



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of August 27, 2015 wherein the ministry denied the appellant a Person with Persistent Multiple Barriers (PPMB) qualification because the ministry determined the appellant did not meet the requirement in section 2(1) Employment and Assistance Regulation (EAR) that a person meet the requirements stated in section 2(2) EAR and section 2(3) or section 2(4) EAR. An Employability Screening completed on the appellant provided a score of 14 and therefore the ministry assessed the appellant’s PPMB application under sections 2(2) and 2(4) of the EAR

The ministry determined the appellant met the requirements of section 2(2) and section 2(4)(a) EAR but did not meet the requirements of section 2(4)(b) EAR; specifically that the appellant, in the opinion of the minister, does not have a medical condition that is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

EAR, section 2 and Schedule E

PART E – Summary of Facts

Neither the ministry nor the appellant attended the teleconference hearing. After confirming that both the ministry and the appellant were notified of the date and time of the hearing, the hearing proceeded in accordance with section 86(b) of the EAR.

The evidence before the ministry at the time of reconsideration:

- Medical Report – Persons with Persistent Multiple Barriers (PPMB) signed by a medical practitioner (MP) on May 12, 2015.
- Employability Screen completed on appellant which indicates a score of 14.
- Letter dated May 15, 2015 from the ministry to the appellant advising his application for PPMB designation has been denied because he did not meet the legislated criteria;
- Request for Reconsideration (RFR) signed by appellant on August 13, 2015. In the RFR the appellant stated that “Right shoulder need surgery to cut 1” off the bone. If used for long period of time I am unable to lift arm up. I have asked my MP for another surgeon to speed up the surgery. Cannot pack home groceries. To verify call landlord”.

The appellant has been in receipt of income assistance for more than 12 of the preceding 15 months. On May 12, 2015 the MP signed the appellant’s application for PPMB designation. The MP diagnosed the appellant’s primary condition as having right shoulder problems that have been ongoing for “years”. The MP stated the appellant’s medical condition is not episodic in nature and is expected to continue for 2 years or more. On the PPMB application under restrictions, the MP comments, “unable to use right shoulder for heavy work”.

On the Notice of Appeal (NOA), the appellant stated he has severe arthritis through his whole body and that he has been waiting for surgery on right shoulder to cut 1” of bone off and that the severe arthritis makes it difficult to use right arm.

The panel finds the information is admissible as the information further explains the impact of his medical condition and supports the information and record that was before the ministry at the time of reconsideration and is admissible under Section 22(4) EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of August 27, 2015 wherein the ministry denied the appellant a PPMB qualification because, in the opinion of the ministry, the appellant does not have a medical condition that is a barrier that precludes him from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

The legislation considered: EAR

Section 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*.
- (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.

Ministry's Position:

The ministry's position as stated in the Reconsideration Decision is that for the appellant to qualify for PPMB he must meet the legislated requirements set out in section 2(2) and section 2(3) or 2(4) of the EAR. The ministry argued that since his Employability Screen score was lower than 15 he did not meet the eligibility requirements set out in section 2(3) EAR and therefore his eligibility was assessed under the legislative requirements set out in section 2(4) EAR. The ministry's position is that the appellant met the requirements under section 2(4)(a) EAR but did not meet the requirements under section 2(4)(b) EAR. The ministry notes the information provided by the appellant in his RFR and that in the PPMB Medical Report the MP indicates that the appellant's condition is not episodic in nature and when asked to describe the nature of any restriction specific to his condition, the MP narrates that the appellant is unable to use his right shoulder for heavy work. Based on this information, the ministry concludes that while the appellant may not be able to use his right shoulder, the MP indicates this is only for heavy work and there are sedentary jobs available and therefore, the appellant's medical condition does not preclude him from all types of employment.

Appellant's Position:

Based on the appellant's information in the RFR and the NOA, the appellant's position is that the severe arthritis impacts his ability to use and lift his right arm, leaving him unable to pack groceries and that he requires surgery on the right shoulder. The appellant has asked his doctor to get another surgeon to speed up the time for his surgery.

Panel Decision:

The panel finds the evidence supports the ministry's position that the appellant's medical condition is not a barrier that precludes him from all types of employment. The panel finds the MP did not provide sufficient detail under Part 3 of the PPMB application (restrictions specific to medical condition) that would support that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment that does not involve heavy lifting and is of a more sedentary nature. The panel finds that the appellant's argument that he cannot carry his groceries home; that he has severe arthritis, and is awaiting for surgery on his right shoulder is not sufficient to establish that his medical condition is a barrier that precludes him from searching for, accepting or continuing in employment.

The panel finds the ministry reasonably determined that the appellant failed to meet the criteria in section 2(4)(b) EAR that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment.

The panel finds that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.