

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) May 7, 2015 reconsideration decision in which the Ministry determined that the Appellant did not qualify as a person who has persistent multiple barriers to employment (“PPMB”) under section 2(4) of the Employment and Assistance Regulation because:

- The Ministry concluded that a medical practitioner did not confirm that the Appellant has a medical condition, other than an addiction, that has continued for at least 1 year and is likely to continue for at least 2 more years; and,
- In the opinion of the minister, that medical condition is a barrier that precludes the Appellant’s ability to search for, accept or continue in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (“EAR”) Section 2 and Schedule E.

PART E – Summary of Facts

With the consent of both parties, this appeal was conducted as a written hearing in accordance with section 22(3)(b) of the *Employment and Assistance Act*.

The following information is in the appeal record:

1. Information that the Ministry provided in its reconsideration decision that the Appellant had been on income assistance since August 7, 1991 with a review date of August 1, 2008. His file was last updated on April 23, 2015.
2. An Employability Screen for the Appellant with the Ministry's letterhead, indicating the answer to question 3 regarding current applications and number of times receiving assistance, as "a – never" for a score of 0, and a total employability score of 14. This form is not dated and there is no information in the record about who completed the form and what information this form is based on.
3. A Medical Report – Persons with Persistent Multiple Barriers completed by a physician and signed on February 3, 2015 with the following information:
 - The Appellant's primary medical condition is cervical disc degenerative disease and his secondary medical condition is migraines.
 - The treatment and outcome for the primary medical condition is Gabapentin – outcome – under control; for the secondary medical condition – Analgesics.
 - The medical conditions have existed since 2010, their expected duration is 2 years or more; they are not episodic in nature.
 - The restrictions from these conditions are described as "unable to sit for longer duration and lift heavy objects".

There is no section in the report for a medical practitioner to address how the identified medical conditions would affect a person's ability to search for, accept or continue in employment.

4. The Appellant's Request for Reconsideration with the Appellant's statement that the information in the employability screen is incorrect; question 3 should be "c" not "a". The Appellant also attached a copy of the screen with question 3 circled and the words "incorrect" and "should be "c".
5. Another copy of an Employability Screen Schedule E, undated and with indication of its origin, with question 3 circled and the score of "1" circled. That question asks "Apart from your current application, how many times have you been on income or Social Assistance anywhere in Canada in the last 3 years?"

In his notice of appeal, dated May 14, 2015, the Appellant submitted that the information in the employability screen score is still incorrect; that is, question 3 should be "b". The Appellant also stated that his doctor said that his condition lasts "more than 2 years", not less than 2 years. With this notice, the Appellant resubmitted a copy of the PPMB Medical Report completed by his doctor. He also submitted a copy of an Employability Screen Schedule E with several answers circled, including the one for question 3 - "(b) 1 to 3 times" - apart from the current application, the number of times he has been on income or social assistance.

As his written submission for this appeal, the Appellant provided the first page of Appendix A of the Ministry's reconsideration decision with a note "see over" and with these 2 paragraphs circled:

- The Ministry's determination that he has been receiving assistance since August 7, 1991 and met the criterion under section 2(2) of the EAR that he has been on assistance for at least 12 of the past 15 months, and
- The Ministry's determination that the doctor indicated that the expected duration of medical

conditions is “Less than 2 years.”

The Appellant attached a note stating that he sometimes gets mixed up. The answer to question 3 [of the Employability Screen] should have been “b”, 1-3 times. The Appellant submitted that the Ministry even stated that he has been on assistance since 2008. The Appellant further submitted that the doctor checked “2 years or more” in the prognosis area of the medical report. The Appellant wrote that he also just had an MRI scan on his “C” spine. He is getting a nerve conduction study on July 7, 2015 because of losing feelings in his arms and also for migraines. The Appellant attached a copy of the February 3, 2015 medical report. He also attached a copy of the Employability Screen with question 3 circled and the notes “? Was previously”, “1991” and denial support [illegible].

Pursuant to section 22(4) of the *Employment and Assistance Act*, the Panel admits the information the Appellant submitted in his notice of appeal and in his written appeal submissions as being consistent with and in support of the evidence the Ministry had at reconsideration.

For this appeal, the Ministry relied on and reaffirmed its reconsideration decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision was reasonably supported by the evidence and/or was a reasonable application of the applicable legislation in the Appellant's circumstances.

Applicable Legislation

Employment and Assistance Regulation -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 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.

Schedule E Employability Score

Question 2 Apart from the current application, how many times has the person been on Income or Social Assistance anywhere in Canada in the last 3 years?

Answer: (a) never (b) 1 to 3 times (c) more than 3 times Scores: 0 1 3

The Parties' Positions

The Appellant's position is that he qualifies as a PPMB. With respect to the Employability Screen information, the Appellant wrote that he sometimes gets mixed up. The correct answer for Schedule E Employability Screen, for the number of times he has been on assistance in addition to the current application, should be "1-3 times". That would give him a score of 1 not 0 for that section.

The Appellant further submits that in the Medical Report – PPMB the doctor indicated that the expected duration of his medical conditions is "2 years or more" and not as the Ministry determined "less than 2 years"

The Ministry's position is as set out in its reconsideration decision. It determined that the Appellant's employability score is 14 and therefore the Appellant's "PPMB application is assessed under sections 2(2) and 2(4)." The Ministry wrote that, "apart from his current application", the Appellant did not provide documentation that he had been on income or social assistance more than 3 times anywhere in Canada in the last 3 years. The Ministry also wrote that the Appellant had been receiving assistance since August 7, 1991 and therefore met the criterion in section 2(2) of the EAR as he had been on assistance for at least 12 of the past 15 months.

As for the doctor's opinion about the duration of the Appellant's medical conditions, the Ministry wrote that the doctor indicated "less than 2 years". Therefore, the Ministry determined that the Appellant did not meet section 2(4)(a) of the EAR.

The Ministry also relied on the doctor's assessment of the Appellant's restrictions. The Ministry wrote that a medical condition is considered to preclude the 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 of environment." The Ministry determined that it does not have enough information from the Appellant's medical practitioner to determine that his medical conditions preclude him from "searching for, accepting or continuing in all types of employment including sedentary or part-time". The Ministry therefore concluded that the Appellant did not meet the requirements in section 2(4)(b) of the EAR and did not qualify as a PPMB.

The Panel's Findings

Section 2(1) of the EAR states that, to qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements in 2(1)(a) subsection (2), and 2(1)(b) subsection (3) or (4). There is no dispute that the Appellant meets the requirements in section 2(2) of the EAR.

As for the other criteria, the Panel finds the Ministry's reconsideration decision to be unclear in some sections and even incorrect in some parts. Therefore the Panel will first address the criteria about barriers from medical conditions in section 2(3)(b)(ii) and in section 2(4)(b) of the EAR.

Barrier to searching for, accepting or continuing in employment

The Ministry's position is that the Appellant's employability screen score is 14. Therefore, the provisions of section 2(4), including 2(4)(b), would apply. The Appellant's position is that his employability screen score is 15. Therefore the provisions of section 2(3) would apply, including 2(3)(b)(ii).

The Panel notes that, although some of the criteria in section 2(3) and 2(4) are different, section 2(3)(b)(ii) and section 2(4)(b) both address barriers to the Appellant's ability to search for, accept or continue in employment because of a medical condition that is confirmed by a medical practitioner.

The doctor, who completed the medical report that is in the record, reported the Appellant's primary medical condition as cervical disc degenerative disease onset 2011 and his secondary medical condition as migraines onset 2010. The only restrictions the doctor reported from these conditions are that the Appellant is unable to sit for longer durations and lift heavy objects. There is no information from the doctor about how these medical conditions and restrictions affect the Appellant's ability to search for, accept or continue in employment.

The Appellant submitted that he had an MRI scan and is getting a nerve conduction study because of losing feeling in his arms and also for migraines. However, he provided no information about how his medical conditions restrict his ability to search for, accept or continue in employment.

Based on this evidence, the Ministry determined that it did not have enough information from the Appellant's medical practitioner to satisfy the requirement in section 2(4)(b). The Panel finds that the Ministry's conclusion is reasonable because there is insufficient evidence from the doctor and the Appellant to determine whether or even if the Appellant's medical conditions are a barrier that preclude him from searching for, accepting or continuing in employment, as required by section 2(4) of the EAR. Similarly, there is insufficient information to determine whether those medical conditions are a barrier that seriously impede his ability to search for, accept or continue in employment, as required by section 2(3)(b)(ii) of the EAR. For these reasons, the Panel finds that the Ministry reasonably concluded that the Appellant did not meet all of the eligibility criteria for PPMB qualification in section 2 of the EAR.

Duration of Medical Conditions

The Panel finds that the doctor reported that the expected duration of the Appellant's medical conditions is 2 years or more. Therefore, the Ministry incorrectly assessed that part of the medical report and was not reasonable in its determination that the Appellant did not meet the requirement in section 2(4)(a) of the EAR.

Employability Score

In its reconsideration decision, the Ministry wrote that the Appellant has been on income assistance since August 7, 1991, with a review date of August 1, 2008 and an update on April 23, 2015. When referring to the times the Appellant has been on income assistance, the Ministry wrote "apart from your current application". The Ministry further wrote: "All of the information provided with your original application as well as with your reconsideration request was considered when making this decision", and then "In your PPMB application dated February 3, 2015, [the doctor] reports .."

The Panel notes that, based on a plain reading of these statements, the Appellant could understand that he has a "current application" to qualify as a PPMB, an application which is now the subject of this appeal. Therefore, his position that the answer to the question in the employability score about the number of times he has been on assistance, "in addition to the current application", could reasonably be 1-3 times.

However, as the Panel discussed above, regardless of the answer to that question in Schedule E Employability Score and regardless of whether the Appellant's employability score is 14 or 15, the Ministry reasonably determined that there was not enough information about any employability barriers from the Appellant's medical conditions and restrictions for him to qualify as a PPMB.

Conclusion

Having considered all of the evidence and the applicable legislation, the Panel finds that the Ministry's reconsideration decision concluding that the Appellant did not meet all of the requirements to qualify as a PPMB was reasonably supported by the evidence. The Panel therefore confirms that decision.