shoes that were fitted with orthotics but that he had discontinued that as he felt they provided little benefit.

In response to a question, the appellant answered that he did not speak with the physician who completed Medical Report #2 about the discrepancy between it and Medical Report #1 as it related to the duration of his medical condition.

In response to a question, the appellant answered that he had been a patient of the physician who completed Medical Report #2 for more than 14 years and that he had seen the doctor on various occasions. The Panel asked the appellant to clarify that the physician that completed Medical Report #2 had in fact been his physician for more than 14 years to which the appellant answered that she had. He stated that when he asked the doctor to prepare this report, she performed some physical examinations and that when he received this report he did not compare it to Medical Report #1.

The ministry relied on the Reconsideration Decision and stated that its denial of the appellant's application for PPMB designation was based on Medical Report #2 which clearly states that the duration of the appellant's medical condition is less than two years. Further, the ministry states that the information provided by a medical practitioner does not establish that the appellant's medical conditions are a barrier or seriously impedes the appellant's ability to search for, accept or continue

in any type of employment, particularly of a more sedentary nature that does not involve strenuous physical labour.

In response to a question, the ministry confirmed that it is satisfied that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner.

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 Employment and Assistance Regulation (“*EAR*”) to be designated as a Person with Persistent and Multiple Barriers (“*PPMB*”). While 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, it was not satisfied that:

- (a) the 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 or has occurred frequently in the past year and is likely to continue for at least 2 more years; and
- (b) that the medical condition is a barrier that seriously impedes 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 the appellant's physician who completed the most recent medical report has not 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 or that it has occurred frequently in the past year and is likely to continue for at least 2 more years. Further, the ministry submits that the appellant's medical condition is not a barrier that seriously impedes him from searching for, accepting or continuing in employment and defines "seriously impedes" as rendering a recipient "unable to participate in any type of employment that would enable independence from income assistance."

The appellant raised arguments with respect to two issues. First, with respect to the expected duration of his medical conditions, he argues that the two medical reports should be looked at together and that greater weight should be placed on Medical Report #1 because the physician who authored it has treated the appellant longer than the doctor who prepared Medical Report #2 and because the first doctor provided a more detailed description of the medical condition referring to it as "severe and chronic" while the second doctor provided no comments to explain or support her opinion. The appellant argues further that there is no reason to believe that his medical condition, which has existed for more than 14 years, would resolve in less than two years.

With respect to the issue of whether the appellant's medical conditions seriously impedes his ability to search for, accept or continue in employment, the appellant argues that the ministry has misinterpreted section 2(3)(b)(ii) of the *EAR* and that the proper interpretation should be to ask whether the appellant's medical condition forms a barrier that seriously impedes his ability to search

for, accept or continue in employment generally. Further, the appellant argues that support for such an interpretation can be found by referring to section 2(4)(b) of the *EAR* and a previous PPMB Employment and Assistance Appeal Tribunal appeal decision in which the panel interpreted section 2(4)(b) of the *EAR* as not requiring the minister to hold the opinion that the medical condition of the appellant is a barrier precluding her from all types of employment or any type of employment for any length of time.

The parties agree that there is no dispute that the appellant has a medical condition – left sided patella femoral syndrome and left sided plantar fasciitis - confirmed by a medical practitioner. There is also no dispute that the appellant scored 15 on the employability screen and as such, the requirements of s.2(3) of the *EAR* must be met in order for the appellant to qualify for PPMB designation.

Duration of medical condition

The panel finds that in Medical Report #2, the appellant's physician indicates that the he has suffered from left-sided patella femoral syndrome and left-sided plantar fasciitis since 1998 and that the expected duration of this condition is less than 2 years. This is inconsistent with Medical Report #1, prepared by a different physician almost two years prior, which describes the appellant's conditions as left-sided patella femoral syndrome and low back pain with expected duration of 2 years or more. The panel is unable to speculate as to the reason for the inconsistency and notes that in Medical Report #1, the physician describes the appellant's condition as severe and chronic but no such description is included in Medical Report #2. It is the appellant's evidence that he believes that his current conditions are indeed chronic and will continue for more than 2 years and he cannot explain the inconsistency between the two medical reports. However, the appellant gave evidence that he has been a patient of the physician who prepared Medical Report #2 for approximately 14 years. Given the evidence and considering that Medical Report #2 is the most recent report commenting on the onset and duration of the appellant's medical conditions and that it was prepared by a physician who has treated the appellant for 14 years, the panel places more weight on Medical Report #2 and finds that a medical practitioner has confirmed that the appellant's medical condition is expected to continue for less than 2 years and as such the panel finds that the ministry's decision that the appellant did not satisfy s. 2(3)(b)(i) of the *EAR* was reasonable.

Is the appellant's medical condition a barrier that seriously impedes his ability to search for, accept or continue in employment?

Section 2(3)(b)(ii) of the *EAR* provides that the minister has discretion to find that an applicant's medical condition is a barrier that seriously impedes the person's ability to search for, accept or continue in employment. In the present case, the minister considered the evidence in Medical Report #2 that the restrictions related to the appellant's medical conditions included no heavy lifting, prolonged walking, standing or repetitive bending. Based on this information, the minister determined that the information provided by the appellant's medical practitioner did not establish that his medical conditions are a barrier that seriously impedes his ability to search for, accept or continue in any types of employment including sedentary jobs that do not involve strenuous physical labour.

The appellant urges the panel to find that the ministry's interpretation of section 2(3)(b)(ii) of the *EAR* was unreasonable insofar as it holds the appellant to a higher standard and that the previously

referenced PPMB Employment and Assistance Appeal Tribunal appeal decision further supports his argument in that the panel there interpreted section 2(4)(b) of the *EAR* as not requiring the minister to hold the opinion that the medical condition of the appellant is a barrier precluding him from all types of employment or any type of employment for any length of time.

The panel finds that section 2(3)(b)(ii) of the *EAR* obliges the minister to exercise its discretion by asking the question of whether the appellant's medical condition seriously impedes his ability to search for, accept or continue in employment. The panel further finds that this subsection is not limited to certain types of work or certain areas of employment but rather that it contemplates employment generally. While the ministry acknowledges that the appellant's medical condition has resulted in his having some physical limitations, it has considered Medical Report #2 and found that the appellant's medical condition does not seriously impede him from searching for, accepting or continuing in areas of employment that are of a more sedentary nature. Further evidence of this can be found in the appellant's own testimony that he has been upgrading his employment qualifications and scheduling job interviews with a view towards accepting and continuing in employment. The panel therefore finds that the minister's opinion that the appellant's medical condition was not a barrier that seriously precludes him from searching for, accepting or continuing in employment and that the appellant did not therefore satisfy s.2(3)(b)(ii) of the *EAR* was reasonable.

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