



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated November 20, 2013 which held that the Appellant was denied Persons with Persistent Multiple Barriers (“PPMB”) as he meet the eligibility criteria of section 2(2), but did not meet the criteria of sections 2(3) or 2(4) of the Employment and Assistance Regulations (the “Regulation”).

PART D – Relevant Legislation

Section 2(2)(3)(4) of the Regulation

PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

The Ministry Request for Reconsideration form dated November 10, 2013 completed and signed by the Appellant (the "Reconsideration Form")

In the Reason for Request for Reconsideration, Section 3, the Appellant submitted a letter and included the following documents: Child Care Subsidy Medical Condition Report (the "CCSMCR" from the Ministry of Child and Family Development, referral letters ("RL"), consult reports ("CR"), as well as a WCB Claims Summary form ("WCS") and Ministry Reports ("MR"):

- i) Letter dated November 10, 2013 to the Ministry from the Appellant. The Appellant disagreed with the Ministry's findings for the following reasons:
 - a) that his score on the Employability Screen ("ES") is more than 15;
 - b) that the practitioner was not able to confirm that the Appellant had a permanent medical condition as he only saw the Appellant briefly at a walk-in clinic;
 - c) that the Appellant's medical condition or work injury happened in 2005 and in the 1980s; and
 - d) that he was declined by WCB for a recommended third surgery and has not had surgical intervention that may resolve his medical condition but has been referred to a new doctor and will explore the medical treatments.
- ii) ES date unknown completed by the Ministry showing the Appellant scored 12 out of a possible 21.
- iii) WCS generated in October 2006 listing the Appellant's claims made since 1984. The Appellant had his first shoulder claim in 1987 and an accepted left shoulder claim in 2005.
- iv) CCSMCR dated December 10, 2009, the Physicians Assessment, section 2, confirms the Appellant had an existing medical condition that interferes with his ability to care for his child or children;
- v) RL #1 dated August 25, 2010 written by the Appellant's then family physician stating that he has seen the Appellant for the last three years with respect to his left shoulder sustained at work; that the Appellant is in constant pain and is not able to carry, lift, push or pull and these restrictions are significant enough to prevent him from working in his previous capacity as a construction worker and that to do so would risk further injury and disability.
- vi) CR #1 dated November 23, 2010, the orthopedic surgeon ("Surgeon") on examination stated that the review of recent x-ray taken in September 2010 demonstrated no bony abnormality in his shoulder and that the Appellant's shoulder remains quite painful but that it is unclear what the origin of the pain is but that it could be a degree of biceps tendinitis and an occult rotator cuff tear.
- vii) CR #2 dated June 9, 2011 from an orthopedic surgeon which stated that the Appellant has ongoing pain and disability; MRI reveals Bankart repair and Hill-Sachs deformity; he has

been advised to find another occupation; that residual symptoms in his shoulder warrant surgery; that it is unclear why he is having so much pain in his left shoulder; and that his symptoms and recent MRI do warrant a surgical exploration to find the cause of the Appellant's pain.

viii) CR #3 dated July 14, 2011 completed by a practitioner for the Appellant's gastritis problems.

ix) MR #1 dated November 2, 2011 completed by a practitioner which stated the Appellant suffered from the primary condition of chronic shoulder pain and disability since 2005 and secondary condition of chronic neck and mid-back pain since the 1980s; that the treatments included bankart repair and MRI (2005), subacromial decompression (2006), physiotherapy and is awaiting lateral tear repair and possible replat decompression and that the outcome is expected to last more than two years; and that there is restricted motion to the left shoulder; weak and pain with movement and frequent flare-ups in the neck and mid-back.

x) MR #2 dated October 17, 2013 completed by a practitioner which stated that the Appellant has chronic shoulder and disability since 2005; that the treatments included bankart repair in 2005, subacromial decompression in 2006, MRI and physiotherapy and that the outcome has provided no change and the physiotherapy has provided minimal relief; that the prognosis was expected to last less than two years and the Appellant would benefit from vocational rehabilitation; and that there is improved range but persistent weakness and frequent pain and that the Appellant needs strengthening and retraining and sedentary work.

For the hearing, the appellant provided the following additional written submission and documentary evidence:

- i) RL #3 dated June 9, 2011 written by a surgeon which stated that the types of treatment he recommended to the Appellant to treat his shoulder issue; that the MRI demonstrates irregular anterior glenoid labrum and possible tear to the rotator cuff.
- ii) RL #4 dated December 6, 2011 written by a surgeon which listed the types of recommended treatment for the Appellant.
- iii) Letter dated December 31, 2013 to the Ministry from the Appellant which pointed out discrepancies in the correspondence received by the Ministry; that the Appellant's name, telephone number and age and the number of time the Appellant has been on income assistance was not accurately stated and provided copies of his birth certificate and care card; and that the Appellant would like an extension.
- iv) CR#4 dated December 31, 2013 written by a practitioner who recently started seeing the Appellant at the time of writing the letter. The practitioner stated that the Appellant had been unsuccessful at getting a family doctor for the last two years; that the Appellant continues to suffer chronic should pain; that the Appellant has still not had the

[REDACTED]

recommended surgery; that the practitioner would like the Appellant to be granted an extension to get a more current evaluation of his shoulder issues; that the Appellant is precluded from finding suitable employment given his limited education; and that the Appellant has been referred back to the surgeon that previously saw the Appellant and that the Appellant is additionally awaiting consult with a neurologist.

- v) CR#5 dated January 21, 2014 from the practitioner written by the same practitioner that wrote CR#4 which stated that the practitioner referred the Appellant to another practitioner who treated the Appellant in 2011 and recommended surgical repair; that the referral practitioner has not seen the Appellant currently; and that the Appellant's inability to get the proper treatment results in his persistent disability.

The Panel finds that the additional evidence provided by the Appellant clarified his current situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the Appellant persons with persistent multiple barriers ("PPMB") qualification is a reasonable application of the law in the circumstances of the Appellant.

Section 2 of the Regulation lists the criteria required to qualify as a person who has PPMB. The Ministry concluded that the criterion in section 2(2) requiring the Appellant to be in receipt of assistance for at least 12 of the past 15 months was met, but determined that the Appellant did not meet the criterion in sections 2(3)(a)(i) and 2(4)(a)(i) of the Regulation.

Section 2(3) and (4) of the Regulation reads as follows:

2(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).

2(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. (B.C. Reg. 263/2002)

Section 2(3)

Section 2(3)(a)(i) of the Regulation states that in order to be designated as a PPMB the Ministry must first determine that a person has a score of at least 15 on the ES. Once it has been established the person has a minimum score of 15, the Ministry must then consider whether the person has barriers that seriously impede the person's ability to search for, accept or continue employment.

In denying the Appellant's request for PPMB designation under this section, the Ministry concluded that the Appellant did not meet the requirements in section 2(3)(a)(i) and stated the following:

To be considered under subsection 3 you must have an employability screen score of at least 15. Your score is under 15 therefore must be assessed under subsection 4. In your request for reconsideration you state that your Employability Screen Score is more than 15 as required by this section of the legislation. No other information is

provided in regards to how/why this score is incorrect. Upon review of your Employability Screen the ministry finds that that [sic] the total amount of 12 was calculated correctly.

The Ministry concluded that the Appellant scored a total of 12 out of a possible 21 noting the Appellant must score a minimum of 15 on the ES before the Appellant is able to be assessed under section 2(3) of the Regulation. The Ministry noted that while the Appellant suggested he scored more than 15 on the ES, the Appellant did not provide information to show how or why the calculation was not accurate.

The Appellant argued that he did meet the requirement in section 2(3) and provided additional written submissions for the hearing which included a letter dated December 31, 2013 to the Ministry from the Appellant which pointed out discrepancies in the correspondence received by the Ministry. The Appellant noted that his name, telephone number, age and the number of times he had been on income assistance was not accurately stated.

The Appellant stated that he is 48 years old not over 50 and that he has been on Income or Social Assistance between 1-3 times in the last three years. The Appellant did provide his birth certificate verifying his age and the Panel accepts that the Appellant has been on assistance between 1 to 3 times in the last three years.

Applying these results to the ES, however, the Appellant's score remains below the minimum threshold of 15 increasing his score from 12 to 13. Section 2(3) of the Regulation requires an applicant to score a minimum of 15 on the ES in order to be assessed under this section.

The Panel therefore finds that the Ministry was reasonable in their determination that the Appellant did not score a minimum of 15 on the ES as required by section 2(3)(a)(i) and cannot be assessed for PPMB under this section of the Regulation.

Section 2(4)

Section 2(4) states that in order to qualify as a PPMB the person has to have a medical condition that is confirmed by a medical practitioner and that in the opinion of the medical practitioner has continued for at least 1 year and is likely to continue for at least 2 more years. The Regulation also requires that in the opinion of the Ministry, the medical condition is a barrier that precludes the person from searching for, accepting or continuing in employment.

In reaching their decision that the Appellant did not meet all the requirements in section 2(4)(a)(i) and 2(4)(b), the Ministry stated the following:

Your doctor has not confirmed that your medical condition has lasted at least 1 year and is expected to last at least another 2 years. When asked the expected duration of your medical condition, Dr. [X] indicates 'less than 2 years' and comments "*Some improvements in range. Would benefit from vocational rehabilitation if available*".

The Ministry noted that the MR#2 dated October 17, 2013 stated that the Appellant's condition was not expected to last more than 2 years as required by 2(4)(a)(i) nor does his shoulder issue create a barrier that precludes the Appellant from searching, accepting or continuing in employment pursuant to section 2(4)(b) noting the practitioner confirmed the Appellant needs to find more "sedentary work" and that "he is not precluded from employment in all fields of work."

The Appellant argued the MR#2 he submitted was not accurate and should not be relied on as the practitioner that completed the report was from a walk-in clinic. According to the Appellant the practitioner saw him for a total of ten minutes and he was not able to confirm that he suffers from a permanent medical condition.

The Appellant additionally submitted for the hearing CR #4 dated December 31, 2013 and CR #5 dated January 21, 2014 to support the Appellant continues to suffer with a shoulder issues. The practitioner notes that the Appellant has been referred back to a former surgeon the Appellant had consulted in 2011. The former surgeon had recommended surgery, among other things, to help resolve the Appellant's shoulder issue.

The Appellant provides a number of documents to support a long history of shoulder issue(s) which confirms he has a "medical condition" for the purpose of section 2(4)(a). The documents date back to 2006 verify the Appellant has suffered from a long history of a work related shoulder injury that continues to be a source of anguish and pain.

The Appellant, however, also provided additional documents for the hearing which confirms that the Appellant's medical condition may get better from his possible upcoming surgery and that he is taking proactive steps to have the recommended surgery.

The Appellant submitted to the Ministry a MR#2 that stated the Appellant's medical condition is not expected to last longer than two years and that he is capable of performing sedentary types of employment and while the Appellant argues that this document should not be relied on as the attending practitioner did not have the time to properly assess the Appellant, he does not provide any current documentation to the contrary which would confirm his medical condition is expected to last more than two years.

The most recent report submitted by the Appellant and the document the Ministry relied in reaching their decision confirms the expected duration of his medical condition is less than two years and that the Appellant is capable of other types of employment.

The legislation is clear in that the opinion of a medical practitioner the medical condition has to likely continue for at least two more years. Having no other current documentation to support otherwise, the Panel finds the Ministry's determination that the Appellant has a condition that is not expected to last longer than two years and that the Appellant is capable of other types of employment and is therefore not precluded from searching for, accepting or continuing in employment is a reasonable application of section 2(4)(a)(i) and section 2(4)(b) of the Regulation.

The panel therefore finds the Ministry's determination that concluded the Appellant did not meet the legislative required to find a PPMB designation was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.