

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated May 28, 2014 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because he did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular Section 2(4)(b) was not met because in the opinion of the minister, his medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as he has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 12 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, he has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

## 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 reconsideration included:

- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated December 3, 2013 and completed by the appellant's physician;
- an Employability Screen with a Total Score of 15;
- an Employability Screen with a Total Score of 14;
- a Client Employability Profile;
- the results of an X-Ray dated November 14, 2013; and
- the appellant's Request For Reconsideration dated May 21, 2014.

In the Medical Report, the physician who indicates that he has known the appellant for 6 months or less and has not examined previous medical records, reported that the appellant's primary medical condition is Spine Osteoarthritis with an onset from 1999. No secondary medical condition is indicated. Under treatment, it is noted none. The stated condition has existed for 14 years with the prognosis expected of duration at 2 years or more. Further noted is that the medical condition is not episodic in nature and under restrictions specific to the reported medical condition, the physician wrote pain with ROM [range of motion] of spine, back stiffness.

There were 2 Employability Screens included with the ministry's record.

The 1<sup>st</sup> Employability Screen was undated and indicated a total score of 15 with results that correspond with Expected to Work (score 15+) which are described on the Employability Screen form as Employable with Longer-Term Interventions. Under Office Use Only it is noted that the Client Employability Profile was completed and that the client has severe barriers. Under comments, it was stated "client was run over by a semi truck which has cause - back bowel-spine damage. Arthritis. PST-mental health issues-ulcers". This form indicated that the appellant has been on Income or Social Assistance 1-3 times, anywhere in Canada in the last 3 years.

The 2<sup>nd</sup> Employability Screen was also undated and indicated a total score of 14 with results that correspond with Expected to Work (score 0-14) which are described on the Employability Screen form as immediately employable/employable with short-term interventions. This form indicated that the appellant has not been on Income or Social Assistance anywhere in Canada in the last 3 years. The portion, Under Office Use Only is not completed.

The Client Employability Profile indicates the following:

- Under Work Experience; the appellant has been unemployed for over 3 years,
- Under Employment Search Skills; a severe lack of employment search and planning skills,
- Under Education/Training; between grade 0 - 9,
- Under Literacy; poor reading, writing and numeracy skills,
- Under Transportation; vehicle/public transportation available and accessible,
- Under Child Care; other, 7 children at family home,
- Under Shelter; adequate shelter,
- Under Health (excluding addictions); severe health condition,
- Under Disability; persistent disability, severely impacts on employment options, and
- Under Communication Skills; has some difficulty communicating and resolving conflicts.

Under comments, it indicates that the Dr. is looking at back and spine surgery.

The summary of the results of an X-Ray dated November 14, 2013 are: "Minimal early multi-level cervical

spondylosis and moderate multi-level facet arthrosis with alteration of normal cervical curvature. There is alteration of the dorsolumbar and lumbosacral curvature but otherwise no abnormality is seen in the lumbar spine.”

In the Notice of Appeal, dated June 9, 2014, the appellant submitted that he has been on PPMB for 10 years and his condition has not changed. He states that his back pain doesn't let him lift his children or anything that weighs more than 5-10 lbs., and that he cannot sit or stand for long periods and is unable to walk more than 1-2 blocks without needing to stop and rest. The appellant indicates that his wife has extreme anxiety and cannot be alone whether it is at home or out in public.

At the hearing the appellant testified that;

- he didn't understand the reason for the different scores on his Employability Screens, and that he had attended the ministry office in person only one time for the interview,
- his physician didn't like filling out the forms and that he has been his physician for 6 years not 6 weeks,
- the physician was waiting for the appellant's condition to change before operating,
- he did not want to take painkillers - OxyContin for fear of becoming addicted,
- he tried "job start" and other programs yet was told to return to the ministry and complete the PPMB forms,
- he was not called to renew his PPMB designation for 4 years and
- his wife cannot be left alone due to her medical condition.

At the hearing the ministry representative testified that the appellant's Employability Screen's total score is 14 and the difference between the 2 Employability Screens was based on the response to the question, ("Apart from your current application, how many times have you been on Income or Social Assistance anywhere in Canada in the last 3 years?") Responses: a - Never – 0 points, b - 1 to 3 times – 1 point, or c – more than 3 times – 3 points. The ministry stated that the appellant was not eligible for the additional 1 point as his electronic record shows that the appellant has been registered with the ministry under the same file number since 2010 and therefore, the correct response is, a – Never – 0 points. The ministry representative stated that although it appears from her records that the most recent Employability Screen indicated a total score of 15, there was no reason why there were 2 Screens included. In response to a question by the panel, the ministry representative stated that the responses to all the questions on the Employability Screen and Employability Profile were recorded directly from the appellant's interview as no other information is indicated or available on the electronic file. The ministry also stated that it is unlikely that other records would have been accessed or verified at the time of the interview.

The ministry relied on its reconsideration decision and submitted no new information to explain why the total score from the Employability Screen was noted as 12 in that decision.

### **Findings of Fact**

The appellant's file number with the ministry is the same on both Employability Screens which dates back to 2010 according to the ministry's electronic file.

The correct total score on the appellant's Employability Screen is 14.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant does not qualify as a person with persistent multiple barriers to employment because he did not meet all the criteria under Section 2 of the Employment and Assistance Regulation. In particular, the appellant has not met Section 2(4)(b), because in the opinion of the minister, his medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as he has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant's score on the employability screen as set out in Schedule E, did not meet the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, he has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

### Relevant Legislation

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

In accordance with the legislation to be designated as a PPMB the appellant must meet the all the criteria set out in Section 2, subsection (2) and subsection (3) or (4). The criteria in Section 2, subsection 2, and subsection (4)(a), have been met.

### Ministry's Position

The ministry's position is that a medical condition is considered to preclude the appellant from searching for, accepting or continuing in employment when, as a result of the medical condition, the appellant 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 argues that based on the information provided, the appellant's medical condition does not preclude him from searching for, accepting or continuing in all types of employment (non-physical,

more sedentary, part-time) or in participating in a program that would work with the appellant to overcome the barriers noted on his Employability Screen. The ministry noted that the restrictions as reported by the physician that are specific to the appellant's medical condition are pain with range of motion of spine and back stiffness and that the physician does not describe any treatment/remedial approaches that have been tried to date or are expected in the future. The ministry also determined that the X-Ray Report dated November 14, 2013 describes the appellant's medical condition as mild to moderate. For these reasons, in the minister's opinion, the appellant's medical condition and resultant restrictions do not preclude him from searching for, accepting or continuing in all types of employment; therefore he does not meet the eligibility requirement of EA Regulation, subsection 2(4)(b).

### **Appellant's Position**

The appellant's position is that his medical condition has not changed in the 10 years since he qualified for PPMB. Based on the facts of his case; specifically, the information on the record supplied by the doctor confirms that the appellant meets the medical portion of the test for PPMB and that the ministry was unreasonable to deny him the PPMB designation. Additionally, the appellant argues that his wife's medical condition does not allow her to be alone.

### **Panel's Findings**

The panel notes that in the appellant's Medical Report - PPMB dated December 3, 2013, the primary medical condition as Spine Osteoarthritis. The appellant's restrictions specific to the reported medical conditions are pain with range of motion of spine and back stiffness.

After reviewing the PPMB Medical Report and the X-Ray Report, the panel finds that although the appellant's physician confirms that the patient's primary medical condition's onset was 1999 and that the prognosis is 2 years or more and that the appellant has restrictions specific to the reported medical condition, this is quite different from the legislation which requires that in the opinion of the minister, the nature of the restriction(s) is a barrier that precludes the person from searching for, accepting or continuing in employment. Additionally the panel finds that while the appellant states that his medical condition has not changed and that he is not able to lift more than 5-10 lbs., cannot sit or stand for long periods or walk more than a block or two; the X-Ray Report summarizes that the appellant has "Minimal early multi-level cervical spondylosis and moderate multi-level facet arthrosis with alteration of normal cervical curvature. There is alteration of the dorsolumbar and lumbosacral curvature but otherwise no abnormality is seen in the lumbar spine." The panel finds that this recent medical information does not support the appellant's statement or establish that he is prevented from participating in a program that would work with him to overcome the barriers noted on his Employability Screen.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical condition(s) are a barrier that precludes him from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not met and he does not qualify as a person with persistent multiple barriers to employment. The panel confirms the reconsideration decision.