

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of May 10, 2013 in which the Ministry of Social Development (Ministry) denied the appellant's application for designation as a person with persistent multiple barriers to employment (PPMB) under section 2 of the *Employment and Assistance Regulation* on the basis that the appellant's medical conditions do not preclude him from searching for, accepting or continuing in *all* types of employment.

PART D – Relevant Legislation

Employment and Assistance Regulation, section 2 ("EAR").

PART E – Summary of Facts

The evidence before the Ministry at the reconsideration included the following documents:

- Copy of 2 page form, Medical Report – Persons with Persistent Multiple Barriers, completed by the appellant's physician on October 19, 2012 ("PPMB Form");
- Copy of 1 page Ministry Employability Screen for the appellant, not dated, showing a total score of 11 ("E Screen"); and
- Copy of 1 page form, Medical Report – Employability, completed by the appellant's physician on November 5, 2012 ("Medical Report- Employability"), in which the physician indicated that the appellant's primary medical condition is "MVA (neck/back pain)" which occurred in October 2012 and his secondary medical condition is "drug abuse/anxiety" which he has had for "years" and checked "moderate" to describe the appellant's overall medical condition. In this form, the appellant's physician described the nature of the appellant's restrictions specific to his medical conditions as, "S/P MVA – R forearm/fingers Hand Surgery. Pat. w/ a lot of pain. Has drug abuse also & lots of anxiety. Unable to concentrate, always thinks about doing drugs."

In his written request for reconsideration, the appellant wrote that "the ministry submitted the wrong medical report which was from the prior month" (referring to the PPMB Form) and said that the Medical Report - Employability showed that he had a car accident and that he cannot move his hand and has lost feeling in his fingers. He also wrote that he has severe neck and back pain since the accident and has a sleeping disorder, as well as anxiety and depression, and cannot concentrate.

In his Notice of Appeal, the appellant wrote that he had been in accident and broke his fingers, that he had pins removed from his hand, but that it is very painful. He wrote that he has a sleeping problem, his body aches "all the time", he can't stand for long, has migraine headaches and "very bad anxiety and mental issues." The panel admitted the appellant's written submission in his Notice of Appeal under section 22(4)(b) of the *Employment and Assistance Act* as written testimony in support of the information and records before the minister when the decision being appealed was made.

The reconsideration decision notes that the appellant has been a recipient of income assistance for at least 12 of the past 15 months (he has been collecting income assistance since March 2011). In the PPMB Form, the appellant's medical practitioner indicated that the appellant's primary medical condition is drug abuse, which the appellant's physician indicated he had suffered from for "years" and that his secondary medical condition is anxiety, which has affected the appellant for "years". The appellant's physician indicated on the PPMB Form that the prognosis is that the appellant's medical conditions will continue for 2 years or more and are chronic. On the PPMB Form, the appellant's physician indicated that the appellant's treatment for his medical conditions is "medications" and that the outcome is "no change". In the PPMB Form, the appellant's physician wrote "unable to concentrate, always thinks about doing drugs, gets anxiety, mood swings, loses focus, unable to work" in the space for describing the nature of any restrictions specific to the medical conditions.

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's physician has confirmed that he suffers from the medical conditions of drug abuse and anxiety; and
- The appellant's physician has confirmed that his medical conditions have continued for one year and are likely to continue for at least two more years.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's reconsideration decision of May 10, 2013, denying the appellant's application for designation as a person with persistent multiple barriers to employment under section 2 of the *Employment and Assistance Regulation* ("EAR") on the basis that the appellant's medical conditions do not preclude him from searching for, accepting or continuing in all types of employment.

Section 2 of the EAR governs the requirements to qualify as a person with persistent multiple barriers (PPMB) to employment. Under subsection 2(1), in order to qualify as a PPMB to employment, a person must meet the requirements set out in subsection 2(2) **and** subsection 2(3) **or** 2(4). Subsection 2(2) requires that the applicant must be a recipient for at least 12 of the immediately preceding 15 calendar months of income assistance or hardship assistance under the *Employment and Assistance Act* (subs. 2(2)(a)). Subsections 2(3) and 2(4) provide the following:

(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 appellant did not challenge his score of 11 on the E Screen at the reconsideration or on appeal. Given that the appellant did not qualify for consideration under subs. 2(3) of the EAR (which requires a score of 15 or higher on the E Screen), the Ministry considered his application for PPMB designation under subs. 2(4) of the EAR.

In the reconsideration decision, the Ministry stated that subs. 2(4)(a) requires that an applicant for

PPMB designation have a medical condition other than addiction and “therefore the restrictions related to [the appellant’s] drug addiction will not be considered.” The Ministry noted that the appellant’s physician indicated in the PPMB Form that the appellant takes medications, but that it “is unclear if the medications” are for the appellant’s drug addiction or his anxiety. The Ministry further determined that, based on the information provided by the appellant’s physician in the PPMB Form, it is “unclear if [the appellant’s] anxiety is a symptom related to [his] drug addiction.” The reconsideration decision concluded that “as the restriction to employment is anxiety, mood swings and loses focus”, in the Minister’s opinion, the appellant’s medical condition and resultant restriction does not preclude him from searching for, accepting or continuing in all types of employment, including part-time work, as required by subs. 2(4)(b) of the EAR.

Further in its reconsideration decision, the Ministry noted the appellant’s submissions regarding the information contained in the Medical Report - Employability form completed by his physician one month after the physician completed the PPMB Form, referring to the car accident and his hand injuries. The Ministry noted in the reconsideration decision that the Medical Report – Employability form is a “document used to assess [an applicant] whose only barrier appears to be a drug or alcohol, medical health or temporary medical condition.” The Ministry wrote that the purpose of this form is “to assess employability and to determine if [the applicant qualifies] for a temporary exclusion from time limits.” The Ministry advised the appellant that the Ministry would only consider the information in the PPMB Form as the appellant was requesting PPMB designation, and would not consider the information in the Medical Report – Employability.

The panel finds that the appellant has not provided evidence that his medical conditions preclude him from searching for, accepting or continuing in employment – there is no information before the panel from the appellant’s physician or from the appellant to confirm that he is precluded from searching for, accepting or continuing in employment, only the appellant’s physician’s remarks on the PPMB Form that the appellant is “unable to work,” without further explanation. The panel finds that the Ministry’s determination that it is unclear from the information in the PPMB Form whether the appellant’s anxiety (his secondary medical condition) is a symptom of his drug addiction is reasonable based on the evidence in the PPMB Form. The panel also finds that the Ministry’s determination that it would not consider the information in the Medical Report – Employability in the context of the appellant’s application for PPMB designation was reasonable in the circumstances – the panel notes that in this form, the appellant’s physician has not indicated how the appellant’s injuries from the motor vehicle accident would restrict his ability to work, and that the appellant’s physician has indicated that the appellant’s secondary medical condition is “drug abuse/anxiety” and that the medical conditions are “moderate”, which supports the Ministry’s determination on the PPMB application.

The panel finds that the Ministry’s determination that the appellant’s medical conditions do not preclude him from searching for, accepting or continuing in employment as required by subsection 2(4)(b) of the EAR is reasonably supported by the evidence. Accordingly, the panel confirms the reconsideration decision of May 10, 2013.