

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the "ministry") dated July 26, 2013 that held that the appellant did not meet the legislated criteria to qualify as a Person with Persistent Multiple Barriers to employment ("PPMB") under section 2 of the Employment and Assistance Regulation ("EAR").

Specifically, the ministry held that: (a) as the appellant's medical assessment was completed by a nurse practitioner, who is not a physician registered with the College of Physicians and Surgeons of British Columbia, the minister was not satisfied, as required by section 2 (4) of the EAR, that a "medical practitioner" had confirmed that the appellant had a medical condition, other than addiction, that has lasted 1 year or more and is expected to last at least another 2 years; and (b) the medical condition of the appellant and resultant restriction did not preclude the appellant from searching for, accepting or continuing all types of employment including sedentary or part-time work.

The ministry determined that (a) the appellant met the criteria of section 2 (2) of the EAR insofar as he had been in receipt of income assistance for at least 12 of the past 15 months; (b) as the appellant's employability screen score was 12, his application was considered under section 2 (4) of the EAR; (c) the ministry was not satisfied, pursuant to the provisions of section 2 (4) (b) of the EAR, that his medical condition precluded him from searching for, accepting or continuing all types of 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 reconsideration included the following:

- A Notice of Practice Closure dated January 2012 from a medical practitioner confirming that he would no longer be seeing patients after March 30, 2012;
- Authorization for Release of Information dated May 7, 2013 signed by the appellant;
- A Medical Report – Persons with Persistent Multiple Barriers dated May 7, 2013 signed by a Nurse Practitioner (“First Medical Report”), which, amongst other things, states that: (a) the appellant’s primary medical condition is chronic back pain, and secondary medical condition is depression and anxiety; (b) the appellant’s treatment includes medication and adjustment, and methadone maintenance; (c) expected duration of the appellant’s medical condition is 2 years or more (“*unsure*”). The appellant had visited the Nurse Practitioner only on two past occasions in February and May 2013; (d) the appellant’s medical conditions are not episodic; (e) the appellant’s restriction was slow gait, no driving while on methadone and no lifting of more than 10 pounds; and (f) the appellant has been the Nurse Practitioner’s patient for less than six months and that the Nurse Practitioner had examined previous medical records of the appellant;
- A letter dated May 31, 2013 from the ministry informing the appellant that: (a) his Employability Screen Score is less than 15; (b) his physician had not confirmed that he has a medical condition that has existed for one year or occurred frequently in the past and is likely to continue for two years as required by section 2 (4) (a) of the EAR; and (c) in the opinion of the minister, his medical conditions do not preclude him from all forms of employment required under section 2 (4) (b) of the EAR;
- Appellant’s Reasons for Request for Reconsideration dated July 16, 2013, which, amongst other things, states that: (a) the appellant had stated that he would refuse treatment for depression in a group therapy sessions for 14 weeks in a row, as the appellant had informed the Nurse Practitioner that he had a problem around people; (b) the appellant had no problem in seeing a therapist on a one on one basis; (c) the appellant was informed by “welfare” in a telephone conversation that it was ok for a nurse Practitioner to fill out the forms; and (d) then the appellant was told that as the Nurse Practitioner did not know me, the forms are not valid and they form a bias opinion; and
- First page of an undated and unsigned Medical Report Form – Persons with Persistent Multiple Barriers (“Incomplete Medical Form”), which, amongst other things, state that: (a) the appellant’s primary medical condition is anxiety/depression since childhood, and the secondary medical condition is chronic back pain due to compression fracture in 2009; (b) the appellant’s treatment include medication and counseling, and the “*outcome*” of such treatment has resulted in “*no change*”; (c) expected duration of the appellant’s medical condition is 2 years or more, and it is not episodic; and (d) the appellant’s restrictions include anxiety, low mood, poor focus and concentration, panic attacks, and unable to function, and unable to do heavy physical work due to chronic pain;

As his reasons for appeal, in a Notice of Appeal dated August 7, 2013, the appellant states that: (a) the first form filled out by the Nurse Practitioner was not accurate because the appellant had seen the Nurse Practitioner only once or twice before; (b) the appellant was older and his health had gotten worse, not better.

With the same Notice of Appeal dated August 7, 2013 (received by the Tribunal on August 8, 2013), the appellant submitted a new Medical Report –Persons with Persistent Multiple Barriers (Second Medical Report) comprising of two pages, the first page of which is identical to the Incomplete Medical Form referred to hereinbefore (which first page was before the minister at the time of reconsideration). A medical practitioner has signed the Second Medical Report. He has certified that he is a physician with the College of Physicians and Surgeons of British Columbia and licensed to practice clinical medicine in BC. The medical practitioner also states that he has been the physician of the appellant for over 6 months.

The appellant also re-submitted an additional copy of the Second Medical Report to the Tribunal on August 26, 2013.

At the hearing, the appellant argued that he has held the PPMB designation for the past four years and his medical reports in respect thereof were confirmed by a medical practitioner, who has ceased to practice medicine since March 2012. Therefore, his renewal application for the PPMB designation was supported by medical report (the First Medical Report) signed by a nursing practitioner who did not know the appellant very well. When the appellant realized that the medical report of the nursing practitioner was inadequate, the appellant obtained the Second Medical Report from a medical practitioner who had known the appellant for a longer period of time.

The appellant has submitted the Second Medical Report with his Notice of Appeal against the reconsideration decision and subsequently, the same Report was also submitted to the Tribunal on August 26th, 2013. The panel has noted that the first page of the Second Opinion was before the minister at the time of reconsideration, but the second page, which sets out the certification of the medical practitioner, was not before the minister at the time of reconsideration. The ministry representative did not object to the Second Medical Report being admitted as new evidence at the hearing. Having regard to the foregoing, and in view of the fact that the contents of the Second Medical Report are in support of or directly related to the information and record before the ministry at the time of reconsideration, the panel admitted the Second Medical Report as relevant new evidence under section 22 (4) of the EAA.

The appellant further contended that he: (a) has lost a lot of weight; (b) shakes a lot; (c) has difficulty in sleep and takes sleeping pills that do not always work; (d) had a bad fall that broke three vertebrae, and consequently, he cannot sit or stand in the same position for any length of time; (e) he gets panicked around people due to his anxiety and depression, for which he takes medication (anti-depressants), which also do not work effectively all the time; (f) he had developed shingles; (g) his concentration is gone; (h) he is in pain, for which also he takes medicine; (i) he has not held a job over the past 5 years, but is willing to consider part-time work, which does not entail heavy lifting. Based on the foregoing medical conditions, which are now confirmed by a medical practitioner, the appellant contends that his PPMB status should be renewed.

As stated earlier, at the hearing, the ministry representative did not object to the introduction of the Second Medical Report as new evidence, and confirmed that it was in support of or directly related to the information and record before the ministry at the time of reconsideration. The ministry representative further confirmed that, the medical condition of the appellant was now confirmed by a prescribed medical practitioner, and in view of the contents of the Second Medical Report, the case of the appellant needs to be reconsidered by the ministry.

PART F – Reasons for Panel Decision

The principal issue in this appeal is whether the ministry reasonably determined that the appellant did not meet all the PPMB criteria in section 2 of the EAR, and specifically the requirements of: (a) section 2 (4) that the medical assessment of the appellant is confirmed by a medical practitioner who is registered with the College of Physicians and Surgeons of British Columbia; and (b) section 2 (4) (b) of the EAR that, in the opinion of the ministry, the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing employment.

The following provision of section 2 of the EAR apply to this appeal:

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*, or
- (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. (B.C. Reg. 263/2002)

The appellant's case is that he is eligible for the renewal of his PPMB designation as his employability score is 12; he has a medical condition, other than addiction (which has been confirmed in the Second Medical Report), that has existed for over 20 years. The expected duration of his medical condition is 2 years or more and the restrictions resulting from his medical condition preclude him from searching for, accepting, or continuing in employment.

The ministry acknowledges that the appellant's employability score is 12 and therefore his PPMB application is assessed under section 2 (2) and section 2 (4) of the Ear. The ministry also acknowledges that the appellant is a recipient of assistance since March 17, 2008 and therefore meets the criteria prescribed in section 2 (2) of the EAR, as he has been on assistance for at least 12 of the past 15 months.

Section 2 (1) of the EAR provides that to qualify as a person who has persistent multiple barriers (PPMB) to employment, the person must meet the requirements set out in section 2 (2) and Section 2 (3) or Section 2 (4). As discussed above, and acknowledged by the ministry, the panel finds that the appellant meets the criteria prescribed under section 2 (2). The panel also finds that as the employability score of the appellant is 12, his PPMB application must be considered having regard to the provisions of section 2 (4) of the EAR.

Section 2 (4) (a) of the EAR provides that two additional requirements must be met for a PPMB designation and they are that: (1) the person has a medical condition, other than addiction, which is confirmed by a "*medical practitioner*" and in the opinion of the medical practitioner such a medical condition: (a) has continued for at least 1 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 two more years; and (2) in the opinion of the ministry, such a medical condition is a barrier that precludes that person from searching for, accepting or continuing in employment.

In the present case, with his notice of appeal as well as subsequent thereto on August 26, 2013, the appellant has submitted the Second Medical Report, which is signed by a medical practitioner who is registered with the College of Physicians and Surgeons of British Columbia. The panel accepted and admitted this medical report as new evidence, as it is in support of as well as directly related to the information and records before the ministry when reconsideration decision was being made. The panel wishes to note that the ministry did not object to the Second Medical Report being admitted in to evidence at the hearing of this appeal.

The Second Medical Report confirms that the appellant has a medical condition over the past 20 years, other than addiction, that is not episodic and its expected duration is 2 years and more. Based on this new evidence, the panel finds that the appellant has met the criteria prescribed in section 2 (4)

(a) of the EAR.

With regard to the appellant's restrictions due to his confirmed medical condition, the First Medical Report, signed by a nurse practitioner, states that the appellant's restriction was slow gait, not allowed to drive while on methadone and no lifting of more than 10 pounds. The Second Medical Report, signed by a medical practitioner, states that the appellant's restrictions include anxiety, low mood, poor focus and concentration and panic attacks. It also states that the appellant is "*unable to function*" and unable to do heavy physical work due to chronic pain.

The panel notes that the First Medical Report provides that the appellant is being treated with medications and adjustments and, in particular, maintenance of his methadone treatment is ongoing. The Second Medical Report also states that the appellant is on medication and, as an "*outcome*" there is no change in his medical condition.

In view of the foregoing analysis, the panel finds that the appellant is, indeed, challenged, by multiple mental as well as physical barriers that preclude him from searching for, accepting or continuing employment. The panel notes that the appellant is seeking a renewal of his PPMB status, which he has held since 2008. The appellant has not held any job over the past five years. The panel also notes that, in the Second Medical Report, the medical practitioner has confirmed that the appellant is "*unable to function*" and his treatment had resulted in "*no change*". Therefore, and particularly in the light of the contents of the Second Medical Report, the panel finds that the ministry's reconsideration decision was not reasonably supported by evidence or a reasonable application of the relevant enactment in the circumstances of the appellant, and rescinds the reconsideration decision.