

PART C – Decision under Appeal

The Decision under Appeal is the Ministry Reconsideration Decision of April 24, 2015 in which the ministry determined the appellant was ineligible for the renewal of his qualification as Persons With Persistent Multiple Barriers (PPMB) because he did not meet the requirements set out in Section 2 of the Employment and Assistance Regulation (EAR). The ministry found that because the appellant has been in receipt of income assistance for at least twelve (12) of the past fifteen (15) months prior to his application he met the requirements under Section 2 (2). The ministry found that the appellant scored nine (9) on the employability screen, his application did not meet the requirements to be assessed under Section 2 (3). The appellant's application was therefore considered under Section 2 (2) and (4) of the EAR. The ministry was satisfied that the appellant has a medical condition other than an addiction and that the medical condition has lasted at least one (1) year and it is likely to continue for two (2) years or more. However the ministry determined that the appellant's medical conditions are not a barrier that precludes him from searching for, accepting or continuing in employment; therefore, he did not meet the criteria under subsection (4) (b), and does not qualify to have his PPMB qualification renewed.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) – Section 2

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A Client Employability Profile form in the name of the appellant dated February 3, 2015.
- An Employability Screen in the name of the appellant undated. The appellant's score is 9.
- An Employability Screen in the name of the appellant undated. The appellant's score is 13.
- A Medical Report-Persons With Persistent Multiple Barriers form in the name of the appellant dated February 2, 2015. The appellant's physician diagnoses him with depression and anxiety as his primary conditions (onset 2009) and scoliosis back and fractured right wrist as his secondary conditions (onset, congenital and 2012). The physician checks that the conditions are expected to last 2+ years and that the conditions are not episodic. The physician writes that the appellant's restrictions include:
 - walking about 10 minutes,
 - standing 10 minutes,
 - cannot carry any heavy weights
 - low mood,
 - low motivation and energy levels
- A letter dated March 31, 2015 written from the appellant's advocate to his physician. The letter asks the physician to agree or disagree with several statements about the appellant's health. The physician confirmed that:
 - The appellant's back pain causes poor sleep resulting in his inability to go to work some days. This happens more frequently in colder/wet weather and can last for up to 4 days.
 - The appellant has arthritis in his hands and feet triggered by cold and wet weather. He suffers from the arthritis approximately 50% of the time.
 - The appellant's depressed moods, lack of energy/motivation, and pain prevent the appellant from working at least one week per month.
 - The physician writes in the comment section that the appellant has arthritis in his back, hands, and feet. Anxiety, depression, mal alignment of knees, scoliosis in his back, and has difficulty working during flare-ups.
- Sixty pages of Employee Earning History for the appellant showing his employment earnings from 2012 to March 12, 2015. The documents show the appellant earned between \$300-600 each month since April 2013.
- A Medical Report-Persons With Persistent Multiple Barriers form in the name of the appellant dated December 6, 2010. The appellant's physician diagnoses him with developmental deformities in spine, foot bunion operated on 2 years ago, hand injury that was operated on, and major depression. The physician writes that the appellant's restrictions include:
 - Cannot walk long distances
 - Cannot lift any heavy weights due to back pain
 - Major depression, concentration, focus on life and tasks.
 - His symptoms are not episodic.
- A Medical Report-Persons With Persistent Multiple Barriers form in the name of the appellant dated January 7, 2013. The appellant's physician diagnoses him with scoliosis, foot bunion and calluses, depression, and anxiety. The physician writes that the appellant's restrictions include:
 - Pain in both feet due to bunions and calluses
 - back pain
 - arthritis in fractured right wrist

- depression and anxiety
- His symptoms are not episodic.

At the hearing the appellant told the panel that he has had the designation as a Person With Persistent Multiple Barriers (PPMB) for many years because of his medical condition. He said the restrictions caused by his medical condition have slowly gotten worse. He now suffers from arthritis more regularly. He added that he works as often as he is physically able and that his work provides him with socialization preventing him from becoming isolated.

He told the panel that the ministry appears to misunderstand the type of work he does. He works for a temporary labour company that places him with an employer each day he is able to work. Although he works for many different companies doing different tasks, he is limited in what he can accept because of his physical restrictions. He added that his pay records from his employer show that his job category is "construction or general labour." He said this category includes a wide range of job functions from very light labour to heavy physical labour. He told the panel that he is only able to accept work that is very light labour. Jobs he typically works at include applying stickers to products in a factory, placing small boxes of food products into a larger case, counting inventory, etc. None of these jobs include construction or heavy labour.

The appellant stated his medical conditions make it impossible for him to maintain a predefined work schedule because some mornings he is well enough to work and some days he is unwell and needs to rest. Because he works on a day-to-day basis with a temporary labour company, he has the flexibility to work when he can without inconveniencing an employer.

At the hearing the ministry told the panel that the appellant has qualified for PPMB twice in the past. The ministry added that the decision to deny the appellant a renewal for PPMB was based on the fact that he is able to work regularly in the field of construction or general labour and the interpretation of "construction or general labour" appears to be an important issue in the reasons of the reconsideration decision. The ministry noted that there is no evidence that the appellant's condition has improved and that his condition is degenerative. The appellant has been working part-time for several years while on PPMB status and his medical condition makes his work schedule unpredictable.

The ministry explained that, as stated in the reconsideration decision, the \$500 monthly earning exemption for people on PPMB status is available to encourage clients to participate more fully in the community, as they are able.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that the appellant does not qualify to be renewed as a person with persistent multiple barriers on the basis that he does not meet all of the legislative requirements. The ministry found that the appellant met the requirements of Section 2 (2) that he had been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. The appellant's score on the employability screen is 9, therefore the ministry considered the application under section 2 (4) of the Employment and Assistance Regulation (EAR). However the ministry determined that the appellant's medical conditions are not a barrier that precludes him from searching for, accepting or continuing in employment.

The EAR section 2 states;

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.

It is the ministry's position that the appellant's score on the Employability Screen is less than 15 and therefore his application must be considered under EAR section 2(4). The ministry argues that the appellant's medical condition does not cause a barrier that would preclude him from searching for, accepting or continuing in any employment.

The appellant argues that his medical condition creates a barrier to him searching for, accepting, or continuing in any employment.

As the ministry is satisfied that the appellant has met the requirements of EAR section 2 (2), the panel will determine the reasonableness of the ministry's decision that the appellant does not meet the requirements in either EAR section 2 (3) or (4)

Regarding the ministry's determination that, the appellant does not qualify under EAR section 2 (3).

The ministry argues that the appellant's score on the Employability Screen is 9. The panel has reviewed the data on the Employability Screen. The appellant has not presented any evidence that would contradict the data used to calculate the score of 9 nor has the appellant argued that the score is inaccurate. The panel finds that the ministry was reasonable to determine the appellant does not meet the criteria set out in EAR section 2 (3).

Regarding the ministry's determination that the appellant does not qualify under EAR section 2 (4) the panel considered the evidence. The ministry argues that, in the opinion of the minister, the appellant's condition does not present a barrier that precludes him from searching for, accepting or continuing employment. The panel considered the evidence of his medical condition. The evidence from the medical reports show that his conditions have not improved from the time his initial medical report was completed in December 2010. In the letter written by the advocate, the physician confirms the appellant has arthritis in his hands, feet and back as well as depression and anxiety, however, the onset of the arthritis in his feet, back, and left hand has not been established. The physician wrote that the appellant has difficulty working when he has "flare-ups" and that his arthritis is triggered by wet and cold that happens about 50% of the time. Additionally, in the advocate's letter, the physician further detailed the effects of the appellant's mental health on his ability to work. The appellant's physician describes the appellant's limitations as being able to walk for 10 minutes, stand for 10 minutes, he cannot carry heavy weights, has a low mood, low motivation and energy levels. The physician agrees that the appellant has at least one week every month that he unable to perform any type of employment due to his depression and other mental health conditions. The oral evidence of the appellant is consistent with this description and did not identify any conflicts.

The ministry argued that the appellant has demonstrated his ability to seek and accept employment by the fact that he has been earning between \$308-\$667 each month for the past two years. The ministry writes, "you have been employed on an ongoing basis by..... an employment agency specializing in temporary work in construction/general labour. Therefore, it cannot be said that your medical conditions preclude you from searching for, accepting, and continuing employment." The appellant responded that he works as much as he can but his medical conditions limit him from accepting additional work beyond what he accepts already. The panel finds that the appellant has limitations caused by his medical conditions and that he has been taking advantage of the \$500 earning exemption allowed under the legislation. However, as the appellant is regularly accepting employment, the panel finds the ministry was reasonable to determine the appellant is not precluded from seeking, accepting, or continuing employment.

At the hearing the ministry agreed with the appellant that the interpretation of "construction or general labour" appears to be an important issue in the reasons of the reconsideration decision. The appellant has clarified his abilities and limitations in terms of the nature of the jobs he can accept and the panel finds that this clarification is consistent with the medical conditions and restrictions described by the physician. The appellant's abilities could not reasonably be described as construction/ general labour, but rather, light-labour or low-impact general labor. However, the appellant has participated in paid employment on an ongoing basis for 1-2 years and therefore has demonstrated he is able to seek, accept or continue in employment.

The panel finds that the reconsideration decision was a reasonable application of the applicable legislation in the circumstances of the appellant and therefore the panel confirms the decision.