

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 June 28, 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) the appellant's medical conditions did not preclude him from maintaining all types of employment. The ministry determined that 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 11, his application was considered under section 2 (4) of the EAR; (c) the ministry was satisfied that the appellant's medical condition met the medical criteria of section 2 (4) (a) of the EAR; but (d) 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:

- Employability Screen of the appellant showing a score of 11;
- Medical Report dated February 4, 2013 (“First Medical Report”), which indicates that: (a) the appellant’s primary condition is an injury that is very painful; (b) this condition has existed for 4 years and its expected duration is 2 years or more; and (c) the appellant is unable to work due to persistent pain;
- Medical Report dated June 26, 2013 (“Second Medical Report”), which states that: (a) the appellant has developed a chronic pain as a result of the injury suffered in 2007; and (b) as a result this injury and the pain relating thereto, the appellant cannot do any exertion related activity.
- Request for Reconsideration dated June 20, 2013 of the appellant in which he submits that: (a) the appellant meets all the eligibility requirements for the PPMB designation; (b) taking into account the Medical Report dated June 26, 2013 and the information in the appellant’s application for PPMB designation, the long-term outcome of the injury in 2007 is chronic pain that has limited the appellant’s ability to sit, stand, bend and lift, and exert himself; and (c) his medical condition prevents him from doing any kind of work.

In his Notice of Appeal dated July 5, 2013 the appellant states that:

“I feel I have adequate information from my doctor and advocate worker informing why I am unable to obtain full time or part time employment. I have more than a temporary injury and pain. I will take proper steps to fulfill whatever medical files are required of me.”

At the oral hearing, the appellant, his representative and the ministry’s representative were present in person and neither the appellant nor the ministry presented any new evidence.

At the hearing, the appellant and the appellant’s representative collectively submitted that the appellant is a recipient of income assistance and his score on the Employment Screen is 11. Therefore the appellant meets the eligibility requirements of section 2 (1) and section 2 (2) of the EAR. They further submitted that the appellant also met consequential applicable criteria of section 2 (4) (a) of the EAR, as a medical practitioner had confirmed that the appellant has a medical condition that has continued for over a year and is likely to continue for at least two more years. Therefore, the main issue under the applicable section 2 (4) (b) of the EAR is whether the appellant has a *“barrier that precludes the appellant from searching for, accepting or continuing in employment”*. With regard to this final point, it was contended that the minister’s interpretation that the appellant’s medical condition and resultant restriction do not preclude the appellant from searching for, accepting or continuing in *“all types of employment including sedentary, non-physical work or participation in an employment program to assist overcoming barriers to employment”* is not based upon any criteria prescribed under the applicable law.

In addition to the foregoing submissions, the following additional information also became available to the panel at the hearing as a result of questions to the appellant from the appellant’s representative, ministry’s representative and the panel members:

- The appellant has an injury in his back since 2007, which is very painful. The pain has become chronic and the Second Medical Report confirms that the appellant cannot do "*any exertion related activity*" and that his health related restrictions preclude him from searching for, accepting, or continuing in employment in the foreseeable future;
- The appellant experiences pain every day. In the past, the medication that he was prescribed for inflammation and pain, have not worked. Physiotherapy was also recommended to him, but he did not have money to pay for it;
- The appellant has participated in Employment Programs that teach preparation of resumes and interview techniques. However, he has been unable to complete them due to "numbing pain";
- Earlier this year, the appellant had been employed by a not-for-profit organization to do non-physical work. He could not continue this employment beyond three weeks. His main physical discomfort is that he cannot bend. If he had asked the employer to give him a shorter shift, the employer might have terminated his employment earlier;
- The appellant moved to BC from another province in 2011 and therefore his earlier medical reports are not available to him for submission to the ministry. However, in the past, he has informed the ministry about his pain; and
- As a young man, the appellant is willing to undertake employment but is unable to do so because of his medical condition; as a result of his medical condition, he also experiences mental and emotional pain that makes it difficult for him to function normally.

At the hearing, the ministry submitted that it reviews applications for assistance based upon all the information received orally and in written form by the ministry from an applicant for assistance. In the case of the appellant, both at the time of his two previous applications for assistance in 2011 and in 2012, the ministry's records indicate that the appellant had informed the ministry that he had been working previously at retail and odd jobs to support himself. The ministry's record also indicated that the appellant had failed to participate and/or complete Employment Programs in which he was enrolled and therefore his file was closed. The ministry further submitted that the intention of the applicable legislation is to include all kinds of employment including those that entail physical labor and those that are sedentary, non-physical kinds of work. The medical practitioner's supplementary report dated June 26, 2013 states that the appellant "*cannot do exertion related activity*" and it therefore does not preclude employment that is non-physical in nature. The ministry contended that this is the plain interpretation of the applicable legislation and the ministry does not have any policy relating to such interpretation.

The panel accepts the foregoing information as additional evidence as it relates to information and records before the ministry at the time of reconsideration.

Based on the foregoing, the panel makes the following findings of fact:

- The appellant has been a recipient of income assistance for at least 12 of the last 15 months;
- The appellant scored a total of 11 on the employability screen;

- The appellant's physician has confirmed that the appellant's medical condition has continued for one year and is likely to continue for at least two more years; and
- The appellant's physician has confirmed that the appellant suffers from a medical condition, other than addiction, that is as a result of an injury and is painful, and as a result thereof the appellant cannot do any exertion related activity;
- The appellant has worked intermittently since his injury in 2007 at retail and odd jobs that do not entail exertion related activity;
- The appellant has participated in, but not completed, Employment Programs in the past. He is currently not participating in any Employment Program.

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 requirement of section 2 (4) (b) of the EAR that in the opinion of the ministry, the appellant's medical condition is not 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)

It is not in dispute that the appellant has: (a) 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 his employability score was 11, his application was appropriately considered under section 2 (4) of the EAR; and (c) based on the foregoing, the ministry was satisfied that the appellant's medical condition met the medical criteria prescribed in section 2 (4) (a) of the EAR.

However, pursuant to the provisions of section 2 (4) (b) the ministry was not satisfied that the medical condition of the appellant precludes him from searching for, accepting or continuing in "*all types of employment including sedentary, non-physical work or participation in an employment program to assist in overcoming barriers to employment*".

The appellant's position is that the reconsideration decision that denies his application as a person with PPMB is unreasonable, particularly as the provisions of section 2 (4) (b) do not make any express reference to "*sedentary, non-physical work*". The appellant has tried to be employed in the past, but has not been able to continue with such employment because of his medical condition, which is described in greater detail in Part E of the panel's decision.

The ministry's position is that the denial of the appellant's qualification as a PPMB was reasonably supported by evidence that was before the ministry at the time of reconsideration. The ministry argued that Second Medical Opinion states that the appellant has developed chronic pain as a result of his injury and therefore cannot do any exertion related activity. It does not, however, expressly rule out the appellant's ability to undertake sedentary, non-physical work. The appellant also has confirmed that he has intermittently worked at retail and odd jobs in the past since his 2007 injury to support himself.

The First Medical Report, which was before the ministry at the time of reconsideration, is specifically worded and designed to disclose medical information for the purposes of assisting the ministry to assess the appellant's employability. Section 3 –Restrictions of the First Medical Report envisages provision of information relating to the specific nature of the restriction and Section 4 –Additional Information envisages additional documentation that supports the severity and restrictions of the relevant medical condition. Neither of these Sections of the First Medical Report appears to have been completed in a satisfactory manner by the medical practitioner consulted by the appellant. Nor does the Second Medical Report adequately address these specific matters. The panel finds that it is the appellant's responsibility to provide such complete information to the ministry in support of his application for PPMB designation.

Based upon the foregoing analysis, the panel finds that both the First Medical Report and the Second Medical Report fall short of establishing that the appellant is precluded from any form of work such as that in a suitable environment doing sedentary less physically active work. This conclusion is supported by the fact that the appellant has, indeed, worked intermittently at retail and odd jobs since his injury in 2007.

APPEAL #

The panel, therefore, finds the ministry's determination, pursuant to the provisions of section 2 (4) (b), that the appellant's medical condition is not a barrier that precludes him from searching for, accepting or continuing employment was reasonable. The panel further finds that the ministry's reconsideration decision was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel confirms the decision of the ministry.