

## PART C – Decision under Appeal

The Decision under Appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision, dated March 7, 2014, which found that the appellant did not qualify as a Person with Persistent Multiple Barriers, (PPMB), under S. 2(4)(b) of the Employment and Assistance Regulation. The Ministry determined that the appellant's restrictions, in their opinion, did not preclude the appellant from searching for, accepting, or continuing in all types of employment including sedentary or part-time.

## PART D – Relevant Legislation

EMPLOYMENT AND ASSISTANCE REGULATION- (EAR)-SEC. 2

## PART E – Summary of Facts

The relevant evidence before the ministry at reconsideration was a two page "Medical Report- Persons with Persistent Multiple Barriers," signed by a physician on Dec. 9, 2013; a two page document entitled "Schedule E Employability Screen" which gave the appellant a score of 13; and, a one page document dated Sept. 27, 2013 advising of the need to provide updated medical information for his PPMB status, and the appellant's request for reconsideration.

The physician's report stated the primary medical condition is dietary, a multiple chemical sensitivity, with a secondary condition of depression. The conditions had existed for four years, were expected to last two years or more and they were not episodic in nature. Treatment is special dietary adaptation and the outcome noted is not much improvement and severe fatigue. The physician noted that the appellant has constant fatigue, lack of energy, flat affect and very socially shy. He also states this will make obtaining work very difficult. On the Sept. 27 letter medical conditions listed are multiple chemical sensitivity issue, chronic fatigue and underlying depression.

The reconsideration decision agreed that as the appellant had been receiving assistance since Nov. 2005 he met the qualification under sec. 2(2) of the EAR; receiving assistance for 12 of the last 15 months. As the reconsideration decision noted the score on the employability screen was 12 the assessment for PPMB would fall under Sec. 2(4) of the EAR. It is noted that the score is actually 13 which still requires an assessment under sec. 2(4) and as it is less than 15.

The decision also states that as the minister is satisfied that the medical practitioner confirms the appellant has a medical condition that has continued for at least one year and is likely to continue for at least two years, as is required under sec. 2(4)(a)(i). It then states that the appellant has "not" satisfied this requirement.

In relation to sec. 2(4)(b), the decision noted the physician's opinion was that the medical conditions make obtaining work difficult. The decision concluded with the ministry's opinion that the medical conditions, did not preclude him from searching for, accepting or continuing in all types of employment, including part-time work.

In the Notice of Appeal, the appellant states that staying alive keeps him busy 19 hours a day and asks, presumably rhetorically, if he should forego sleep?

At the hearing the Appellant did not attend. After confirming that the Appellant was properly notified of the hearing, the matter proceeded under section 86(b) of the Employment and Assistance Regulation. The Ministry reiterated the reconsideration decision that as the medical report did not say the appellant was precluded from searching for, accepting or continuing employment he did not qualify for PPMB designation. Also, the ministry acknowledged the mistake where the decision stated the appellant did not have a medical condition that has continued for at least one year and is likely to continue for at least two years, as is required under sec. 2(4)(a)(i). This was an error and was incorrect. However, the appellant still did not meet all the statutory requirements.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined the Appellant was not eligible for PPMB.

The governing legislation in this situation is as follows:

### 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;*

*(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 one 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 has to be satisfied the person has a medical condition, other than an addiction, that is confirmed by a medical practitioner and in the opinion of the minister is a barrier that precludes the person from searching for, accepting or continuing in employment under S. 2(4)(b) of the Employment and Assistance Regulation. The Ministry determined that the appellant's restrictions, in their opinion, did not preclude the appellant from searching for, accepting, or continuing in all types of employment including sedentary or part-time. The appellant presumably argues he is not able to search for, accept or continue in employment.

The medical report from the doctor states that the appellant will have a very difficult time obtaining employment. Unfortunately, there are no further descriptors provided relating to the ability to work. The report asks the medical practitioner to "describe the nature of any restrictions specific to the above medical condition(s)" and it also asks for copies of documentation that support the severity and restrictions of the conditions, such as lab reports or psychological reports. The report in this case does not describe in detail the restrictions specific to the conditions and provides no supporting documentation. The report does advise the practitioner has been the patient's medical practitioner for over six months and he has examined previous medical records.

The important issue is whether the medical condition is a barrier precluding searching for, accepting or continuing employment. The word "preclude" is to be contrasted with the wording in sec. 3(b)(ii) that talks about the medical condition being a barrier that "seriously impedes" the ability to search for, accept or continue in employment. Preclude, in its ordinary use, means to make impossible or prevent from happening. It is a higher burden than seriously impedes. Without further detail from the physician, it only appears from the report the appellant will find it very difficult to obtain a job. It does not indicate he is precluded from searching for work. It does not say he cannot perform sedentary or part time work. The ministry must be satisfied the appellant meets all the PPMB criteria. Without further evidence the panel does not find the ministry's determination on this issue is unreasonable.

The appellant must meet all the legislated criteria to qualify for PPMB. As he has not satisfied sec. 2(4)(b) the panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation and confirms the Decision.