



PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 4 September 2015 determined the appellant did not qualify as a person with persistent multiple barriers (PPMB) because, while the information provided established he had a medical condition which had continued for at least one year and was likely to continue for at least two more years, it did not establish that in the opinion of the minister it presented a barrier that precluded him from searching or accepting or continuing in employment and therefore he did not meet all the required conditions set at section 2 (4) of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

EAR section 2.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant had been on assistance for at least 12 of the previous 15 months.
- A Medical Report PPMB dated 13 February 2015 by the appellant's previous physician indicated:
 - The appellant's primary medical condition: dyspnea.
 - Secondary medical condition: hyperlipidemia, hypertension and obesity, onset not specified.
 - The appellant was treated through medication.
 - The expected duration of his condition was 2 years or more.
 - The condition was not episodic in nature.
 - The physician did not indicate any restriction specific to the appellant's medical condition.
 - No additional documentation supporting the severity and restrictions of the medical condition was provided.
 - The physician had been the appellant's medical practitioner for over 6 months.
- A 1-page, undated, letter from the appellant indicated that since he had surgery in his lungs, his weight increased and he was at risk of heart attack. He had pain in his lower back, down to his ankle and he could barely stand. A family member helped him for housekeeping and sometimes for meals.
- An undated Employability Screen form indicating the appellant scored a total of 8.
- A 2-page letter dated 24 July 2015 from the ministry to the appellant informing him that in the opinion of the minister his medical condition did not preclude him from all forms of employment and that the appellant was expected to look for employment.
- In his Request for Reconsideration dated 28 August 2015, the appellant indicated that his former family doctor did not provide enough information because of her condition and that he had another physician complete the ministry form.
- A second Medical Report PPMB dated 26 August 2015 by the appellant's other physician indicated:
 - The appellant's primary condition: poorly controlled type II diabetes.
 - Secondary medical condition: obstructive sleep apnea and hypothyroidism.
 - The condition was expected to last 12 to 18 months.
 - The medical condition was not episodic in nature with the comment "persistent – daily".
 - In terms of restrictions, the physician indicated that the appellant was only fit for light duty as his medical illness was poorly controlled and that he was waiting for a cardiology consult.
 - The physician did not indicate for how long he had been the appellant's medical practitioner and if under 6 months whether he had examined previous medical records.
- In its Reconsideration Decision dated 4 September 2015 the ministry indicated that according to its files, a previous medical report had been provided in September 2014 confirming the onset of the appellant's condition for dyspnea, abnormal liver function test, obesity, hypertension and hypothyroid as January 2014.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that determined the appellant did not qualify as a PPMB because, while the information provided established he had a medical condition which had continued for at least one year and was likely to continue for at least two more years, it did not establish that in the opinion of the minister it presented a barrier that precluded him from searching or accepting or continuing in employment and therefore he did not meet all the required conditions set at section 2 (4) of the EAR was either a reasonable application of the legislation or reasonably supported by the evidence.

Section 2 of the EAR states the conditions necessary to qualify as a PPMB:

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,...

(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 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.

Position of the parties:

The ministry argued that section 2 (2) and (4) of the EAR apply in this matter. The ministry agreed that the appellant met the requirements under subsection (2) as he had been a recipient of income assistance for at least 12 of the immediately preceding 15 months but not those of subsection (3)(a) as he has not scored 15 on the employability screen but only 8. Thus, the ministry argued subsection 4 applied and the documentation provided by the medical practitioners did not confirm the appellant's medical condition *precluded* him from searching for, accepting or continuing employment since one physician did not mention any restriction while the other indicated the appellant was fit for light-duty work.

The appellant argued that his medical condition deteriorated as a result of lung surgery and that he became obese as a result. He indicated he had a number of limitations because of back pain down to his ankles and that he could not stand. He also argued he could not sit down if he did not have someone to help him get up. He also argued he could not walk much as he was short of breath and was getting help from a family member for housekeeping and meals.

Panel decision:

At the outset, the panel notes that the appellant did not contest the employability screen score of 8 and therefore, given that it was under the required 15 mandated by s. 2 (3)(a) of the EAR, finds the ministry reasonably determined subsection 4 applied.

After having reviewed all the evidence, the panel notes that:

- There is no issue that the appellant's medical condition had continued for at least 1 year and was likely to continue for at least 2 more years and that he met the requirement under s. 2 (4)(a)(i) of the EAR.
- The appellant in his letter explains his medical condition but he did not mention whether he could look for and continue employment nor did he indicate his trade or line of work.
- The appellant's first physician did not mention any restriction as a result of his medical condition.
- The appellant's second physician indicated some restrictions as a result of his medical condition but explained that the appellant was "fit for light duty" and did not suggest he could not work in any type of employment.

The legislation is very specific: to be eligible for a PPMB designation, the minister must be satisfied that the appellant's medical condition *precludes* him from searching for, accepting or continuing in employment. The Canadian Oxford Dictionary's definition of *preclude* is: prevent, exclude, make impossible and remove. There is no evidence showing the appellant could not work while the second physician's evidence suggests that the appellant could work provided it would be light duty.

Consequently, the panel finds the ministry reasonably inferred the appellant could work provided the right conditions existed and reasonably determined he was not *precluded* from looking for, accepting or continuing in employment and, as a result, did not meet the requirement of s. 2 (4)(b) of the EAR.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.