



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 06 August 2014 that held that the appellant was not eligible for qualification as a person with persistent multiple barriers to employment (PPMB). The ministry determined that the appellant’s employability screen score was 11 and therefore assessed his PPMB eligibility under sections 2(2) and 2(4) of the Employment and Assistance Regulation. The ministry found that the appellant met the requirements of section 2(2). Section 2(4)(a) requires that to qualify for PPMB a person must have 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, or has occurred frequently in the past year, and is likely to continue for at least 2 more years. The ministry was not satisfied that the information provided by the appellant’s medical practitioner has confirmed that his medical condition has continued for at least 1 year, or occurred frequently in the past year, and therefore determined that the appellant did not meet the criteria of section 2(4)(a) of the Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files: the appellant has been in receipt of income assistance since December 2001.
2. The appellant's employability screen, showing a score of 11.
3. Two Medical Reports – PPMB, (MR-PPMB1 and MR-PPMB2), both completed by the appellant's general practitioner (GP), who has known him for more than 6 months:

MR-PPMB(1), dated 29 November 2013:

- Primary medical condition: severe left shoulder fracture. Date of onset 17 September 2013.
- Secondary medical condition: stiffness left shoulder/elbow/wrist.
- Treatment: physiotherapy, may need surgery and extensive rehabilitation
- How long has this condition existed? 3 months.
- Prognosis: expected duration of medical condition – 2 years or more, will need prolonged rehabilitation with/without surgery.
- The medical condition is not episodic.
- Restrictions: unable to use left arm.

MR-PPMB(2), dated 22 February 2014:

- Primary medical condition: chronic regional pain syndrome left arm. Date of onset 2013.
- Secondary medical condition: severe injury left shoulder (dislocation) and wrist.
- Treatment: physiotherapy, pain left arm/rehabilitation, prescription analgesic.
- How long has this condition existed? 5 months.
- Prognosis: expected duration of medical condition – 2 years or more.
- The medical condition is not episodic.
- Restrictions: no use of left arm, chronic pain.

4. The appellant's Request for Reconsideration, dated 31 June 2014. The appellant writes that first, the ministry has wrong information: it was a 20 ft. ladder that went out from under him as he was doing his second cut of a hedge – he was on the 18th step. The fall destroyed his left shoulder rotator cuff and tore the top of the shoulder to elbow muscle and to tendons. He has developed a problem with his left leg, which causes severe cramping. Several tests have been done, leaving his doctor to believe it is a circulation problem, so he is in need of a compression sock.

In his Notice of Appeal, dated 14 August 2014, the appellant writes that he still does not have full mobility in his injured arm, nor does he have the lifting strength in his injured left arm due to torn upper arm muscle and two tendons on same arm. He still has severe upper leg cramps in his left leg. The appellant states: "No more long walks. Prolonged sitting also causes severe cramps. Lying down with a straightened leg also causes severe cramps."

At the hearing, the appellant elaborated on the difficulties he has experienced since his fall from a ladder. He described how his legs are not working right and while there has been some slight

improvement with his left shoulder, there has been no improvement with his left hand and fist – he cannot close that hand. He has difficulty writing and cannot write a full sentence. He cannot lift and cannot hold onto a wheelbarrow. He has tried carving but cannot get a full push with his carving tools as needed. He has tried mowing the lawn but he cannot do that. He cannot hold onto a ladder. He tried helping his wife with the horses at her former workplace, but that didn't work either. His left arm always aches even when he takes pain medication.

The appellant's wife explained that her husband had always worked as a landscaper. This involved heavy work, such as moving soil and rocks and installing pools. No landscaping company will hire anyone who cannot work with both hands.

When asked by the panel, the appellant confirmed that his fall from a ladder occurred on 17 September 2013.

The ministry stood by its position at reconsideration.

When asked by the panel to differentiate between “has continued for at least one year” as in section 2(4)(a)(i) and “has occurred frequently in the past year” as in section 2(4)(a)(ii), the ministry representative responded that continuous means ongoing without relief for a period of one year, and occurred frequently means the condition is episodic and occurring frequently over a one year period.

The panel finds that the information provided by the appellant at the hearing is in support of the information before the ministry at reconsideration. The panel therefore admits as evidence the appellant's testimony under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision that found that the appellant did not qualify for PPMB because he did not meet the criterion set out in section 2(4)(a) of the EAR, requiring that a medical practitioner confirm that his medical condition has continued for at least year or has occurred frequently in the past year and is likely to continue for at least two years, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the EAR:

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[not applicable to this appeal]
- (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.

In the reconsideration decision, the ministry referred to the MR-PPMB(2), noting that the appellant's GP indicates that the expected duration of his medical condition will be two years or more. However the date of the injury was 17 September 2013. The position of the ministry is that it is not satisfied that the information from a medical practitioner confirms that the appellant has a medical condition, other than an addiction, that has continued for at least one year. The ministry concludes that the requirements of section 2(4)(a) of the EAR have not been met.

The position of the appellant is that the evidence shows that his medical condition is a barrier that

precludes him from searching for, accepting or continuing in employment and that therefore he meets the criteria for PPMB.

The panel notes that the appellant's submissions all relate to his position that he meets the requirements set out section 2(4)(b) of the EAR – that is, his medical condition is a barrier that precludes him from searching for, accepting or continuing in employment. The ministry did not make a determination in this respect. The panel considers the criteria set out in section 2(4)(a) and 2(4)(b) of the EAR to be consecutive – in other words, the ministry need not make a determination with respect to whether the appellant's medical condition is a barrier to employment if the 1 and 2 year criteria set out in section 2(4)(a) have not been met.

The legislation requires that the 1 and 2 year criteria must be confirmed by a medical practitioner – the appellant's GP. The available evidence from the GP is that the date of onset of the appellant's medical condition is 17 September 2013 and that the GP has confirmed that, in the GP's opinion, it has continued up to the 22 February 2014, when MR-PPMB(2) was completed, or for 5 months. While the GP has given an opinion that the appellant's medical condition will continue for at least two years from that date, the panel finds that the ministry was reasonable in concluding that this is not the same as the GP providing explicit confirmation that the medical condition has continued for at least one year. The panel therefore finds that the ministry was reasonable in determining that the requirements set out in section 2(4)(a) of the EAR had not been met.

On the basis of the foregoing, the panel finds that the ministry's decision that the appellant did not qualify for PPMB was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.