

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the Ministry”) reconsideration decision dated August 17, 2015 in which the Ministry found that the Appellant is ineligible for the Persons with Persistent Multiple Barriers to employment (“PPMB”) qualification pursuant to section 2 of the Employment and Assistance Regulation (“EAR”). The Ministry assessed the Appellant’s application under EAR section 2(4) because he has an employability screen score of less than 15. The Ministry found that while the Appellant met the criteria under section 2(2), he does not meet the criteria in EAR section 2(4)(b) which requires that: *In the opinion of the minister, (the medical condition) is a barrier that precludes the person from searching for, accepting or continuing in employment.*

## PART D - Legislation

Employment and Assistance Regulation - EAR - section 2

## PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of:

1. A Request for Reconsideration signed by the Appellant on August 5, 2015 with attached information as follows:

A PPMB medical report signed by the Appellant's family physician on May 29, 2015, that stated the following:

- Primary medical condition: Recurrent pancreatitis, date of onset "not known".
- Secondary medical condition: Klinefelter's Syndrome.
- Treatments: 3 medications "for life" including monthly injections.
- The conditions have existed for 45 years.
- Prognosis: Expected duration of medical conditions is 2 years or more with the comment, "life".
- The medical conditions are episodic in nature with the comments, "last episode was 2 years ago" and "more frequent occurrences are possible".
- Restrictions specific to the noted medical conditions: "Alcohol restrictions are strongly advised. Also avoid Tylenol # 3".

2. The Appellant's undated Employability Screen, indicating a total score of 14. Points were awarded for being on income assistance for more than twelve months in the last three years, having less than Grade 10 education, and having no/very limited work experience over the last three years.

3. The Ministry's PPMB denial letter dated July 20, 2015 which informed the Appellant that he no longer meets the requirements for the PPMB category. The Ministry advised that the Appellant will continue to receive the higher support allowance, monthly earnings exemption and have access to general health supplements for the next three months so he can plan for the reduction in income assistance. The reduction will take effect at the end of October 2015 and the Appellant will now be expected to find work and develop an Employment Plan.

4. A letter from the Appellant's family physician dated July 29, 2015. The physician stated that the Appellant has been receiving disability assistance since 2003 but made an error in filling out the forms. The correct response for Item 3. on the Employability Screen should be *c – More than 3 times*, in response to the question, *Apart from your current application, how many times have you been on Social Assistance anywhere in Canada in the last 3 years?*

5. A medical history print-out signed by a physician (not the Appellant's family physician) on May 27, 2014 detailing the Appellant's medical history including several conditions, past surgeries, and medications.

6. Information from the Ministry record that indicates the Appellant is a sole recipient of income assistance. His file was opened on May 6, 2008. He was first approved for PPMB in 2004 which continued after his file re-opened in 2006 and 2008. His file was closed for less than 2 months on each occurrence.

*Additional submissions*

With the consent of both parties, the appeal proceeded by way of a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. In an e-mail to the tribunal, the Ministry stated that its submission for the appeal will be the reconsideration summary.

In his Notice of Appeal dated August 26, 2015, the Appellant reported that he loses his balance when he walks, he has stopped drinking, his doctor still gives him T-3's, and he is going blind.

The panel finds that these statements describe the Appellant's symptoms and medications and are therefore corroborative of the records that were before the Ministry at the reconsideration which list several medical conditions and prescriptions. The panel admits the appeal submission under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the ministry at the time the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reconsideration decision of August 17, 2015, finding that the Appellant's PPMB application should be assessed under EAR section 2(4) and that he is ineligible for PPMB qualification because the Ministry was not of the opinion that his medical condition is a barrier that precludes him from searching for, accepting, or continuing in employment, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The sections of the legislation relevant to the issue on appeal are set out as follows:

### **Employment and Assistance Regulation, section 2**

#### **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

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.

In order for a client to be eligible for the PPMB qualification or renew their application, all of the criteria in EAR section 2 must be satisfied. The Ministry noted that the Appellant's PPMB application was assessed under EAR sections 2(2) and 2(4) as he has an Employability Screen score of 14. The Ministry found that the Appellant met the requirements in EAR section 2(2) as he has been an income assistance recipient for at least twelve of the immediately preceding fifteen calendar months [file opened in 2008].

Regarding the specific criteria the Ministry determined did not apply or were not met, the panel's analysis is as follows:

*EAR section 2(3)*

The Ministry argued that this section is not applicable to the Appellant's circumstances because in order to have PPMB eligibility assessed under section 2(3) the client must have an Employability Screen score of at least 15, and have a medical condition of at least one year duration that is expected to last for at least 2 more years. The Ministry argued that the Appellant's Employability Screen score is 14, because apart from his current application, which was opened in May 2008, he has not been on income or social assistance anywhere in Canada in the last 3 years. Therefore, his application is assessed under EAR section 2(4).

The Appellant argued that an error was made on his Employability Screen and he has been receiving disability assistance since 2003. Therefore, he should get 3 additional points for being on income or social assistance more than 3 times in the last 3 years, and his Screen score is actually 17. His family physician argued that a total score of 17 "would therefore qualify him for continued income assistance."

*Panel's decision*

The panel finds that the Ministry reasonably determined that the Appellant's Employability Screen score was less than 15 thereby excluding consideration under section 2(3). There is no evidence that the Ministry closed and then re-opened the Appellant's file at any time since 2008. The Ministry's evidence is that the file was closed and re-opened twice but both occurrences were prior to 2008. As the Appellant has been on income assistance continuously since 2008, the panel finds that the Ministry's determination that his Screen score is 14 was reasonable.

Regarding the Appellant's argument that he would qualify for continued income assistance if his Screen score is 17, the panel notes that section 2(3) does not confer PPMB eligibility for a Screen score that is 15 or greater. While the legislative language states that the requirements under EAR section 2(3) apply only where the Employability Screen score is at least 15, all of these requirements must still be met. Therefore, even if the Appellant's Screen score was 17 and section 2(3) applied to his circumstances, he would still have to satisfy all of the requirements under the section including the requirement that his medical condition is a barrier to employment.

Given that the Appellant's Employability Screen score is 14, the panel finds that the Ministry was reasonable in determining that section 2(3) does not apply to the Appellant's circumstances, and reasonable in assessing his PPMB application under EAR section 2(4).

*EAR section 2(4)*

While the Ministry accepted that the Appellant's medical condition meets the duration criteria in subsection 2(4)(a) as confirmed by his family physician, the Ministry argued that subsection 2(4)(b) is not met because the physician reported no restrictions to employment, nor did he list any mental or physical restrictions. The Ministry argued that the physician's advice that the Appellant should restrict alcohol consumption and avoid Tylenol # 3 does not provide any detail about day to day or periodic restrictions and is not sufficient to support that the Appellant's medical conditions preclude him from searching for, accepting, or continuing in employment.

The Ministry argued that a medical condition is considered to preclude a client from searching for, accepting, or continuing in employment when as a result of the condition, the client is unable to participate in any type of employment, for any length of time, except in a supported/sheltered type of work environment. The Appellant noted that he loses his balance; has stopped drinking; is still prescribed Tylenol # 3; and is going blind.

*Panel's decision*

EAR subsection 2(4)(b) requires the minister to have the opinion that the medical condition is a barrier that precludes the client from searching for, accepting or continuing in employment. The Ministry submitted that "precludes" means that the client is unable to participate in any type of employment except in a supported/sheltered type of work environment.

The panel notes that the Appellant's physician, in the PPMB medical report, indicated restrictions that include limiting alcohol and avoiding Tylenol # 3 and last episode was 2 years ago. However, as argued by the Ministry, the reported restrictions do not provide information about the Appellant's barriers to employment. Further, while the physician who provided the Medical History print-out included a list of the Appellant's conditions and medications, there is no information in this History about the Appellant being unable to look for work, or continue in any type of job. The panel notes that none of the medical information provides any information about the Appellant's capacity to work.

The Appellant, in his appeal submission, noted that he loses his balance when he walks and that he is going blind. However, the panel gives his evidence little weight as he has not tied these in to any assessment of his ability to work, and his physicians have not described these symptoms or how they impact his employability. As there is no information in the record provided, concerning the impact of the Appellant's conditions on his ability to search for, accept, or continue in employment, the panel finds that the Ministry reasonably determined that there was insufficient information to meet all of the requirements under section 2(4).

*Conclusion*

The panel finds that the Ministry reasonably assessed the Appellant's PPMB application under section 2(4), concluding that the requirements of this section are not met based on the information provided. The panel finds that the Ministry reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.