



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of August 24, 2015, which found that the appellant did not qualify for the Persons with Persistent Multiple Barriers (PPMB) status. The ministry determined that the appellant had an employability screen score of less than 15 and in the opinion of the minister the medical condition of the appellant did not preclude him from searching for, accepting, or continuing in employment as required by section 2(4) of the Employment and Assistance Regulation (EAR).

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## PART D – Relevant Legislation

EAR section 2

## PART E – Summary of Facts

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

1. A *Medical Report – Persons with Persistent Multiple Barriers* dated July 29, 2013 that was completed by the appellant's general practitioner and reports that the appellant has a primary medical condition of COPD with the date of onset December 15, 2012 and a secondary medical condition of Asthma which is listed as a lifelong condition of the appellant. Under *Treatment* the physician has written Advair and liquid Ventolin with the corresponding *Outcome* listed as "*Limits exacerbations*" for both medications. Other *Treatment* listed are "*Quit Smoking*" with the corresponding outcome listed as "*Limit decline*" and "*Walking exercise*." The physician reports that the medical conditions are expected to continue for 2 years or more and adds the comment "*Progressive decline*." Under *Restrictions* the physician has written "*Limited exertion/walking*" and "*Chronic cough & shortness of breath*." The physician has known the appellant for over 6 months.
2. A *Medical Report – Persons with Persistent Multiple Barriers* dated May 7, 2015 that was completed by the appellant's general practitioner and reports that the appellant has a primary medical condition of COPD with the date of onset April 2013. Under *Treatment* the physician has written Advair and Salbutamol and under *Outcome* is listed "*Limits exacerbations*" and "*progressive*." The physician reports that the condition has existed for 3 years and is expected to continue for 2 years or more. Under *Additional comments* the physician has written "*Permanent*" and the medical condition is not episodic in nature. Under *Restrictions* the physician has written "*Shortness of breath, fatigue, exercise intolerance*." The physician has known the appellant for over 6 months.
3. The appellant's *Request for Reconsideration* signed and dated by the appellant on August 11, 2015. In it the appellant states: "*Although I cannot dispute my Employability Screen Score, I don't feel enough weight & consideration was given to my health condition. I am at a loss of how to express my condition in any other way than was originally described by my physician. Please find attached his notes re: my denial of continued PPMB status.*"
4. A letter from the appellant's physician dated August 10, 2015 which reads: "*(The appellant) has COPD which is a progressive condition. He was accepted for PPMB in 2013 on the basis of his COPD and was rejected in 2015. As the condition is progressive I am unsure why his status changed. He continues to be short of breath on exertion and takes medication for COPD. He has had pneumonia and exacerbations of COPD in the past 2 years.*"
5. An *Employability Screen* report (undated) which shows that the appellant has an employability screen score of 8.

The appellant's *Notice of Appeal* was dated August 30, 2015. Under *Reasons for Appeal* he states "*Due to COPD, I have an increased susceptibility to colds, respiratory infections including pneumonia, etc. that require unscheduled doctor/clinic visits, abrupt periods of convalescence, or hospitalization. Sedentary/light physical activity employment that takes into consideration these conditions mentioned above is rare to non-existent.*"

In the *Reconsideration Decision* the ministry reports that the appellant has been a recipient of assistance since February 2011 and was approved for PPMB in August 2013. The ministry also reports that the appellant has an Employability Screen Score of 8 and lists his earnings from January 2013 to August 2015 for part-time employment doing childcare for a family member.

At the hearing the ministry requested permission for a ministry worker to be allowed to be present for

the hearing. As the appellant had no objection this was agreed.

The appellant presented a written statement listing four episodes in 2014 of pneumonia and viral exacerbations. The appellant explained that this information was provided to him (verbally) by his physician and was recorded by the appellant. Accordingly, the statement did not have the physician's signature. The ministry did not object to the admission of this new information. Pursuant to section 22(4) of the *Employment and Assistance Act (EAA)*, the panel decided to admit the statement as it corroborates the information provided by the appellant's physician in his letter of August 10, 2015.

The appellant reported that 2 years ago he was hospitalized with pneumonia which was brought on by his asthma. After being released from hospital he was advised by a ministry worker that he should apply for PPMB. He did do so and was granted PPMB in August 2013. The rest of the appellant's comments go to argument and are presented in Part F.

The ministry was asked by a panel member what had changed so as to render the appellant ineligible for PPMB when he had previously been granted PPMB. The ministry responded that the appellant had been working and earning income over the past 2 years (except for 3 months of the past 2 years) and also noted that there was no evidence that the appellant required a supported or sheltered work environment.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant PPMB status was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant has an Employability Screen score of less than 15 and in the opinion of the minister the medical condition of the appellant did not preclude him from searching for, accepting, or continuing in employment as required by section 2 of the EAR

The relevant legislation is as follows:

### **EAR**

#### **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.

### The Appellant's Position

The appellant argues that his medical condition has not improved over the past 2 years and accordingly, he is "dumbfounded" that the ministry has determined that his medical condition does not preclude him from searching for, accepting, or continuing in employment given that the ministry had previously found that his medical condition did satisfy the requirements for PPMB. He stated that there has been no change in his medical condition over the past 2 years except insofar as it has gotten worse. The appellant referred to the document he had prepared based upon his doctor's notes which listed 4 episodes of pneumonia and viral exacerbation which occurred between April 14, 2014 and December 12, 2014. The duration of these episodes ranged from 1 week to several weeks. The appellant argued that he would be unable to search for, accept or continue in employment because no potential employer (other than family) would be tolerant of the frequent and protracted absences that would be caused by his medical condition.

### The Ministry's Position

The ministry reported that the appellant satisfied the requirements of sections 2(2) and 2(4) (i) since the appellant has been a recipient of income assistance for at least 12 of the past 15 months, and has a medical condition which has continued for at least 1 year and is likely to continue for at least 2 more years. In response to a question from the panel the ministry confirmed that the appellant also met the requirement of 2(4) (ii) but had been denied PPMB because he did not meet the requirements of 2(3)(a) or 2(4)(b).

The ministry argues that a medical condition is considered to preclude working 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 work environment. Since the appellant has maintained regular part-time employment doing childcare over most of the last 2 years and there is no information provided to support that his medical condition would require a supportive or sheltered work environment, the ministry concluded that the appellant's medical condition did not preclude him from searching for, accepting or continuing in employment.

### Conclusion

The panel appreciates the appellant's confusion and frustration that he was given PPMB status in 2013 but denied it in 2015 when (in his view) his medical condition is no better and may be worse than before. Nonetheless, PPMB status is reviewed every two years and once awarded, there is no guarantee that this will never be changed. Moreover, the panel notes that the appellant has maintained regular part-time employment doing childcare over most of the last 2 years and there is no information provided to support that his medical condition would require a supportive or sheltered work environment. Accordingly, the panel accepts that the ministry reasonably determined that the appellant is not precluded from employment and therefore does not meet the requirements of EAR section 2(4). In the face of these facts, the panel considers the ministry's decision to deny PPMB status to the appellant to be reasonable.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's determination that the appellant has not met the requirements of section 2 of the EAR for PPMB status was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry decision.