

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated March 13, 2014, which held that the appellant did not meet all of the applicable statutory requirements of section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers (PPMB) to employment. The ministry was satisfied that the evidence establishes that the criterion set out in the EAR section 2(2) has been met, as the appellant has been a recipient of income assistance for at least 12 of the preceding 15 months. However, the ministry found that the appellant did not meet the requirement set out in EAR section 2(3)(a) as his score on the Employability Screen was less than 15 and therefore relied upon the provisions set out under section 2(4)(a) and (b) of the EAR. The ministry determined that the conditions set out in 2(4)(a)(i) of the EAR were met as the appellant has a medical condition, other than addiction, confirmed by a medical practitioner, and in the opinion of the medical practitioner, has continued for one year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the conditions set out in 2(4)(b) of the EAR were met as the ministry determined that the person's medical condition is not a barrier that precludes him from searching for, accepting, or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 2.

PART E – Summary of Facts

Evidence before the ministry at the time of reconsideration included the following:

1. An undated copy of a hand written letter from the appellant providing argument as to why he believes the ministry's decision was not reasonable.
2. A copy of the appellant's Request for Reconsideration signed February 28, 2014.
3. A faxed copy of a letter signed by the appellant February 28, 2014, addressing his reasons for requesting reconsideration.
4. PPMB Medical Report dated January 21, 2014.
5. A copy of the appellant's Ministry Employability Screen, unsigned, total score 12.

Information contained in the Record shows that the appellant's score on the Ministry Employability Screen was revised at reconsideration from 12 to 13 as the answer to question 3 which records the number of times the appellant had been on Income or Social Assistance anywhere in Canada in the last 3 years was incorrectly recorded as (a-never-score 0) when it should have been recorded as (b-1 to 3 times-score 1).

The appellant's submission of February 28, 2014, provides argument as to why the appellant believes the ministry's decision was not reasonable and will be addressed later in Part F of the panel's reasons.

The appellant's PPMB medical report dated January 21, 2014, completed by his medical practitioner reports the following:

- Primary medical condition -- Polysubstance dependence since 1978.
- Secondary medical condition -- Chronic Obstructive Pulmonary Disease (COPD) since 2010.
- Treatment -- Encourage counseling, NA/AA treatment and recovery program. Specialist referrals Podiatry and Lung Centre, GI.
- Outcomes -- Mandated to Drug Treatment Program (1/12/13 clean currently) (will remain in Drug Court Treatment Program until 12/2015) 100% compliant with same. Compliant with referral to Lung Centre, Podiatry and GI.
- Prognosis -- The conditions have existed for more than 2 years, expected duration over 2 years, and are not episodic in nature.
- Restrictions -- Polysubstance abuse dependence, COPD, history of history of (H/O) chaotic life style.

At reconsideration the ministry also had available a second PPMB medical report dated March 3, 2014, not included in the Appeal Record. This was submitted to the Tribunal after the reconsideration and before the hearing and reports the following:

- Primary medical condition -- Polysubstance dependence since 1978.
- Secondary medical condition -- chronic left foot pain since 2007, unable to stand for more than one hour or walk more than two blocks.
- Treatment -- Encourage counselling, NA/AA treatment and recovery program. Specialist referrals Podiatry and Lung Centre, GI.
- Outcome -- Mandated Drug Court Treatment Program (1/12/13 clean currently) and in the program until December 2015 - 100% compliant - left foot XR results pending, F/UP on February 25, 2014, 100% compliant with same.
- Prognosis -- the expected duration - over 2 years and is not episodic.
- Restrictions -- Polysubstance abuse dependence, chronic left foot pain since 2007, S/P injury, unable to stand over 1 hour or walk continuously over 4 blocks, COPD, H/O chaotic lifestyle, has applied for Person with Disabilities Medical form.

After the ministry Reconsideration Decision and prior to the hearing the appellant submitted his Notice of Appeal to the Tribunal dated March 25, 2014. In this document the appellant presented arguments which will be dealt with in Part F of this decision as to why he believes the ministry Reconsideration Decision was not reasonable.

After the ministry Reconsideration Decision and prior to the hearing on April 11, 2014, a Health Authority faxed copies of the following information in support of the appellant's appeal to the Tribunal Office.

- A prescription from a physician for a full leg air cast dated March 25, 2014.
- An undated Medical Report providing the following diagnosed conditions: Tobacco use disorder; Chronic left foot pain; Alcohol dependence; Osteopenia/Osteoporosis; COPD; Crack cocaine abuse. The report lists no known allergies and then provides the names of a series of medical tests and procedures carried out on the appellant between August 2009 and April 2014.
- A list of usual medications prescribed for the appellant.
- The appellant's Radiology Consultation Report dated February 27, 2014.
- Best Flow Volume Loop Graph and Best Volume Time Graph dated May 13, 2013.
- X-RAY Ultrasound Report - Left Shoulder - dated April 15, 2013.
- X-RAY Ultrasound Report - Left Shoulder Sonogram - dated March 20, 2013.
- X-RAY Ultrasound Report - Chest - dated February 20, 2013.
- X-RAY Ultrasound Report - Right Knee - dated February 20, 2013.
- X-RAY Ultrasound Report - Both Hips - dated January 26, 2013.
- X-RAY Ultrasound Report -Thoracic Spine - dated December 21, 2012.

At the hearing the appellant reported that he has a prescription for an air cast but has no financial resources to purchase it. He stated that he is required to attend Drug Court Programs until January 2015, which takes up 6 hours per week, involving several days each week. As the days and times he is required to participate will vary over time it would be difficult to hold down a job of any kind. The appellant referred to additional medical reports submitted to the Tribunal April 11, 2014, which he said confirmed that he has arthritis in his spine and hips and bursitis in his shoulders. The appellant also reported his COPD makes it difficult to walk more than a few blocks and that he also reported that he will be starting a Breathing Therapy Program next week. The appellant also believes he has Attention Deficit Hyperactivity Disorder (ADHD) as he has difficulty comprehending written information; he has discussed this problem with his doctor, but to date no specific diagnosis has been made. The appellant reported that he is currently in the process of completing an application for Persons With a Disabilities which he plans to submit shortly. When asked if he objected to the ministry submission of April 2, 2014, which consisted of a copy of his PPMB medical report dated March 3, 2014, he did not object.

The ministry stood by its position at reconsideration, and provided no new facts..

The panel found both the appellant's oral testimony and the additional submission of medical reports and records to the Tribunal April 11, 2014, admissible under section 22(4) of the Employment and Assistance Act as both were found to be in support of the information and records before the ministry at reconsideration. The oral testimony provided additional information from the appellant as to why he believes the ministry's decision to be unreasonable, and the additional medical reports faxed to the Tribunal by a Health Authority April 11, 2014, confirmed the existence of additional medical conditions. The ministry did not object.

The panel makes the following findings of fact based on the evidence presented:

- The appellant has been in receipt of income assistance for at least 12 of the preceding 15 calendar months.
- The appellant's score on the Employability Screen is 13.
- The appellant's medical practitioner has diagnosed his primary medical condition as Polysubstance dependence since 1978 and a secondary medical condition of chronic left foot pain since 2007 and COPD since 2010.
- Additional medical reports submitted to the Tribunal by a Health Authority April 11, 2014, provide additional diagnosed conditions of Tobacco use Disorder; Osteopenia/Osteoporosis; Crack cocaine abuse.
- Treatment has included Mandated Drug Court Treatment Program (1/12/13 clean currently) and in the program until December 2015. Left foot X-ray results pending. Specialist referrals Podiatry and Lung Centre, GI and a prescription for an air cast.
- The medical practitioner reports that the appellant's medical conditions have existed for more than 2 years and are expected to continue for at least two more years.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that the appellant did not meet all of the applicable statutory requirements of section 2 of the Employment and Assistance Regulation to qualify as a person with persistent multiple barriers to employment was either a reasonable application of the legislation or reasonably supported by the evidence. The ministry was satisfied that the evidence establishes that the criterion set out in the EAR section 2(2) has been met, as the appellant has been a recipient of income assistance for at least 12 of the preceding 15 months. However, the ministry found that the appellant did not meet the requirement set out in EAR section 2(3)(a) as his score on the Employability Screen was less than 15 and therefore relied upon the provisions set out under section 2(4)(a) and (b) of the EAR. The ministry determined that the conditions set out in 2(4)(a)(i) of the EAR were met as the appellant has a medical condition, other than addiction, confirmed by a medical practitioner, and in the opinion of the medical practitioner, has continued for one year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the conditions set out in 2(4)(b) of the EAR were met as the ministry determined that the person's medical condition is not a barrier that precludes him from searching for, accepting, or continuing in employment.

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*;
- (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 appellant's position is that he is unable to sustain the minimum requirements for sedentary work due to his physical limitations, age, lack of education and transferable job skills and because he is mandated to drug court recovery programs to stay clean until January 2015. The ministry's position is that the appellant did not meet all of the applicable statutory requirements of section 2 of the EAR and specifically that as he has not met the legislative criterion set out in section 2(4)(b) of EAR and is therefore ineligible to receive benefits as a PPMB to employment.

As to the requirements set out in section 2(4)(b) of the EAR, the appellant argued in his submission of February 28, 2014, in his Notice of Appeal, and at the hearing that his limitations from COPD, Bursitis, Arthritis, Substance Dependency, his agreement with the ministry, and his legal requirements with the Drug Treatment Court prevent him from being able to work currently, or in the foreseeable future. COPD prevents him from walking more than 3 blocks, walking up hill or walking up more than 10 steps without resting. Furthermore, he has been told he should start Breathing Therapy Classes next week. The appellant argued that the Bursitis in his left shoulder and the Arthritis in his hips and spine prevent him from lifting higher than his shoulders and that lifting more than 10 kg. causes acute pain in his left foot when walking, causing him to limp and require a "splinter" on one of his toes. The appellant also argued that he is in pain after sitting from 30 to 45 minutes and his physician has now prescribed an air cast for him which he can not afford to purchase.

The ministry argued that section 2(4)(a) of the EAR requires that the person must have a medical condition, other than addiction, therefore any restrictions related to the appellant's substance dependency can not be considered. Furthermore, the ministry argued that the restrictions listed in the appellant's most recent PPMB medical report dated March 3, 2014, excluding addiction, include, "chronic left foot pain since 2007, S/P injury, unable to stand over 1 hour or walk continuously over 4 blocks, COPD, H/O chaotic lifestyle", do not prevent him from participating in any type of employment, for any length of time, except in a supported or sheltered-type work environment. For these reasons the ministry argued that the appellant's medical conditions, excluding addiction, do not prevent him from searching for, accepting, and continuing in all types of employment and therefore section 2(4)(b) of EAR is not met.

The panel finds that the ministry reasonably determined that section 2(4)(a) of the EAR requires the medical condition that precludes the person from searching for, accepting or continuing in employment must be other than an addiction; therefore any restrictions related to the appellant's substance dependency can not be considered. As to the appellant's other identified medical conditions, COPD, Bursitis and Arthritis, the panel finds that the ministry reasonably determined that the restrictions listed in the appellant's PPMB Medical Report dated March 3, 2014, excluding addiction, "chronic left foot pain since 2007, S/P injury, unable to stand over 1 hour or walk continuously over 4 blocks, COPD, H/O chaotic lifestyle", do not prevent him from participating in any type of employment, for any length of time, except in a supported or sheltered-type work environment.

The panel further finds that while the additional medical information submitted to the Tribunal by a Health Authority April 11, 2014, does provide additional medical information about the appellant, it does not directly address the issue of this appeal. While the submission clearly describes various medical test results and verifies some additional medical conditions, the panel finds no accompanying narrative explaining what, if any, additional restrictions these conditions present or how they might prevent the appellant from participating in any type of employment, for any length of time, except in a supported or sheltered-type work environment. The

panel further finds that the existence of a medical condition on its own does not necessarily present a barrier which would preclude a person from searching for, accepting or continuing in employment and therefore finds the ministry reasonably determined that the statutory requirements set out above in section 2(4)(b) of the EAR have not been met.

For these reasons the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.