

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated November 5, 2015 wherein the ministry denied the appellant’s request for renewal of his qualification as a person with persistent multiple barriers to employment (“PPMB”). The ministry determined that the appellant satisfied all statutory criteria for PPMB designation except that, in the ministry’s opinion, the appellant’s medical conditions do not preclude him from searching for, accepting, or continuing in employment as required by section 2(4)(b) of the Employment and Assistance Regulation (“EAR”).

PART D – Relevant Legislation

EAR: section 2 [*persons who have persistent multiple barriers to employment*], and Schedule B section 3(6)(d) [*exemption – earned income*].

PART E – Summary of Facts

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

- A PPMB Medical Report form dated June 16, 2009. The appellant's primary medical condition was listed as "Addiction – being rehabilitated." Related restrictions were described by the appellant's physician as "Psychologically and mentally not fit to work. Having to work through past childhood experiences in therapy. Not fit to work."
- A PPMB Medical Report form dated September 14, 2011. The appellant's primary medical condition was listed as Post Traumatic Stress Disorder ("PTSD"), and secondary condition as "alcohol addiction - bereavement." Related restrictions were described by the physician as "Significant post traumatic stress disorder secondary to past events – unable to sustain gainful employment."
- A PPMB Medical Report form dated September 9, 2013. The appellant's primary medical condition was listed as PTSD, and secondary condition as "previous alcoholic." The physician described related restrictions as "Longstanding PTSD – unable to cope in a work environment. Socially withdrawn – receiving ongoing psychotherapy – not able to sustain gainful employment."
- A PPMB Medical Report form dated August 11, 2015. The appellant's primary medical condition was listed as PTSD. His treatment consists of medication, and the physician described the outcome of treatment as "stable." The physician described related restrictions as "Longstanding [PTSD] dating back to childhood. Unable to cope in a social or work environment."
- The physician's response to an advocate-prepared questionnaire (the "Questionnaire") dated October 19, 2015. In her response to the Questionnaire the physician stated that:
 - The appellant's PTSD is longstanding. His anxiety is more marked in social settings, he is easily overwhelmed, does not interact well with other people and tends to isolate. He is unable to cope in a typical work environment.
 - The appellant is not capable of working more than a few hours a week.
 - It is reasonable to conclude that his health restrictions preclude him from searching for, accepting, and continuing in employment for the foreseeable future.

The appellant has been qualified as a PPMB for a number of years. As a PPMB he qualifies for an earning exemption of \$500 per month as provided in section 3(6)(d) of Schedule B of the EAR. The appellant has declared earnings from part-time employment almost monthly since December 2012. Earnings were under \$100 until mid-2014, and then started to increase. In 2015 earnings declared ranged from \$283 to \$518. The appellant's income is derived from a paper route.

At the appeal hearing the appellant often verged on tearfulness. In his oral testimony (either speaking for himself or through his advocate) the appellant stated that:

- He has been designated as a PPMB for over five years.
- He does not dispute the employment screen score of 10.
- When he started out on income assistance he attended training sessions with the ministry's

contractor but simply couldn't continue – he found it overwhelming.

- He was drinking a lot then, but thanks to treatment seldom drinks anymore. However, now that he's not drinking he is more able to remember his trauma.
- He has been delivering papers for four years. The paper publishes two days a week and he works a total of about an hour and a half a day on each of those two days.
- He doesn't sleep well, and he gets up about 5:00 a.m. to deliver papers to businesses before they open so he doesn't have to see anyone. He delivers residential papers later and doesn't mind speaking to the occasional home-owner on a one-on-one basis.
- His usual monthly earnings are about \$380. The one month where he earned \$518 was as a result of a cumulative payroll error made by his employer which resulted in each newspaper carrier receiving a cheque for back pay.
- He is at the limit of what he can handle. He can work at his own pace, and is not rushed or pressured.
- He is grateful for the help the ministry has provided to him.

The ministry representative stated that she had reviewed the appellant's file and confirmed that his declared monthly income is generally between \$320 and \$380 – usually closer to \$320. She also confirmed that the \$518 month was an isolated incident. Otherwise the ministry relied on its reconsideration decision.

At the hearing the appellant, through his advocate, submitted two documents for consideration:

1. An e-mail exchange between the advocate and a senior ministry official in which the advocate sought clarification of the ministry's policy on the interpretation of EAR section 2(4)(b).
2. The appellant's written argument.

The ministry took no position on admissibility of the documents. The panel accepted both documents as going to argument.

The oral testimony of both the appellant and the ministry provided more detail about – and tended to corroborate - information that was before the ministry at the time of reconsideration. Accordingly, the panel has admitted the oral testimony into evidence in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry denied the appellant's request for renewal of his qualification as a PPMB. The ministry determined that the appellant satisfied all statutory criteria for PPMB designation except that, in the ministry's opinion, the appellant's medical conditions do not preclude him from searching for, accepting, or continuing in employment as required by section 2(4)(b) 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,

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- (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.

EAR Schedule B

Exemption — earned income

- 3** (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.
- (2) If an application for income assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for income assistance unless a member of the family unit received disability assistance under the *Employment and Assistance for Persons with Disabilities Act* for the calendar month immediately preceding that first calendar month.
- (3)-(5) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 16.]
- (6) The exempt amount for a family unit is the lesser of the family unit's total earned income in the calendar month of calculation and the following:
- ...
- (d) \$500, if the family unit includes a person who has persistent multiple barriers to employment.

* * *

The appellant's position is that there is sufficient information for the ministry to confirm that the appellant still meets the eligibility criteria for PPMB designation. He argued that the reconsideration decision is unreasonable because it makes assumptions about his capabilities that are not supported by the evidence. He stated that his employment activity is very limited and well within the earning exemption, and emphasized the physician's confirmation that the appellant is only capable of working a few hours per week. He argued that being "stable" doesn't mean "cured." Finally, he argued that the ministry placed too much weight on the one month when the appellant exceeded the earning exemption, especially considering the reason for the higher earnings that month.

The ministry's position, as set out in the reconsideration decision, is that while sympathetic to the appellant's situation, the physician's information does not establish that the appellant is unable to work in an environment with minimal or no social interaction, such as newspaper delivery. The ministry argued that psychotherapy and alcoholism are not listed on the most recent PPMB Medical Report, suggesting that the appellant's overall medical condition has shown improvement. The ministry also argued that the employment earnings of \$518 suggest the appellant is capable of working more than a few hours a week. Finally, the ministry argued that since the appellant has managed to maintain employment with his current employer for over two years, it cannot be said that

his medical conditions preclude him from searching for, accepting or continuing in employment.

Panel Decision

The only issue in dispute is whether the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment as contemplated by section 2(4)(b) of the EAR. As the ministry pointed out in its reconsideration decision, a common interpretation of the term "preclude" is "to make impossible or prevent from happening." However, reading the legislation as a whole it is clear that the legislative intent is not to interpret "preclude" in such a literal fashion, since the earnings exemption in section 3(6)(d) of EAR Schedule B anticipates that a PPMB may earn some employment income. The ministry's policy – as cited in the reconsideration decision - acknowledges this less stringent interpretation of "preclude":

"A medical condition is considered to preclude the recipient from searching for, accepting or continuing in employment 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."

The ministry appeared to place significant weight on the evidence that the appellant's medical condition has shown some improvement over the years since he was first designated as a PPMB. However, the evidence shows that his medical condition still limits him to working only a very few hours per week, in a low stress/low pressure environment that allows him to set his own pace and to avoid social interaction. The ministry also appeared to place a substantial amount of weight on the fact that the appellant earned \$518 one month. However, the evidence demonstrates that that level of earnings was a one-time event that arose due to a payroll error made by the appellant's employer. Other than that one exception the appellant's earnings are well within the exemption limit contemplated by the legislation. In the panel's view, in the appellant's case-specific circumstances, his paper route represents a "sheltered-type work environment" as contemplated by EAR section 2(4)(b) and the ministry's policy.

Based on the foregoing rationale, the panel finds the ministry's reconsideration decision was not a reasonable application of the legislation in the appellant's circumstances, and rescinds the decision in the appellant's favour.