

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 27, 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 June 17, 2014, in which a general practitioner wrote, in part, that:
 - The appellant's primary medical condition is hip replacement- left, with onset of 2010 and treatments identified as “surgery, physio, pain meds”;
 - The appellant's secondary medical condition is osteoarthritis- left knee, with onset of 2005;
 - 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. The general practitioner added a note: “pt. [patient] walks well when using cane.”
 - In the section of the Report regarding restrictions, the physician wrote: “pt. [patient] walks well but uses a cane”;
- 2) Letter dated October 30, 2014 from the ministry to the appellant advising him that he no longer meets the requirements for the PPMB category; and,
- 3) Request for Reconsideration dated November 19, 2014.

In his Request for Reconsideration, the appellant wrote that:

- Since his last medical examination, his condition has changed.
- His right hip is deteriorating and he is waiting for an appointment with a specialist for re-examination of his right hip.
- If needed, he may have a total hip replacement.
- He has been unable to get his WCB [workers' compensation board] claim resolved.
- No one wants to hire him because of his hip replacement in case of the possible liability.

In his Notice of Appeal dated December 4, 2014 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- His degenerative disc has worsened from his last medical examination.
- The ministry made the decision on the disability Act, not on the regular Act, and the decision was not in his favour.
- His age was not made known to the ministry and he was not assigned for a disability pension.
- His doctor wants to know why the ministry is asking the same question over and over, repeating the same information that the ministry already knows.
- His left hip has had ongoing pain and discomfort and he is unable to walk on snow or ice and he is afraid of falling on his hip and reinjuring his hip.
- If he is removed from social assistance he will not be able to support himself because of his hip replacement and his degenerative disc.
- No employer in his previous trade wants to hire him because of his hip replacement and his back injury.

At the hearing, the appellant stated that:

- He had approached his doctor on several occasions, asking for the same information as that presented in the Medical Report – Persons with Persistent Multiple Barriers dated June 17, 2014 and felt that he was repeatedly asking for the same information. The doctor became irritated.
- He had a work injury ten years ago affecting his hips and back. His left hip was replaced four years ago and the doctor is waiting to see if the right one will deteriorate sufficiently to warrant

a second hip replacement. The injured disc in his back has also deteriorated.

- He wondered if he might be eligible for his pension, or if he might be able to get a disability pension.
- While his previous doctor had known the full extent of his background and injury, his previous doctor retired and his new doctor is inexperienced and “doesn’t know me yet”.
- Both he and the doctor were confused as to whether he was, or should be, applying for PPMB status or Persons With Disability (PWD) status.
- He knows of other people who, like him, walk with a cane but were able to get PPMB status.
- While he had worked for more than 20 years in a trade prior to his accident, he had since been refused employment by an employer in his trade due to his hip replacement and back problems, which according to the employer could make their WCB insurance skyrocket.

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 appellant is not being cut off income assistance, he just did not qualify for PPMB.
- In other cases, in addition to the use of a cane, other individuals might have additional conditions which are not readily apparent that would result in them being granted PPMB status.
- In response to a question from the appellant, the ministry said that information would be provided to the appellant about an advocate to assist the appellant with submitting an application for CPP.

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, 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 described restrictions specific to the appellant's medical conditions of left hip replacement and osteoarthritis in his right (sic) knee as "walks well but uses a cane." The ministry argued that there is insufficient information to establish that the appellant's medical condition precludes him from searching for, accepting or continuing in all types of employment, including sedentary or part-time 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 medical conditions, which include problems with both hips and his back from a work place injury. The appellant argued that his left hip has ongoing pain and discomfort and he is unable to walk on snow or ice and he is afraid of falling on his hip and reinjuring his hip. The appellant argued that no employer in his previous trade wants to hire him because of his hip replacement and his back injury

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 and the appellant did not dispute the score. The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the

Medical Report dated June 17, 2014, that the appellant suffers from a medical condition other than an addiction, namely a left hip replacement and osteoarthritis in his knee. 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 wrote that the appellant walks well but uses a cane. While the appellant stated at the hearing that his previous doctor was much more familiar with the extent of his injuries from a previous workplace accident and the doctor who completed the Medical Report is new and does not know him yet, the doctor is asked in the Medical Report to describe the nature of any restrictions specific to the identified medical conditions and wrote that the appellant "walks well." The appellant also stated that he is unable to walk on snow or ice and he is afraid of falling on his hip and reinjuring his hip; however, the doctor also noted in the prognosis section of the Medical Report that the appellant "walks well when using cane." The panel finds that the ministry reasonably relied on the information provided by the medical practitioner in the Medical Report and 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*.