

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the Ministry”) reconsideration decision dated August 31, 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”). While the Ministry accepted that the Appellant met the criteria in section 2(2), the Ministry found that the eligibility requirement in section 2(3) was not met based on the Appellant’s Employability Screen score, and that he does not meet the criteria in subsection 2(4)(b) which requires: *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 the following:

1. A Request for Reconsideration signed by the Appellant on August 10, 2015 with attached information as follows:

(a) Two PPMB medical reports signed by the Appellant's family physician, dated March 31 and April 23, 2015, that stated the following:

- Primary medical condition: Addictions with date of onset left blank (March 31 report), and Hepatitis C ("new diagnosis"), date of onset April 1, 2015 (April 23 report).
- Secondary medical condition: "depression, anxiety, trauma", with date of onset left blank (both reports).
- Treatment and Outcome: "interested in getting treatment for his addictions", "anticipate gradual improvement" (March 31 report), and "unsure whether treatment of Hep C will be undergone", "hopeful for continued improvement over time regarding addictions and mental health" (April 23 report).
- The conditions have existed for more than 10 years (both reports).
- Prognosis: Expected duration of medical conditions is less than 2 years (March 31 report) and 2 years or more (April 23 report). The medical conditions are not episodic in nature (both reports).
- Restrictions specific to the noted medical conditions: "No physical restrictions" (March 31 report) and "currently mental health precludes (the Appellant) from employment" (April 23 report).

(b) A 6-page submission from an advocate dated August 21, 2015, outlining the Appellant's argument that he meets all of the regulatory and policy requirements for PPMB and requesting that his PPMB status be reactivated.

(c) A Ministry policy sheet for PPMB criteria, updated to March 1, 2006.

(d) A letter from a Registered Nurse dated August 5, 2015 that provided the following information:

- The Appellant has been a patient at a community health centre for the previous year, and is preparing to initiate intensive therapy for his chronic Hepatitis C. The treatment has many side effects, recovery will take up to 6 months, and he will be unable to work during this time.
- The Appellant has a longstanding history of trauma, anxiety, and subsequent depression that has persisted for longer than 10 years and is expected to continue indefinitely.

2. The Ministry's PPMB denial letter dated July 24, 2015, informing the Appellant that he has not met the requirements for the PPMB category. The Ministry advised that the Appellant will be expected to find work and create an Employment Plan.

3. 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.

4. Information from the Ministry record that indicates the Appellant is in receipt of income assistance as a sole recipient.

Additional submissions

1. Subsequent to the reconsideration decision the Appellant filed two copies of his Notice of Appeal, the additional one with corrected date of September 14, 2015, together with an attached submission signed by the Appellant and an advocate on September 13, 2015. The submission outlines the Appellant's argument for consideration of PPMB eligibility under EAR section 2(3), and provides the following information:

- The Appellant is a First Nations individual who did not have a family doctor until April 2015 and has had very little health care during his adult life. He is requesting additional medical reports from his periods of incarceration that may verify the date of onset of his Hepatitis C.
- He has been living with trauma for 29 years and had no "preparatory orientation" to adulthood following multiple foster care placements (46 in total).
- Arrangements are in place for a formal mental health assessment to gain insight into the Appellant's long standing trauma, possible FASD, depression, anxiety, anger management issues, history of violence, developmental delay, and lack of social skills.

2. Subsequent to an adjournment request (for the purpose of providing medical documentation), as granted by the tribunal on September 28, 2015, the Appellant submitted a questionnaire prepared by an advocate and completed and signed by the Appellant's family physician on October 6, 2015. The physician provided the following information in response to two questions:

(a) *In the April 23, 2015 PPMB Medical Report, you stated your patient has depression, anxiety, and trauma. What are the symptoms or health limitations that arise from his medical conditions that restrict his ability to work?:*

- (The Appellant) has a longstanding history of abuse and neglect with multiple foster placements as a child, multiple violent episodes, continual flashbacks, and marginal coping skills. He is very often triggered by stressful situations and is "very unlikely to be able to hold steady employment" due to his symptoms.

(b) *Are the health-related restrictions noted above severe enough to preclude him from searching for, accepting, or continuing in employment in the foreseeable future?:*

- "Most definitely yes".

3. At the hearing, the advocate provided a 2-page document, *Appellant's Submission to the Tribunal*, dated October 19, 2015, that outlines the Appellant's argument for consideration of PPMB eligibility under EAR subsection 2(4)(b).

Admissibility

At the hearing, the Ministry confirmed they had no objections to the above listed documents. The panel accepts the appeal submissions of September 13 and October 19, 2015 as argument, substantiating the Appellant's position in the Request for Reconsideration that he meets all "regulatory and policy requirements" for PPMB qualification, in particular, with respect to being restricted from employment due to his mental health conditions. The panel further finds that the statements in the September 13, 2015 advocate submission regarding the Appellant's health and cultural background and the physician's information of October 6, 2015, explaining the Appellant's

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restrictions to employment, are admissible as evidence pursuant to section 22(4)(b) of the *Employment and Assistance Act* (EAA). The test for admissibility, as set out in the EAA, states that a panel may admit as (additional) evidence only oral or written testimony in support of the information and records that were before the minister when the decision being appealed was made.

The panel finds that the submission of September 13, 2015 substantiates the family background and mental health information provided in the reconsideration record (advocate submission and letter from a Registered Nurse). Regarding the physician's information of October 6, 2015, the panel finds that it corroborates the information the physician previously provided in the two PPMB medical reports, by specifically referencing the April 23, 2015 report. It provides greater detail about the Appellant's mental health conditions as identified in the reports, including his symptoms and resulting restrictions.

4. Oral testimony

The Appellant attended the hearing with an advocate and his mental health counsellor (who acted as an additional advocate). Through their submissions and in response to questions from the panel, the following information was provided:

- The Appellant changed advocates between the reconsideration and the hearing. His reconsideration submission of August 21, 2015 and his original appeal submission of September 13, 2015 were prepared by his previous advocates. His submission for the hearing was prepared by his current advocate.
- The Appellant recently regained contact with primary care and has been seeing his physician for less than 6 months (since March 2015).
- He has a severely dysfunctional family background, collected bottles and taught himself to break and enter for clothing and food, and has not had a psychiatrist since he was 16 (the age that he was turned out on his own without any supports after being in 46 foster homes). He has lived in BC since the early 1990's, has been on income assistance consistently since at least 2010, and cannot remember if he ever worked except for his "career of b & e".

At the hearing, the Ministry summarized the reconsideration decision, noting it is based on the information that was provided at that time. The Ministry provided one piece of additional evidence, confirming that their record shows that the Appellant has been on income assistance continuously since 2008.

Admissibility

The panel finds that all of the oral testimony substantiates the information in the reconsideration record, in particular, the submissions from other advocates, the information that the Appellant started seeing his physician in March 2015, and the information regarding his family background and history on income assistance (with additional details provided). Accordingly, the panel admits the testimony, under section 22(4)(b) of the EAA, as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reconsideration decision of August 31, 2015, finding the Appellant ineligible for PPMB qualification because the eligibility requirement in section 2(3) was not met based on the Appellant's Employability Screen score, and that there was insufficient information to establish that his medical condition is a barrier that precludes him from searching for, accepting, or continuing in employment as set out in subsection 2(4)(b), 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, all of the criteria in EAR section 2 must be satisfied. Under section 2(1), the client must meet the requirements of section 2(2) and either 2(3) or 2(4) depending on the score s/he receives on the Ministry Employability Screen. The Ministry assessed the Appellant's PPMB application under EAR sections 2(2) and 2(4) based on an Employability Screen score of 14. At the reconsideration, the Ministry accepted that the Appellant met the requirements in EAR section 2(2) as he has been an income assistance recipient for at least 12 of the immediately preceding 15 calendar months. The Ministry further accepted that the duration and time requirements under subsection 2(4)(a) were met with respect to the conditions of depression, anxiety, and trauma because the Appellant's physician confirmed that these conditions have existed for more than 10 years and are likely to continue for more than 2 years.

Regarding the Appellant's addictions, both parties agreed that these could not be considered for the PPMB qualification because addictions are specifically excluded under EAR sections 2(3) and 2(4). Both parties also agreed that the diagnosis of Hepatitis C would not be considered, as the duration and time requirements under subsection 2(4)(a) were not established: Hepatitis C was a "new diagnosis" as of the date of the reconsideration, and as of the date of the hearing, the Appellant had not been able to access past medical records that may have indicated the date of onset of the Hepatitis C.

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)

Ministry's position

In the reconsideration decision, the Ministry noted that for the PPMB application to be assessed under section 2(3), the section requires the Employability Screen score to be 15 or more. The Ministry argued that this eligibility criterion was not met because the Appellant's Screen score is 14.

Appellant's position

The Appellant's position shifted between the reconsideration and the hearing. In the reconsideration submission, prepared by a previous advocate, he argued that there was a miscalculation in the Employability Screen and the answer to Question 3 that asks how many times he has been on income or social assistance anywhere in Canada in the last 3 years should be "more than 3 times", resulting in a Screen score of 17.

However, at the hearing, with clarification regarding how long the Appellant's income assistance file has been open (continuously since 2008), the current advocate accepted the Ministry total of zero points for Question 3. While the advocate expressed that the Appellant could have been awarded additional points on the Screen for being in need of English language upgrading, he said that they are no longer disputing the Screen score of 14 because there is sufficient evidence to approve the PPMB application under EAR section 2(4).

Panel's decision

The panel finds that the Ministry reasonably determined that the eligibility criterion for assessment of the PPMB application under EAR section 2(3) was not met. The Ministry consistently held the position that the Appellant's Employability Screen score is 14. This is supported by evidence at the hearing that the Appellant's current income assistance file has been open continuously since 2008.

As there is no evidence that the Ministry closed and then re-opened the Appellant's file at any time since 2008 or that the Appellant was on assistance in another province in the past 3 years, the panel finds that the Ministry's determination that his Screen score is 14 was reasonable. Given that the Appellant's Employability Screen score is 14, the panel finds that the Ministry reasonably determined that he is not eligible for PPMB assessment under EAR section 2(3).

EAR section 2(4)(b)

Ministry's position

As stated earlier, the Ministry based the finding of ineligibility under subsection 2(4)(b) on the Appellant's mental health diagnosis: depression, anxiety, and trauma. While finding that the duration and time criteria for these conditions were met under subsection 2(4)(a), the Ministry argued that subsection 2(4)(b) was not met because the PPMB medical reports did not note any restrictions resulting from depression, anxiety, and trauma that would preclude the Appellant from participating in work-related activities. The Ministry further argued there was insufficient evidence to establish that the resulting restrictions would preclude all forms of employment. At the hearing, the Ministry reaffirmed that the decision was based on the information that was provided for the reconsideration.

Appellant's position

In the Appellant's reconsideration submission of August 21, 2015, the advocate argued that the Appellant "complies with all the regulatory and policy requirements of PPMB." That advocate argued that while the Appellant is actively working with his doctor to address his health barriers and become more productive, "his medical conditions are beyond his control and prevent him from doing an effective job search" and it is "impossible for (him) to find a job" regardless of his Employability Screen score. In the original appeal submission of September 13, 2015, the advocate, while referring to EAR section 2(3), argued that the Appellant's "commitment to health...for long term stability" would jeopardize his recovery if he was required to be employed.

In the most recent appeal submission, prepared for the hearing, the current advocate submitted that while the Ministry chose not to recognize the impact of the Hepatitis C diagnosis, and the legislation excludes addictions, the Appellant's mental health conditions are enough in terms of severity and duration, to preclude the Appellant from employment. In terms of anxiety, depression and trauma, both the advocate and counsellor argued that while the Appellant is "making himself come back", he has been outside of the health care system without supports until April of this year, needs a great deal of support because of his background, has a long way to go before he can manage a work situation, and is "not at a point where he can consider employment as a possible activity".

The counsellor reported that in terms of the level of support required, the Appellant attends two appointments with her per week instead of the regular schedule of once a week sessions. The Appellant added that he is slowly reconnecting with his family and culture and is working very hard to try and get a life, deal with anger, and listen. He explained that he grew up around addictions, violent episodes, and poverty, taught himself to break and enter in order to obtain clothing and food, and cannot remember ever working except for his "career of b & e" which landed him in jail. He argued that he is triggered by stressful situations as these bring back memories of his dysfunctional, often violent and neglectful, family situation. He is angry with the Ministry over his 46 foster placements followed by being turned out to fend for himself. With the historic destruction of his culture he struggles with understanding all of the rules and paperwork, but he is trying hard to function in society.

The advocate submitted that the panel should give significant weight to the physician's additional information of October 6, 2015, arguing that this information is consistent with the Appellant's mental health restrictions that were identified in the April 23, 2015 PPMB medical report where the physician stated, "currently mental health precludes (the Appellant) from employment." The advocate argued that the additional information addresses the Ministry's concerns that there was "insufficient information" about restrictions, submitting that when the physician filled out the original PPMB medical report (March 31, 2015) she had a very brief history with the Appellant and knew little about him. The advocate noted that the physician indicated no physical restriction but did not say anything about any mental restriction although in this initial medical report as well, the physician has acknowledged a mental health diagnosis.

The advocate argued that based on the evolving doctor-patient relationship, the physician's assessment has provided more detail about the Appellant's conditions and restrictions as time has gone by and she gained more knowledge of the Appellant. He argued that the Ministry must not expect a lot of detail as there is very little space in the medical report for the physician's comments. He argued that in any event, "depression/anxiety/trauma say a lot in themselves about how they impact people."

The advocate emphasized that the Appellant's position turns on the most recent information of October 6, 2015, where the physician has provided substantial detail on how the Appellant's mental health conditions preclude him from employment, reporting that due to his upbringing, he has continual flashbacks, marginal coping skills, and is "very often triggered by stressful situations" and would be "very unlikely to be able to hold steady employment due to these symptoms." The advocate argued that the physician not only endorsed that the Appellant's health-related restrictions are severe enough to preclude him from searching for, accepting, or continuing in employment, she strongly endorsed that statement in the questionnaire submission by indicating, "most definitely yes."

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 policy document, filed by the Appellant for the reconsideration, states the recipient must be unable to participate in "any type of employment that would enable independence from income assistance." The panel notes that this policy applies to the test under EAR subsection 2(3), "seriously

impedes” employment and is not applicable to subsection 2(4)(b) which sets out that the medical condition must “preclude” searching for, accepting or continuing in employment.

The panel finds that based on the original information filed for the reconsideration, the Ministry was reasonable in finding that there was insufficient information from the physician to indicate how the Appellant’s mental health restrictions preclude him from searching for, accepting, or continuing in employment as set out in EAR subsection 2(4)(b). While the physician acknowledged the mental health conditions of depression, anxiety, and trauma which the advocate argues would reasonably have an impact in their own right, the physician’s comments that the Appellant has “no physical restrictions” and that “currently mental health precludes (him) from employment” do not provide any detail about how his conditions prevent him from either searching for or accepting a job, or continuing in a job.

The panel turns its attention to the physician’s additional information of October 6, 2015 and the appeal submissions (which the panel has admitted), combined with the portion of the reconsideration submission that referenced the Appellant’s mental health conditions indicating that they prevent him from doing an effective job search. The physician sets out specific restrictions to employment due to the Appellant’s depression, anxiety, and trauma which she identified as a secondary medical condition in both of the PPMB medical reports. These restrictions include “continual flashbacks” and “marginal coping skills”, especially when he is “very often” triggered by stressful situations.

The panel accepts the advocate's argument that the physician's additional submission clarifies the information in the earlier PPMB medical reports by providing more detail regarding the Appellant's ability to search for, accept, or continue in employment. It is consistent with the PPMB medical report of April 23, 2015 in which the physician wrote, “currently mental health precludes (the Appellant) from employment.”

As there is sufficient information in the additional submissions, read in combination with the reconsideration record, to establish that the Appellant’s medical conditions are a barrier that preclude him from searching for, accepting, or continuing in employment, the panel finds that the Ministry’s reconsideration decision under EAR subsection 2(4)(b) is not reasonably supported by the evidence.

Conclusion

The panel finds that the Ministry reconsideration decision, denying the Appellant the PPMB qualification under section 2 of the EAR, is not reasonably supported by the evidence with respect to subsection 2(4)(b). The panel rescinds the reconsideration decision and refers the matter back to the minister for a determination as to the amount of income assistance.