

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 October 1, 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)(a)(ii) was not met because the appellant’s physician has not confirmed that the expected duration of the appellant’s condition is 2 years or more.

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)(b) as it has been established that the appellant’s medical condition precludes the appellant from searching for, accepting or continuing in all types of employment at this time.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2.

PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

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

- a 2 page letter from the appellant's neurologist dated January 20, 2014
- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) page 1 of 2 received by the ministry on July 24, 2014;
- an Employability Screen with a Total Score of 12;
- a ministry Employment Checklist for PPMB dated September 2, 2014 which indicated that a medical practitioner has confirmed that the expected duration of the appellant's condition is 2 years or more; and
- the appellant's Request For Reconsideration dated September 17, 2014.

In the Medical Report, the physician reported that the appellant's primary medical condition is a ruptured L5-S1 disc and sciatica with an onset of May 2012. No secondary medical condition is indicated. Under treatment/remedial approaches that have been tried to date or are expected in the future are noted as epidural injections ("slight improvement") and three consults with the neurologist to contemplate other modalities. The stated condition has existed for 2 years and 2 months with the expected duration less than 2 years. Further noted is that the appellant cannot afford physiotherapy which would greatly increase recovery. The medical condition is not episodic in nature and the episodes occur daily. In response to how frequently they are likely to recur is noted "unsure". Under restrictions specific to the reported medical condition, the physician wrote lifting, pulling and pushing.

In the letter from the appellant's neurologist, it is reported that:

- the appellant's chief complaint is low back pain and weakness in his low back for approximately 1 and ½ years;
- the appellant did perform physiotherapy and has had 3 pain injections but does not feel he had a substantial improvement since the last visit;
- his pain interferes with his sleeping and he has difficulty performing any type of physical task;
- he does not have any pain or numbness in his legs; his back pain is worse standing and he develops worsening discomfort with prolonged sitting;
- rest tends to help his symptoms;
- his lumbar range of motion was slow, stiff and uncomfortable with flexion, extension, lateral bending and rotation without any evidence of instability;
- his medications are Lyrica and Naprosyn;
- the appellant gained 20 lbs. in last year because of inactivity;
- the appellant was able to heel, toe and tandom walk; and
- the appellant may benefit from lumbar decompression such as an inversion table and recommended the appellant work on reconditioning his core.

In the appellant's Request for Reconsideration, he writes that that he has been off work since October 2012 and has chronic back pain. He states that his back goes into severe spasms when

picking up his infant son who weighs 15 lbs. He states that he cannot stand or sit for more than 1-2 hours at a time. Lying down is his only constant relief of pain.

On appeal the appellant submitted page 1 of a 2 page letter from his neurologist dated June 4, 2013 which reported that :

- the appellant's chief complaint is lower back pain and right leg pain from a work-related accident on May 20, 2012;
- the appellant continued to work with low back discomfort until June 18, 2012 after which he began a 6 week physiotherapy program;
- he returned to work after the physiotherapy program until Oct 22, 2012 at which time he could not continue to work due to discomfort;
- the appellant continued to perform some exercises for discomfort;
- in February 2013 he started to develop right leg pain in addition to his low back pain;
- he currently complains of low back pain mostly right-sided hip with radiating discomfort in his buttock and then down the leg to the back of the knee;
- he describes the pain as sharp and stabbing in nature and is worse with sitting and walking;
- he feels less discomfort when lying down;
- he continues to exercise; and
- the appellant does not take any medications.

The appellant testified that his injury occurred on May 20, 2012 and that had he known the system he would have applied for PPMB with his original physician's diagnosis on June 4, 2012. He stated that he has suffered since that time with low back pain which has continued daily and his latest MRI has resulted in no change to his doctor's opinion. The appellant indicated that he continues with core conditioning and goes when he can afford to the local pool where he does light exercises. He indicated that he takes muscle relaxants to get through the day.

Admissibility of New Information

The new information the appellant provided prior to the hearing regarding the circumstances and date of his work-related accident provided additional detail consistent with the original PPMB application form. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4) of the Employment and Assistance Act.

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 Section 2(4)(a)(ii) was not met because the appellant's physician has not confirmed that the expected duration of the appellant's condition is 2 years or more.

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)(b) as it has been established that the appellant's medical condition precludes the appellant from searching for, accepting or continuing in all types of employment at this time.

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 qualify 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 the appellant's physician has not confirmed that the expected duration of his condition is 2 years or more; therefore, the appellant does not meet the eligibility requirement set out in the EAR, subsection 2(4)(a)(ii).

Appellant's Position

The appellant's position is that his injury occurred on May 20, 2012 and that had he known the system he would have applied for PPMB with his original physician's diagnosis on June 4, 2012. He stated that he has suffered since that time with low back pain which has continued daily and his latest MRI has resulted in no change to his doctor's opinion. The appellant argues that he has been off work since October 22, 2012 and continues to have daily chronic back pain and his doctor has said it could take another 2 years to get better. This is a total of almost 4 years.

Panel's Findings

The panel notes that in the appellant's Medical Report - PPMB dated July 24, 2014, the primary medical condition is a ruptured L5-S1 disc and sciatica with an onset of May 2012. No secondary medical condition is indicated. The physician indicates that the appellant's medical condition is not episodic in nature and the episodes occur daily. In response to how frequently they are likely to recur the physician notes "unsure". Under restrictions specific to the reported medical condition, the physician wrote lifting, pulling and pushing.

After reviewing the PPMB Medical Report and the neurologist's reports, the panel finds that the appellant's physician and neurologist confirm that the patient's primary medical condition's onset was in May 2012 and that on July 24, 2014, the appellant's physician indicated that the prognosis of his medical condition is less than 2 years; whereas, the legislation requires that in the opinion of a medical practitioner, the appellant's medical condition is likely to continue for at least 2 more years. Additionally, the panel finds that while the ministry has referred to the EAR, subsection 2(4)(a)(ii) which requires that in the opinion of the medical practitioner, the appellant's medical condition has occurred frequently in the past year and is likely to continue for at least 2 more years, subsection 2(4)(a)(i) which requires that the appellant's medical condition has continued for at least 1 year and is likely to continue for at least 2 more years is more applicable in the circumstances as the medical practitioner indicated that the appellant's medical condition is not episodic in nature. The panel finds however that the ministry reasonably determined that the appellant's prognosis by his physician dated July 24, 2014 indicated that the duration of the appellant's medical condition is less than 2 years which is a requirement under both 2(4)(a)(i) and (ii).

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 is likely to continue for at least 2 more years and therefore the criterion under section 2(4)(a) 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.