

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated September 4, 2013 which held that the Appellant did not meet the legislative requirements to qualify as a person who has persistent multiple barriers to employment as set out in section 2 of the EAR.

The Ministry held that the Appellant’s medical condition does not seriously impede the Appellant’s ability to search for, accept or continue in employment as outlined in section 2(3)(a) and (b) of the EAR and that not all steps have been taken for the Appellant to overcome the barriers identified in the employability screen as outlined in section (3)(c) of the EAR.

Additionally, the Ministry was not satisfied that the Appellant has met section 2(4). Specifically, it is the Ministry’s opinion that the Appellant’s medical condition does not preclude the Appellant from searching for, accepting, and maintaining all types of employment.

## PART D – Relevant Legislation

*Employment and Assistance Act* (“EAR”), section 2

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following:

1. Ministry of Social Development Medical Report – Persons with Persistent Multiple Barriers dated May 3, 2013 completed and signed by the medical practitioner (the “Medical Report 2”)

The practitioner listed the primary medical condition as osteoarthritis beginning in 2009. The secondary medical condition was left blank. The description of the overall medical condition (mild, moderate or severe) was also left blank.

The Medical Report asked the practitioner to describe the nature of any restrictions to the medical condition (for example, restricted motion in arms or legs). In response, the Appellant’s practitioner indicated chronic pains and restricted movement, and that the expected duration of the medical condition was two years or more.

2. Ministry of Social Development Client Employability Profile dated July 31, 2013 page 1 and 2 (the “Profile”)

The Profile listed employment limitations used by the Ministry to determine whether a client has limitations that affect employment options. These included work experience/job retention, employment search skills, education/training, literacy, transportation, child care, criminal record, shelter, health (excluding addictions), disability and communication skills.

Under “Severely Limits Employment Options” it was found that the following factors severely limited the Appellant’s employment options: work experience or unemployment for over three years, level of education, severe health condition and persistent disability.

Under “Affects Employment Options” it was found that the following factors affected the Appellant’s employment options: poor literacy and inadequate transportation.

Under “No Employment Limitations” it was found that the following factors did not limit the Appellant’s employment options: good employment search strategy and action plan, no child care required, no criminal record, adequate shelter, and good communication skills and interpersonal skills.

Under the Comments section the Ministry noted that the Appellant has a stable fulltime history of employment as a heavy equipment operator and farm worker which came to an end three years ago when he was diagnosed with osteoarthritis in his spine. It was noted that the Appellant is in chronic and severe pain and can no longer walk longer than ten minutes, do yard work, get his own groceries, lift over ten pounds and lie down (sleeps in an upright position). The Ministry also noted that the Appellant is having his artificial elbow joint replaced and is on a wait list. The rehabilitation period is stated to be longer than four months and during this time the Appellant will need assistance in his daily activities.

Under Recommendations for Employment Plan Activities there are no recommendations added by the Minister.

Page two of the Profile was an Employability Screen listed eight questions to determine if the Appellant's current situation warrants no employment related obligation as a result of severe barriers.

The Appellant scored 17 out of a possible 21 whereby 21 represented severe barriers to employment. The Appellant did not score any points for his age (50-65 inclusive) and for not having collected assistance in the last three years.

The Appellant scored the highest points in each category for being on assistance more than 12 months; having less than a grade 10 education; none or limited work experience in the past three years and literacy level.

3. Ministry of Social Development Employment and Assistance Request for Reconsideration form dated August 26, 2013 completed and signed by the Appellant (the "Reconsideration Form")

The Appellant indicated under Reasons for Reconsideration that he has barriers to employment including the following:

- (i) osteoarthritis and chronic pain and limited lifting;
- (ii) grade seven education and "low" reading;
- (iii) age barrier; and
- (iv) no driver's license and no other transportation, including public transportation.

4. Employment and Assistance Appeal Tribunal Notice of Appeal form dated September 13, 2013 completed and signed by the Appellant (the "Appeal Form").

The Appellant stated that he completed a work plan in August, 2013 and he has been going to an employment center once per week and working with staff to find suitable employment.

The Appellant left the contact name and number of the staff that was assisting him in his job search.

5. Ministry of Social Development Medical Report – Persons with Persistent Multiple Barriers not dated completed and signed by the medical practitioner (the "Medical Report")

The practitioner listed the primary medical condition as osteoarthritis and the secondary medical condition as chronic pains. The recommended treatment included exercise, anti-inflammatories and pain pills with the outcome being no change or/and stable. The expected duration of the medical condition was two years or more.

The Medical Report asked the practitioner to describe the nature of any restrictions to the medical condition (for example, restricted motion in arms or legs) and the Appellant's practitioner stated that the "Pt [sic] says can't do any work. Paining too much."

The Appellant provided the following additional documentary evidence prior to the appeal:

1. Letter dated October 2, 2013 from the Appellant to the Employment and Assistance Appeal Tribunal (the "Appellant Letter")

The Appellant stated that he had osteoarthritis in his spine that has gotten progressively worse every year and that he is on pain medication. The Appellant stated that he used to be a ranch and farm worker but he can no longer do that type of work.

The Appellant indicated that he is trying to go back to work and waiting to go to school in the fall to upgrade his education.

The panel finds that the additional evidence provided by the Appellant clarified his situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry reasonably determined that the Appellant does not qualify as a person who has persistent multiple barriers (PPMB) to employment because he did not meet the legislative requirements under section 2 of the EAR.

Specifically, the Ministry held that the Appellant's medical condition does not seriously impede the Appellant's ability to search for, accept or continue in employment as outlined in section 2(3)(a) and (b) of the EAR and that not all steps have been taken for the Appellant to overcome the barriers identified in the employability screen as outlined in section (3)(c) of the EAR.

Additionally, the Ministry was not satisfied that the Appellant has met section 2(4). Specifically, it is the Ministry's opinion that the Appellant's medical condition does not preclude the Appellant from searching for, accepting, and maintaining all types of employment.

Section 2 subsections (1)(2)(3)(4) of the EAR states:

- (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out
  - (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

The Ministry determined that the Appellant was on income assistance for at least 12 months preceding 15 calendar months as required by section 2 (2) of the EAR, but argued that he did not meet the requirements in sections 2(3) or (4) of the EAR.

The Ministry acknowledged that the Appellant scored 17 on the employability screen of which the Appellant had to score a minimum of 15 pursuant to subsection (3)(a)(i) of the EAR, but concluded that based on the results of the employability screen the noted factors were not considered to be a barrier that seriously impeded the Appellant's ability to search for, accept or continue in employment pursuant to subsection (3)(a)(ii) of the EAR.

The Ministry also acknowledged that the medical practitioner confirmed the Appellant's condition has lasted for at least one year and is expected to last at least another two years as required by subsections 2(2) and (3)(b)(i)(A).

In the opinion of the Minister, however, the medical condition was not a barrier that seriously impeded the Appellant's ability to search for, accept or continue in employment and the Appellant has not taken all steps that the Minister considers reasonable for the person to overcome the barriers that were highlighted in the employability screen as per subsections (2) and (3)(b)(ii) and (c).

The Ministry cited the following reasons:

In the ministry opinion your medical condition does not seriously impede employment and not all steps have been taken to overcome your employment barriers. Severity of restrictions not confirmed by a doctor, and no history on file to confirm that you have taken all reasonable steps to overcoming your employment barriers. Since applying for assistance it appears that you were to be doing an independent job search however no record of work searches were found on file nor any record of any other activities to demonstrate that you were making all reasonable efforts to overcome your employment barriers.

The Ministry examined the Medical Report which listed the primary medical condition as osteoarthritis and the secondary medical condition as chronic pains. The recommended treatment included exercise, anti-inflammatories and pain pills with the outcome being no change or/and stable.

When asked to describe the nature of any restrictions to the medical condition (for example, restricted motion in arms or legs) and the Appellant's medical practitioner stated that the "Pt [sic] says can't do any work. Paining too much."

The Ministry also took into consideration that the Appellant had insufficient support in his file to verifying work search efforts or any reasonable efforts to overcome employment barriers.

The appellant argued that he had osteoarthritis in his spine that his condition has got progressively worse every year and that requires him to take pain medication. The Appellant indicated under

Reasons for Reconsideration that he has barriers to employment including: osteoarthritis and chronic pain and limited lifting; grade seven education and "low" reading; age barrier; and no driver's license and no other transportation, including public transportation.

The Appellant stated that he used to be a ranch and farm worker but he can no longer do that type of work any longer due to his condition. The Appellant indicated that he is trying to go back to work and is waiting to go to school in the fall to upgrade his education. The Appellant also confirmed that he completed a work plan in August, 2013 and he has been going to an employment center once per week and working with staff to find suitable employment.

In determining whether a person is a Persons with Persistent Multiple Barriers ("PPMB") an applicant must meet a number of requirements that are set out in section 2 of the EAR. The Ministry is given a fairly broad discretion to interpret the results of the employability screen to determine whether the Appellant has barriers that seriously impede their ability to search for, accept or continue in employment and additionally interpret the findings of the medical practitioner to determine whether the medical condition itself is specifically a barrier to employment and whether or not the Appellant has taken all reasonable steps to overcome the barriers.

The employability screen has a list of questions - one through eight - that are intended to determine whether a person has severe barriers to finding employment. This included the persons age, number of times the person has been on assistance in the last three years; total amount of time on income or social assistance in the last three years; level of education; total amount of time in paid employment in the last three years and level of English skills.

The Ministry stated that the Appellant may have done independent job searches but noted that there were no records on file to confirm job searches or any other activities.

The Appellant gave evidence stating that he was looking for work and trying to go back to school to upgrade his education but again there is no documentation to support his efforts.

The Ministry additionally found that the severity of the medical condition was not confirmed by the medical practitioner. The Medical Report merely stated that the patient cannot do any work as he was "paining," but the medical practitioner does not describe any restrictions or attach additional supporting documents to support the severity of the condition as requested in the report. The Medical Report on its own does little more than confirm that the Appellant has osteoarthritis but not the severity of the condition which would otherwise support the condition as a barrier that seriously impedes the Appellant's employability.

Finally, and with respect to the final criteria set out at section 2(4), the panel finds that the Ministry reasonably determined that the Appellant's medical condition does not preclude the Appellant from searching for, accepting, and maintaining all types of employment. As noted above, the medical report does little more than confirm the appellant's medical condition. It does not speak to the specificity of the appellant's restrictions, and it does not indicate that the appellant's restrictions are so significant as to impact his overall ability to search for, accept, and continue employment.

The panel therefore finds the Ministry's determination that the Appellant does not qualify as a PPMB was reasonably supported by the evidence, and confirms the decision pursuant to section 24(1)(a) of

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the Employment and Assistance Act.