



PART C – Decision under Appeal

The appellant appeals the reconsideration decision of November 7, 2013 in which the Ministry of Social Development and Social Innovation (ministry) denied the appellant's application for qualification as a person with persistent multiple barriers to employment (PPMB) under section 2 of the *Employment and Assistance Regulation* (EAR) on the basis that, in the minister's opinion, the information provided does not establish that the appellant's medical conditions present a barrier that precludes him from searching for, accepting or continuing in employment as required by subsection 2(4)(b) of the EAR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

- Copy of 2 page form, Medical Report – Persons with Persistent Multiple Barriers, completed by the appellant and his physician on July 8, 2013 (“July PPMB Form”);
- Copy of 2 page form, Medical Report – Persons with Persistent Multiple Barriers, completed by the appellant and his physician on October 22, 2013 (“October PPMB Form”);
- Copy of 1 page ministry Employability Screen for the appellant, not dated, showing a total score of 13 (“E Screen”);
- Copy of the appellant’s request for reconsideration dated October 31, 2013 with handwritten submission prepared by an advocate for the appellant; and
- Copy of a 1 page questionnaire/letter prepared by an advocate for the appellant on October 31, 2013, addressed to the appellant’s physician with the physician’s handwritten notes in response to 2 questions signed and dated November 4, 2013.

In the July PPMB Form, the appellant’s physician diagnosed his primary medical condition as right knee meniscus tear, onset in 2010, and secondary medical condition of chronic lower back pain with an onset of 2006. The physician indicated that there was no treatment for the conditions and wrote, “orthopedist appointment pending.” The physician indicated the appellant’s condition has existed for 3 years, and was expected to continue for less than 2 years. He indicated that the condition was not episodic in nature. In his answer to the question asking to indicate the nature of the appellant’s restrictions, the physician wrote, “pain in r. knee when standing, walking - lower back pain with standing, bending.” The physician indicated he had been the appellant’s medical practitioner for over 6 months.

In the October PPMB Form, the appellant’s physician diagnosed his primary medical condition as right knee meniscus tear, onset in 2010 (the same as the July PPMB Form), and also indicated that the appellant had a secondary medical condition of depression/anxiety with the onset of 2013. The October PPMB Form does not indicate chronic lower back pain as a medical condition. The physician indicated that the treatment was a prescription anti-depressant and wrote, “no change yet” as well as Advil. On the October PPMB Form, the physician indicated that the appellant’s condition has existed for 3 years, and was expected to continue for 2 years or more (which is different from the answer on the July PPMB Form). He indicated that the condition was not episodic in nature. In his answer to the question asking the physician to indicate the nature of the appellant’s restrictions (question #3), the physician wrote, “restricted walking, standing - decreased attention, concentration, energy.”

On the E Screen, the appellant’s total score was 13. In answer to question #5, “What is the highest level of education you have completed?” there is an “X” beside the answer “Grade 10 to 12” for a score of 1. In answer to question #7, “What is your English speaking ability or literacy level?” there is an “X” beside the answer “Good working knowledge of English” for a score of 0.

In the questionnaire/letter completed by the appellant’s physician on November 4, 2013, the appellant’s physician wrote, “see page 2 of previous form question #3” in response to the question, “What are the health limitations, if any, that arise from your patient’s mental health condition (depression and anxiety) that restrict his ability to work?” The appellant’s physician answered “yes”.

to the advocate's second question, "When both his physical and mental conditions are considered, are his health-related restrictions severe enough to preclude him from searching for, accepting, or continuing in employment in the foreseeable future?"

The appellant's request for reconsideration was completed by his advocate who referred to the October PPMB Form and to the November 4, 2013 questionnaire/letter. On his behalf, the appellant's advocate wrote, "When the above information is considered, we submit that the requestor has medical conditions that have lasted 1 year and are expected to continue 2 more years, in addition to physical limitations, has depression and anxiety which cause decreased attention, concentration and energy and that [the appellant's physician] has confirmed that his physical and mental restrictions preclude him from searching for, accepting or continuing in employment."

On this appeal, the appellant provided a 4-page written submission dated December 9, 2013, prepared by his advocate. In the submission, the appellant's advocate said that although the October PPMB Form does not refer to the appellant's medical condition of chronic back pain (which is in the July PPMB Form as the appellant's secondary medical condition with an onset of 2006), the appellant still suffers from the condition of chronic back pain. The appellant's advocate wrote that "although there is no mention of the lower back pain in the [October PPMB Form] ... it is extremely unlikely for a condition that has existed since 2006 and described as chronic to disappear in the space of a few months." In the appeal submission, the appellant's advocate also writes "the ministry made two errors when [the ministry] completed the [E Screen]." With respect to question #5 of the E Screen, the appellant says that he has less than a Grade 10 education – that he has the equivalent of a Grade 6 education. The appellant's advocate also writes that the answer to question #7 of the E Screen is that English is not the appellant's first language and although he has taken some ESL courses, "he believes that his working knowledge of English still needs to improve." The appellant's advocate says in his written submission that his total score on the E Screen should exceed 15.

The appellant's written submission was provided to the ministry on December 10, 2013. In its submissions on this appeal dated December 11, 2013, the ministry relied on its reconsideration decision.

The appellant's written submission on appeal contains evidence – that the scores of the answers to questions #5 and #7 on the E Screen should be increased to reflect that the appellant has a grade 6 education and that English is his second language. The *Employment and Assistance Act* requires in section 22(4) that a panel may only admit as evidence information and records that were before the minister when the decision being appealed was made (subs. 22(4)(a), and oral and written testimony in support of the information and records that were before the minister when the decision being appealed was made (subs. 22(4)(b)). While this new evidence is compelling, the panel has reviewed the reconsideration decision as well as the appellant's submissions to the ministry on request for reconsideration and can find no previous challenges to the appellant's score on the E Screen on the basis that he has a grade 6 education and English is his second language. Accordingly, the panel finds that the evidence in the appellant's written submission on appeal does not meet the requirements of subs. 22(4)(a) as the information was not before the minister at the time the decision being appealed was made and, further, that it does not meet the requirements of subs. 22(4)(b) as it is not testimony in support of information that was before the ministry at the time the decision under appeal was made. Accordingly, the panel does not admit as evidence the appellant's assertion in his written submission on appeal that he has a grade 6 education and English is his second language.



The panel makes the following findings of fact:

1. The appellant has been on income assistance for at least 12 of the immediately preceding 15 calendar months.
2. The appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that in the opinion of the medical practitioner has occurred frequently in the past year and is likely to continue for at least 2 more years.

[REDACTED]

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of November 7, 2013, denying the appellant's application for qualification as a person with persistent multiple barriers ("PPMB") to employment under section 2 of the *Employment and Assistance Regulation* ("EAR") on the basis that the information provided does not establish that the appellant's medical conditions present a barrier that precludes him from searching for, accepting or continuing in 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.

Ministry's position

The ministry relies on the reconsideration decision. The ministry found that the appellant met the requirement of subs. 2(2) as he had been receiving income assistance for at least 12 of the immediately preceding 15 months. The ministry determined that, based on the score of 13 on the E

[REDACTED]

Screen, 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 assessed the appellant's application for PPMB designation under subs. 2(4) of the EAR, but determined that it was not satisfied the appellant met all of the requirements for subs. 2(4).

In the reconsideration decision, the ministry noted that in order to satisfy subs. 2(4) of the EAR, the minister must be satisfied of three things: 1) the appellant has a medical condition other than an addiction that, 2) in the opinion of a medical practitioner has lasted or occurred frequently for at least 1 year and is likely to continue for at least 2 more years and, 3) in the ministry's opinion, the medical condition presents a barrier that precludes the appellant from searching for, accepting or continuing in employment. In the reconsideration decision, the ministry found that the appellant satisfied the first 2 requirements, but not the third.

In the reconsideration decision, the ministry found that the appellant had met the first criteria under subs. 2(4) as his medical practitioner confirmed that the appellant has a condition other than an addiction based on the information in the October PPMB Form that the appellant suffers from the primary medical condition of a right meniscal tear onset in 2010 and a secondary medical condition of depression and anxiety with an onset in 2013.

In the reconsideration decision, the ministry was satisfied that the appellant's medical practitioner had confirmed that his medical condition of a right meniscal tear has continued for one year and is likely to continue for at least 2 more years. However, the ministry determined that the appellant's medical practitioner had not confirmed that his secondary medical condition – depression and anxiety – had continued for one year as the physician indicated the onset as 2013, as set out in the October PPMB Form, and the appellant's application for PPMB designation was made in 2013.

As noted in the reconsideration decision, the ministry was not satisfied that the information provided established that his medical conditions present a barrier that precludes him from searching for, accepting or continuing in employment. The ministry noted that the information provided by the appellant's physician in the October PPMB Form did not indicate whether the appellant's decreased attention, concentration and energy relates to his primary medical condition, or his secondary medical condition, or a combination of both. Further, the ministry noted that the level of restriction noted by his physician regarding the appellant's walking and standing associated with the right meniscal tear was unclear and the ministry was not satisfied that it poses a barrier that precludes the appellant from all types of employment. The ministry also considered the November 4, 2013 questionnaire/ letter and determined that as the ministry was only considering the right knee meniscal tear (and not the mental and physical conditions collectively), it was not satisfied that this condition in and of itself poses a barrier that precludes the appellant from searching for, accepting or continuing in employment.

Appellant's Position

In the written submission prepared by the appellant's advocate, the appellant argues that the ministry was too narrow in its approach and should have considered the appellant's medical condition of anxiety and depression as his "mental health restrictions are an important reason why the appellant cannot work." The appellant states in his written submissions that he has been on medication for his anxiety and depression since August 2013, but that his symptoms of depression and anxiety predate

his agreeing to take medication by a couple of years. The appellant further submits that the ministry should have considered the medical condition of chronic back pain, which his physician had indicated in the July PPMB Form was his secondary medical condition. The appellant says he still suffers from the secondary medical condition of chronic back pain and that "perhaps [his physician] was of the opinion that he had already noted it as a secondary medical condition [on the July PPMB Form] so he did not have to repeat it on the [October PPMB Form]." The appellant also submits in his written submission that his physician confirmed in the November 4, 2013 questionnaire/letter that the appellant is "precluded from searching for, accepting, or continuing in employment in the foreseeable future by his physical and mental conditions."

Analysis

As stated previously, section 2 of the EAR governs the requirements for PPMB qualification and, under subs. 2(1), to qualify as a PPMB to employment, a person must meet the requirements set out in subs. 2(2) and subs. 2(3) or 2(4). Subsection 2(2), which requires that the appellant has been on income assistance for 12 of the past 15 months, is not disputed in this appeal. Although the appellant disputes his score of 13 on the E Screen in his written submissions on appeal and argues that the ministry should have considered his application for PPMB under subs. 2(2) and 2(3) (instead of under subs. 2(2) and 2(4)), the panel has not admitted the new evidence to support this argument on this appeal as it does not meet the requirements of section 22(4) of the *Employment and Assistance Act*. Accordingly, the panel agrees with the ministry's determination that the appellant's application for qualification for PPMB designation should be considered under subs. 2(2) and 2(4) of the EAR.

As stated in the reconsideration decision, the ministry was satisfied that the appellant met the requirement of set out in subs. 2(4)(a) – that the appellant's medical practitioner has confirmed that the appellant's medical condition (of the right meniscal tear) has continued for one year and is likely to continue for at least 2 years. The appellant asserts that the ministry should have considered his secondary medical condition of chronic back pain, which was confirmed by his medical practitioner in the July PPMB Form as having an onset of 2006. The panel agrees with the appellant's submission that it is unlikely that his chronic back pain was resolved between the time his physician completed the July PPMB Form and the October PPMB Form.

The appellant also challenges the ministry's determination that his secondary medical condition of depression and anxiety cannot be considered as part of his PPMB application because his medical practitioner confirmed that it had an onset of 2013. The appellant says that this is an "unreasonably narrow" interpretation of the legislation. Although the appellant states that in his written submissions on appeal that he has suffered from anxiety and depression for a couple of years before he started taking medication for it in August 2013, subs. 2(4)(a) of the EAR requires that the appellant's *medical practitioner* confirm that the appellant's medical condition has continued for at least one year. The panel notes that the appellant's physician completed the October PPMB Form on October 22, 2013 and indicated in this form that the appellant's anxiety and depression started in 2013. There is no other evidence from the appellant's physician regarding the onset of the appellant's anxiety and depression. Accordingly, the panel finds that the ministry's determination that the appellant's medical practitioner had not confirmed that his secondary medical condition of anxiety and depression had continued for at least 1 year, as required by subs. 2(4)(a) of the EAR, was reasonable based on the evidence.

The appellant challenges the ministry's determination that the information provided does not establish that his medical conditions present a barrier that precludes him from searching for, accepting or continuing in employment as required by subs. 2(4)(b) of the EAR. The appellant says that the ministry's interpretation is "unreasonably narrow and is not consistent with the PPMB regulatory requirement" as restrictions such as pain and depression could allow a person to "search for" and/or "accept" employment, but make the person an unreliable employee and unable to "continue in" employment (as set out in subs. 2(4)(b)). The appellant asserts that information provided by the appellant's physician in the November 2013 questionnaire/letter confirms that his medical conditions preclude him from searching for, accepting or continuing in employment.

In its reconsideration decision, the ministry found that it was "difficult to determine whether [the appellant's] decreased attention, concentration and energy" as indicated by the physician in the October PPMB Form relates to the appellant's primary medical condition or his secondary medical condition of anxiety and depression. As noted by the ministry, and accepted by this panel, the ministry could not consider the appellant's secondary medical condition of anxiety and depression as it was not confirmed by his medical practitioner to have continued for at least one year. The ministry also found that the appellant's physician had not provided information about the level of the appellant's restrictions caused by his right knee tear and chronic back pain in either the July PPMB Form, the October PPMB Form, or by his response of "yes" in the November questionnaire/letter to the question whether the appellant's conditions are severe enough to preclude him from searching for, accepting or continuing in employment.

The information set out in the July PPMB Form by the appellant's physician is that the appellant's medical conditions restrict him as "pain in r. knee when standing, walking, lower back pain with standing, bending." The information set out in the October PPMB Form by the appellant's physician is that the appellant's medical conditions "restricted walking, standing decreased attention, concentration, energy." In the November questionnaire/letter, the appellant's physician referenced his answer to the October PPMB Form, and answered "yes" to the question "when both his physical and mental conditions are considered, are his health-related restrictions severe enough to preclude him from searching for, accepting or continuing in employment in the foreseeable future." The panel agrees with this ministry's finding that this information does not indicate the degree of restrictions caused by the appellant's medical conditions or clarify what restrictions result from which medical conditions. Accordingly, the panel finds the ministry's determination that it is not satisfied that the appellant meets the requirements of subs. 2(4)(b) – that his medical conditions are a barrier that preclude him from searching for, accepting or continuing in employment – is reasonable based on the evidence.

The panel confirms the ministry's reconsideration decision of November 7, 2013.