



## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (ministry) dated January 27, 2014 denying the appellant continuing qualification as a Person with Persistent Multiple Barriers (PPMB) to employment upon the renewal of her application. The ministry was not satisfied that three criteria set out in section 2 of the Employment and Assistance Regulation (EAR) had been met:

1. The appellant has a medical condition confirmed by a “medical practitioner” as required by subsection 2(4) of the EAR;
2. In the opinion of the “medical practitioner”, the medical condition has continued for at least one year or occurred frequently in the past year, and is expected to continue for at least 2 more years as required by paragraph 2(4)(a); and
3. in the opinion of the minister, the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment as required by paragraph 2(4)(b).

The ministry specifically found that the appellant’s doctor, a podiatrist, is not a “medical practitioner” under the *Interpretation Act* as it applies to provincial enactments. Notwithstanding the doctor’s status, the ministry was also not of the opinion that the information provided indicated the appellant’s medical condition presented barriers to employment.

## PART D – Relevant Legislation

Employment and Assistance Regulation, section 2;  
*Interpretation Act*, section 29

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

1. Information from the ministry's records indicating the appellant had received PPMB assistance since February 2008, renewed in November 2011.
  2. Medical Report – Persons with Persistent Multiple Barriers (PPMB medical report) dated October 15, 2013 and signed by the appellant's podiatrist, indicating:
    - Primary medical condition: hypertension, with date of onset left blank;
    - Secondary medical condition: onychocryptosis, with date of onset "yrs ago";
    - Treatment: "Reduction, debridement of partial spicule removal of nails B/L (illegible) toenails";
    - Outcome: "Decreases possibility of infection and surgery";
    - The condition has existed for "Years";
    - Prognosis: expected duration 2 years or more;
    - Additional comments: the podiatrist wrote "requires continual treatment" and check marked that the condition is episodic in nature; "every several mos." with duration "same as above";
    - Restrictions: "N/A".
- In the certification section of the PPMB medical report, the podiatrist endorsed that:
- He is a "physician registered with the College of Physicians and Surgeons of British Columbia and licensed to practice clinical medicine in BC", writing the word "Podiatrists" above "Physicians";
  - He is a specialist in podiatry;
  - He has been the appellant's medical practitioner for over six months;
  - He has a Medical Practitioner Number, which he included below his signature.
3. Appellant's undated Employability Screen indicating a total score of 11.
  4. Appellant's Client Employability Profile and Employment Checklist dated January 31, 2008 indicating barriers to employment due to Intractible Plantar Keratosis, Hypertension, Generalized Anxiety Disorder, pain, and minimal education and work experience.
  5. Two PPMB medical reports dated January 12, 2008 (2008 report) and October 19, 2011 (2011 report) respectively, completed by the appellant's podiatrist and indicating among other things:
    - Primary medical condition: Intractible Plantar Keratosis;
    - Secondary medical condition: Onychocryptosis;
    - Treatment: reduction, debridement, padding, and removing offending spicules;
    - Restrictions: painful ambulation.

In the certification section of these two PPMB medical reports, the podiatrist endorsed:

- in the 2008 report that he is a podiatrist : “physician” is crossed out with “podiatrist” inserted, and he wrote “British Columbia Association of Podiatrists” below College of Physicians and Surgeons;
- in the 2011 report that he is a “physician registered with the College of Physicians and Surgeons of British Columbia and licensed to practice clinical ‘podiatric’ medicine in BC” ;
- in both reports that he is a specialist in podiatry;
- in both reports that he has been the appellant’s medical practitioner for over six months; and
- in the 2011 report that he has a Medical Practitioner Number, which he provides.

6. The appellant’s Request for Reconsideration, signed by the appellant on January 13, 2014 and stating no reasons in Section 3: Reason for Request for Reconsideration. This section is left blank.

In her Notice of Appeal dated February, 3, 2014, the appellant states that:

- her podiatrist removes cysts on the bottom of her feet every couple of months;
- her cysts have made her toes curl;
- she cannot wear her shoes for more than an hour;
- the pain is terrible, her toes go numb; and
- she needs special running shoes.

In oral testimony, the appellant and her advocate added that the podiatrist had filled out the medical reports for 8 years and the ministry had always accepted that he was a medical practitioner. She noted that the podiatrist states in his reports that he is registered with the College of Physicians and Surgeons of BC (College). The appellant stated that her feet are so bad she can barely walk and she will eventually require special shoes because of the big growths taken off her feet. She added that last year the ministry asked her if she needed these shoes, but now they say she doesn’t qualify for PPMB. She advised that she will see her family doctor and her podiatrist at the end of the week and re-apply for PPMB.

In response to questions from the panel, the appellant stated that she has been in extreme pain since 2008. Her information hasn’t changed; she still has the same restrictions and her condition has gotten worse. She could not remember if she had been to her podiatrist since she received the reconsideration decision but she sees him every 3 months and did not feel she needed to ask him to clarify his registration with the College because “since 2008 he said he was with the College; he is registered with the College, but now there’s a glitch being thrown at me by the ministry, after they approved it all along.”

At the hearing, the ministry relied on its reconsideration decision. The ministry stated that the College has a website for checking whether a doctor is registered with the College, and that the name of the appellant’s podiatrist does not come up in a search of this website. Further, while the appellant’s previous PPMB medical reports did indicate restrictions, the ministry can only consider the most recent report of October 2013.

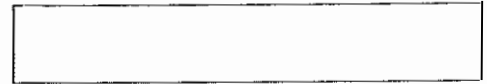
The panel admits the statements in the Notice of Appeal and the oral testimony of the appellant and ministry under section 22(4)(b) of the *Employment and Assistance Act*, as testimony in support of

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information that was before the ministry at the time the decision being appealed was made. The panel finds that the appellant's statements elaborate on the enduring nature and effects of her medical condition, and her belief that her podiatrist was registered with the College. The ministry's oral statements provide the basis for its finding that the podiatrist is not registered with the College as set out in the *Interpretation Act*.

The panel makes the following findings of fact:

1. The appellant was on PPMB assistance since 2008 and this appeal relates to her renewal application dated October 31, 2013.
2. The appellant has a medical condition, other than an addiction that is confirmed by a podiatrist, and in the opinion of the podiatrist has lasted for at least one year and is likely to continue for at least 2 more years.
3. The ministry approved the appellant's PPMB applications in 2008 and 2011 on the basis of medical reports from the podiatrist.
4. The appellant's podiatrist is not a registrant of the College of Physicians and Surgeons of British Columbia.
5. The appellant's conditions have endured over time and she has reported pain and difficulty with walking since 2008.



## PART F – Reasons for Panel Decision

The issue in this appeal is whether the following determinations of the ministry were reasonably supported by the evidence, or were a reasonable interpretation of the legislation in the circumstances of the appellant:

- The appellant was not eligible for continuing PPMB qualification because there was no information from a “medical practitioner” confirming a medical condition as required by subsection 2(4) of the EAR;
- A “medical practitioner” had not confirmed that the appellant’s condition had existed for at least one year, and was expected to continue for at least 2 more years as required by paragraph 2(4)(a); and
- The medical condition, in the ministry’s opinion, is not a barrier that precludes the appellant from searching for, accepting, or continuing in employment as required by paragraph 2(4)(b).

The relevant sections of the legislation are as follows:

### Employment and Assistance Regulation

#### 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.

## **Interpretation Act**

### **Expressions defined**

**29** In an enactment:

"medical practitioner" means a registrant of the College of Physicians and Surgeons of British Columbia entitled under the Health Professions Act to practise medicine and to use the title "medical practitioner".

### Appellant's Position

The appellant's position is that for 8 years, the ministry considered her podiatrist to be a "medical practitioner" and approved her PPMB applications on the basis of his medical reports. As far as she is concerned, her podiatrist is a "medical practitioner" because he certified in the PPMB medical reports that he was registered with the College. The podiatrist provides ongoing treatment for the cysts on the appellant's feet; her condition is enduring and has gotten worse to the point where "the pain is terrible", and if she wears her shoes for more than an hour her toes go numb.

### Ministry's Position

The ministry's position is that the appellant is no longer eligible for PPMB qualification because a "medical practitioner" as defined in the *Interpretation Act* section 29, has not confirmed a medical condition pursuant to subsection 2(4) of the EAR that has continued for at least one year and is likely to continue for at least 2 more years as required by paragraph 2(4)(a). The ministry argues that the appellant's podiatrist is not a "medical practitioner" under the *Interpretation Act* and while it acknowledges that it made an unfortunate error in granting the appellant the PPMB qualification for a number of years, it cannot compound its mistake by allowing the PPMB qualification to continue without the legislative requirements being satisfied.

Regarding barriers to employment, the ministry's position is that the information from the podiatrist does not, in the ministry's opinion, satisfy EAR paragraph 2(4)(b) which requires the medical condition to preclude the client from searching for, accepting or continuing in employment.

In terms of the other EAR criteria, the ministry affirms that the appellant's PPMB application falls under subsections 2(2) and 2(4) based on the Employability Screen score of 11, and that the appellant has been on income assistance for at least 12 of the past 15 months. The panel notes that these criteria are not disputed in this appeal.

### Panel's Decision

The panel notes that in order for a client to qualify for the PPMB qualification and renew their application, all of the criteria in section 2 of the EAR must be satisfied. These provisions hinge upon information from a "medical practitioner" as follows:

1. The practitioner must confirm a medical condition pursuant to subsection 2(4).
2. The practitioner must be of the opinion that the medical condition has existed for at least a year, and is likely to continue for at least 2 more years (or is episodic in nature but has occurred frequently) pursuant to paragraph 2(4)(a); and
3. While paragraph 2(4)(b) gives the ministry discretion to determine whether the medical condition presents a barrier to employment, the ministry in forming its opinion, relies on the medical practitioner's information, with Section C.3 of the PPMB medical report asking the practitioner to describe any restrictions specific to the client's condition.

As the ministry notes in the reconsideration decision, the *Interpretation Act's* definition of "medical practitioner" applies to the EAR. According to the *Interpretation Act* section 29, in an "enactment", a "medical practitioner" is a registrant of the College who is entitled under the *Health Professions Act* to practise medicine and use the medical practitioner title. It follows then, that a podiatrist is not a medical practitioner for the purposes of the EAR unless they are first a registrant of the College.

While the appellant's evidence was that her podiatrist certified that he is a "physician" registered with the "College of Physicians and Surgeons" (with the word "Podiatrists" inserted above "Physicians"), and that the ministry had accepted his medical reports since 2008, the ministry's evidence was that the podiatrist is not a registrant of the College. The ministry stated that the College maintains a list of registrants on its website and the name of the appellant's podiatrist does not currently come up in a search. Further, the ministry acknowledged that it had made an unfortunate error in finding that the appellant was eligible for the PPMB qualification based on the podiatrist's previous medical reports and it did not give the appellant the opportunity to obtain information from a valid practitioner prior to her reconsideration request.

The panel accepts the ministry's information regarding the College's website and its search for the podiatrist's name as a reasonable way of verifying that the podiatrist is not a registrant of the College. Accordingly, the panel finds that the ministry reasonably determined that although the podiatrist confirmed the appellant's medical condition including how long it had existed and its expected duration, the podiatrist is not a "medical practitioner" as set out in the *Interpretation Act*. EAR requirements under sections 2(4), 2(4)(a) and 2(4)(b) are therefore not satisfied.

With regard to the medical condition being a barrier to employment under paragraph 2(4)(b) of the EAR, the panel finds that the ministry's opinion that the appellant's medical condition does not preclude her from employment was reasonable. The ministry's evidence was that the podiatrist had written "N/A" in the October 2013 PPMB medical report when asked to describe the appellant's restrictions. The ministry found that "...notwithstanding the fact that (the podiatrist) is not a *medical*

*practitioner*, the information provided in your Medical Report- PPMB does not establish that you have a medical condition that *precludes* you from searching for, accepting, or continuing in employment.”

The appellant's evidence was that her condition has not changed over time despite treatment every 3 months. Her feet have gotten worse and the restrictions that the podiatrist and the ministry identified in the documentation from 2008 and 2011 still stand, specifically: "ambulation secondary to pain"; "ambulation is exquisitely painful"; "minimal walking on foot", "cannot walk upstairs or do housework", and "cannot stand or walk".

The panel considers it reasonable that the ministry would give little weight to this evidence because in making its reconsideration decision the ministry only considered the most recent PPMB medical report from October 2013. As the ministry explained, it only looks at the most recent information because PPMB qualification is reviewed every 2 years and a client's condition and restrictions can change over time. The podiatrist noted "N/A" in the 2013 medical report next to Restrictions, suggesting that the appellant does not have any current barriers to employment due to her medical condition. Accordingly, the panel finds that the ministry reasonably determined that paragraph 2(4)(b) of the EAR respecting a barrier to employment was not met.

In conclusion, the panel finds that the ministry's decision that the appellant is ineligible for the continuing PPMB qualification was reasonably supported by the evidence. Accordingly, the panel confirms the ministry's decision.