

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated May 26, 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 to employment (PPMB). The ministry was satisfied that the evidence establishes that 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 continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

**PART D – Relevant Legislation**

*Employment and Assistance Regulation* (EAR), Section 2

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated January 16, 2014; in which a specialist in internal medicine wrote, in part, that:
  - The appellant's primary medical condition is non-ischemic cardiomyopathy with no date of onset indicated and no treatment identified;
  - The prognosis sets out that the expected duration of the medical condition is 2 years or more and that the medical condition is not episodic in nature.
  - In the section of the Report regarding restrictions, the physician has not included any notes;
- 2) Employability Screens indicating a total score of "7," which the appellant and the ministry identified at the hearing as completed in December 2013, as well as a score of "12," identified as completed in January 2014, with increases in scoring on two factors: the times on income assistance in the last 3 years and the total amount of time spent on income assistance in the last 3 years;
- 3) Letter dated April 23, 2014 from the ministry to the appellant denying his application for PPMB;
- 4) Letter dated May 8, 2014 signed by the specialist in internal medicine in which he disagrees with listed restrictions to the appellant's employment, namely an inability to lift more than 40 lbs. with any repetition and an inability to work in a physically demanding job, heart condition, and wrote: "he has no limitations"; and,
- 5) Request for Reconsideration dated May 8, 2014.

In his Notice of Appeal dated April 14, 2014 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that people who are making the decision have medical knowledge, not a medical license. He has questions about the Employability Screen.

At the hearing, the appellant stated that:

- Up until 2009, he was healthy but in that year he had massive heart failure and he was pronounced legally dead twice. He was in hospital for 24 days and was in an induced coma. When he woke up, he had to learn how to walk again. His treatment occurred over the period of one year and then he was able to start doing things again and, slowly, his life is "getting normal again."
- He was forced to resign from his employment and had to apply for income assistance.
- The ministry suggested that he apply for PPMB and, in December 2013, he went into the local office. He was then told that he could not apply at that time because of the requirement to be in receipt of assistance for a year at the time of application.
- The ministry filled out a questionnaire (for completing the Employability Screen) and he thought that there was no point in going through the process since he was going to be denied at that time anyway.
- He was told to re-apply on January 15, 2014 and he submitted his doctor's note to the ministry on January 16, 2014. He suggested that he could sign a waiver so that the ministry could have access to all of his medical records but he was told this was not necessary. He answered questions for the same questionnaire but his answers were a bit different.
- He is concerned that the decision about whether he qualifies for PPMB is made by the ministry and not necessarily by someone with a medical license.
- He is concerned that he was not given a copy of the legislation by the ministry at the time he applied for PPMB so he would know what the requirements are to qualify.

- He has to take heart medication for the rest of his life and go for periodic heart stress tests. He has a defibrillator which needs to be changed every few years. If he did not take his medications, after 3 days he would start to "go funny."
- With his condition, he is more prone to organ failure. He still has problems with his kidneys and thyroid. These problems are permanent and are not going to change.
- He has restrictions that his physician did not record in the Report and he does not know the reason that these were not set out. He cannot do heavy lifting like he used to in his previous employment which involved heavy physical labour.
- His long-time family physician recently passed away and the other doctors in the office are not as familiar with his situation so he consulted with the specialist in internal medicine for completing the Medical Report.

The ministry relied on its reconsideration decision. The facts included that:

- The appellant has been in receipt of income assistance for at least 12 of the past 15 months.
- The information from the most recent Employability Screen indicates that the appellant's score is "12".

At the hearing, the ministry clarified that:

- The ministry must follow the legislation and, therefore, relies on the information from the medical practitioner to provide sufficient information to show that the criteria are met.
- The requirement is for a medical practitioner to complete the Medical Report but it does not necessarily have to be completed by a specialist.
- The medical practitioner is able to attach the results of medical tests to the Medical Report for the ministry's consideration.
- The medical practitioner has an opportunity to set out the restrictions associated with the diagnosed medical condition in order to satisfy the ministry that the associated restrictions preclude the person from all types of employment.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded 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 to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

The criteria for being designated as a person with PPMB are set out in Section 2 of the EAR 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 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.

### *Summary of Criteria*

- Under Section 2(2), the person must have been the recipient of one or more of a number of types of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4).
- If the person has scored **at least 15** on the employability screen (in the form set out in Schedule E to the EAR), then Section 2(3) applies.
- If the person has scored **less than 15** on the employability screen, then Section 2(4) applies.
- Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and,
- In the opinion of the ministry, the medical condition is a barrier that precludes the person from searching for, accepting, or continuing in employment.

### *Ministry's position*

The ministry's position is that the appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. However, the ministry argued that the evidence has not established that the appellant has met all the remaining applicable criteria of Section 2. As the appellant scored 12 on the most recent employability screen completed in January 2014, he must meet the requirements of Section 2(4) of the EAR. The ministry acknowledged that the appellant has a medical condition, other than an addiction, that has been 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. However, the ministry argued that the evidence does not establish that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment. The ministry pointed out that a medical condition is considered to preclude a recipient from searching for, accepting, or continuing in employment when as a result of the medical condition the recipient is unable to participate in any type of employment for any length of time, except in a supported or sheltered-type work environment. The ministry argued that the doctor does not describe any treatment/ remedial approaches that have been tried to date or are expected in the future and does not identify any restrictions specific to the appellant's medical condition. The ministry argued that in the May 8, 2014 questionnaire, the doctor disagreed with the listed restrictions to employment and wrote that the appellant "has no limitations." The ministry argued that there is insufficient information to show that the appellant's medical condition precludes him from searching for, accepting or continuing in employment.

### *Appellant's position*

The appellant's position is that although his physician did not record his restrictions on the Medical Report, he does have restrictions as a result of his heart condition. The appellant argued that his previous employment involved heavy physical labour and, since he experienced massive heart failure, he is restricted from heavy lifting and is taking heart medications. The appellant argued that the decision about qualifying for PPMB was made by the ministry and should, more appropriately, be made by someone with a medical license with access to his medical files.

### *Panel decision*

The panel finds that the appellant's score on the employability screen had been determined by the ministry as "12" based on the available information in January 2014 and the appellant did not dispute

the most recent score. The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated January 16, 2014, that the appellant suffers from a medical condition other than an addiction, namely nonischemic cardiomyopathy. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years.

Regarding the nature of restrictions specific to the medical condition, the physician left this section of the Medical Report blank with no comments inserted and no further information attached to the Report. Given an opportunity to provide more information about the appellant's restrictions, the physician reported in the May 8, 2014 letter that he disagrees with the listed restrictions to the appellant's employment, namely an inability to lift more than 40 lbs. with any repetition and an inability to work in a physically demanding job and the physician wrote: "he has no limitations." While the appellant stated at the hearing that he has restrictions that have not been recorded and he does not know the reason that the physician did not set these out, the physician is clear in the opinion that the appellant has no physical restrictions to employment, even to a physically demanding job with heavy lifting. The panel finds that the ministry reasonably relied on the information provided by the medical practitioner, in both the Medical Report and the May 8, 2014 letter, which was information provided to the ministry by the appellant. The panel further finds that the ministry reasonably concluded that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR.

#### *Conclusion*

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.