

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated July 24, 2013 wherein the Ministry denied the appellant's request for Persons with Persistent Multiple Barriers (PPMB) designation. The Ministry held that the appellant's Employability Screen Score was less than 15 and therefore assessed the PPMB application under sections 2(2) and 2(4). The Ministry denied the appellant's application after determining that the appellant did not meet all the criteria of section 2 of the Employment and Assistance Regulation, specifically that the appellant's medical conditions have not lasted at least 1 year and are not expected to last at least another 2 years as required under section 2 (4)(a) and do not preclude all forms of employment as required under subsection 2(4)(b).

PART D – Relevant Legislation

Employment and Assistance Regulation, (EAR) Section 2, subsection (1), (2), (3), and (4)

PART E – Summary of Facts

The appellant's application for PPMB designation was denied because the ministry determined that he did not meet all of the criteria required, specifically that the appellant's medical conditions are not expected to last at least another 2 years and do not preclude all forms of employment.

The evidence before the Ministry at the time of the reconsideration decision included:

- 1) The appellant's Request for Reconsideration (RFR) dated July 15, 2013 in which the appellant states that he is still not feeling well, particularly that his hands are stiff and sore and go numb at night, as well he notes that he has teeth missing, high cholesterol, a possible blockage of the left side of his heart which is restricting blood flow and left shoulder pain with possible arthritis.
- 2) Letter from the ministry to the appellant, dated June 28, 2013, advising the appellant that his PPMB application has not been approved because his medical conditions do not preclude him from all forms of employment as required by the legislation for someone with an Employability Screen Score of less than 15.
- 3) A copy of Employability Screen test indicating that the appellant's score was 11.
- 4) A copy of an unsigned, undated page 1 of a 2-page (page 2 was missing) Medical Report – Persons with Persistent Multiple Barriers indicating that the appellant's medical conditions include bilateral carpal tunnel syndrome, hypertension and elevated lipids with the recommendation to diet and exercise as well as stop caffeine.
- 5) A copy of a 2-page Medical Report – Persons with Persistent Multiple Barriers dated February 1, 2013 indicating that the appellant's primary medical condition is elevated lipids which began in November 2011 and is expected to last 2 years or more, with the recommendation of diet and exercise and that the date of resolution is dependent on the appellant's ability to follow these recommendations.

In the Reconsideration Decision, the ministry states that:

- 1) in order to qualify as a person who has persistent multiple barriers to employment, the appellant must meet the requirements set out in EAR section 2. Since the Appellant was a recipient of assistance since August 19, 2005, the ministry states that the appellant meets the requirement of EAR section 2(2) as the he has been on assistance for at least 12 of the past 15 months;
- 2) the appellant's employability screen is 11, which is less than the minimum requirement of at least 15 as set out in EAR section 2(3)(a)(i);
- 3) the Medical Report indicates that the expected duration of the medical condition is less than 2 years, depending on diet and exercise. It is the ministry's position that the information from the medical practitioner does not confirm the appellant's medical condition has lasted at least 1 year and is expected to last at least another 2 years, therefore not meeting the requirement of section 2(4)(a);

- 4) the medical practitioner does not provide a restriction specific to the appellant's medical condition but instead states the need for a "low fat diet, walk daily" and they therefore conclude that the appellant's medical condition does not preclude him from searching for, accepting or continuing in all types of employment.

In the appellant's Notice of Appeal, received August 8, 2013, he states that he is still not feeling well and still experiencing pain and soreness.

At the oral teleconference hearing, the appellant provide the additional following points:

- 1) He still has all of the same symptoms of pain and numbness, specifically, he is often unable to close his hands, sometimes for up to 3 hours in the morning, is unable to lift his arms above his head and often experiences nausea and dizziness.
- 2) He finds that he gets sick frequently with serious colds, flu and hayfever.
- 3) He regularly attends appointments with his doctor who has diagnosed him with carpal tunnel syndrome and high lipids.
- 4) He did not have his lipids tested until he was in his late 50s and it has been further investigated by his current doctor.
- 5) Although he has changed his diet, eliminating caffeine and sugar, he still feels a lot of discomfort and therefore he is seeking further testing from his doctor because he feels that he cannot lift boxes or do any sort of physical work and is also concerned about possible heart attack and stroke.
- 6) He feels that living in rooming houses is quite stressful (illnesses of other occupants, fights and landlord stress) which has contributed to his pain and discomfort.
- 7) He adds that he feels the pain and numbness in his arm could be due to a blockage or thickening of vein which limits adequate blood flow to his shoulder, arm and chest muscles. He has requested testing from his doctor, but the doctor told him that he was concerned about the radiation from such scans.

The appellant was asked if his doctor had discussed possible surgical options to address the carpal tunnel syndrome. The appellant said that surgery was not an option for his numbness in his arms and hands.

At the oral teleconference hearing the ministry did not provide any new evidence and relied on the details provided in the Reconsideration Decision.

At the hearing, the appellant argued that the Medical Report does state that his medical condition is expected to last more than 2 years, but does acknowledge that his physician did not include any specific restrictions to his employment in the Medical Report.

At the hearing the ministry acknowledged that the Medical Report of February 1, 2013 did state that the medical condition is expected to last more than 2 years, but reiterated that the other criteria must be satisfied, including a confirmation of any barriers or specific restrictions which preclude him from searching for, accepting or continuing in all types of employment, of which were not included on the Medical Report.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's decision that the Appellant was ineligible for Persons with Persistent Multiple Barriers (PPMB) designation because the appellant's medical condition has not lasted at least 1 year nor is it expected to last at least another 2 years and the medical condition does not preclude the appellant from all forms of employment as required under EAR section 2(4)(a) and (b).

The pertinent legislation is:

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.
[en. B.C. Reg. 368/2002.]

The Ministry's position is that the appellant's Employability Screen Score was less than 15 and therefore assessed the PPMB application under sections 2(2) and 2(4) and the Ministry denied the appellant's application after determining that the appellant did not meet all the criteria of section 2 of the Employment and Assistance Regulation, specifically that the appellant's medical conditions have not lasted at least 1 year and are not expected to last at least another 2 years as required under section 2 (4)(a) and do not preclude all forms of employment as required under subsection 2(4)(b).

The appellant's position is that his medical condition has been ongoing for longer than 1 year and is expected to last for more than 2 years.

The panel finds that although the appellant has a medical condition, it does not satisfy all of the requirements in the EAR section 2.

The panel finds that the ministry's determination that the appellant's Employability Screen Score was less than 15, not satisfying section 3(a)(i), and therefore assessing his PPMB application under sections 2(2) and 2(4) is a reasonable application of the enactment in the circumstances of the appellant.

The panel did consider the unsigned, undated, Medical Report in the evidence which indicated that the medical condition, Carpal Tunnel Syndrome, has an expected duration of less than 2 years; however, the physician did not identify any restrictions to employment.

The panel finds that, as stated in the Medical Report, dated February 1, 2013, the appellant's physician indicates that his medical condition of elevated lipids has been present since November 2011 and is expected to continue for 2 years or longer which satisfies section 2(4)(a), therefore the panel finds that the ministry unreasonably determined that this criterion was not met.

The panel finds that the ministry's determination that the appellant's physician has not identified any restrictions or provided evidence of barriers that precluded the appellant's ability to search for, accept or continue in employment, in accordance with section 2(4)(b), is a reasonable application of the enactment in the circumstances of the appellant.

In conclusion, the panel finds that the ministry's reconsideration decision to deny the appellant's application for PPMB designation, pursuant to Section 2, subsection (4)(b) of the Employment and Assistance Regulation, (EAR) was a reasonable application of the enactment in the circumstances of the appellant.

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