

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated 17 August 2015 that held that the appellant was not eligible for qualification as a person with persistent multiple barriers to employment (PPMB). The ministry determined that the appellant’s employability screen score was 8 and therefore assessed his PPMB eligibility under sections 2(2) and 2(4) of the Employment and Assistance Regulation. The ministry found that the appellant met the requirements of sections 2(2) and 2(4)(a). However, the ministry was not satisfied that the information provided established that the appellant met the criterion set out in section 2(4)(b) of the Regulation, that to qualify for PPMB a person must have a medical condition, other than an addiction, that in the opinion of the minister is a barrier that precludes the person from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. From the ministry's files: the appellant has been a recipient of income assistance for more than 12 of the preceding 12 months.
2. The appellant's Employability Screen, showing a score of 8.
3. The appellant's Client's Employability Profile, dated 31 March 2015. Against the factor Health, "Severe health condition" is checked. Against the factor Disability, "Persistent disability, severely impacts on employment options" is checked.
4. Medical Report – PPMB, completed by a general practitioner (GP), dated 18 February 2015, who indicates that he has known the appellant for 6 months or less.
 - Primary medical condition: chronic pancreatitis with pseudo cyst (onset: years).
 - Secondary medical condition: insulin dependent diabetes (onset: years).
 - Treatment: insulin.
 - How long has this condition existed? >1 year.
 - Prognosis: expected duration of medical condition – 2 years or more.
 - The medical condition is not episodic.
 - Restrictions: "Unable to lift, push, pull objects."
5. The appellant's Request for Reconsideration dated 23 July 2015. Under Reasons, the appellant writes:

"I feel as if my first request for assistance was denied due to insufficient information regarding my situation. I have trouble sleeping due to pain in my leg and can't stay in one position for more than a few minutes. Walking for any more than a city block causes numbness and severe pain in my leg and foot. At times my elyostomy [sic] gets plugged and causes me to vomit and makes me bed-ridden for days. I feel that my health issues would compromise any chance I have at full time employment. These health issues will not let me return to my previous employment as a drywaller as I can't lift heavy objects due to my hernias caused by my operations in 2013."
6. Attached to the Request for Reconsideration is a "To whom it may concern" letter, dated 30 July 2015, from the appellant's GP. The GP writes that the appellant has multiple medical problems. He is currently unable to work. He has been referred for further assessment by a vascular surgeon and is awaiting further treatment. The GP lists the appellant's medical history as follows: abnormal liver function tests that are stable, alcohol abuse in the past, anemia, cannabis dependence, chronic pancreatitis, insulin-dependent diabetes mellitus Dx Jan 2014, neuropathy in diabetes, right femoral artery occlusion, smoker and thrombocytopenia. Under surgical history, the GP states that the appellant had a right hemicolectomy in November 2013 after severe pancreatitis that resulted in perforation of colon stoma in situ since. The GP also lists the appellant's medications.

In his [undated] Notice of Appeal, the appellant writes under Reasons for Appeal:

"My doctor has failed to relay my conditions as they have changed and I am going for surgery in October. I also have a hernia in my abdomen that has to be addressed. I have no idea when

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in determining that the appellant did not qualify for PPMB because he did not meet the criterion set out in section 2(4)(b) of the EAR. More specifically, the issue is whether the ministry's decision, which held that the information provided did not establish that the appellant has a medical condition, other than an addiction, that in the opinion of the minister, is a barrier that precludes him from searching for, accepting or continuing in employment, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the 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*[not applicable to this appeal]*
- (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.

In the reconsideration decision, the ministry noted that the GP had reported that the appellant's restrictions arising from his medical conditions were: unable to lift, push or pull objects. The ministry also noted that the GP had not described the same level or nature of restrictions that the appellant had provided in his Request for Reconsideration. Relying on the information provided by the GP, the position of the ministry was that it was not satisfied that the appellant is not precluded from all types of employment, including light physical duties or sedentary work. The ministry therefore determined that the appellant the appellant is not eligible for PPMB qualification under section 22(4) of the EAR.

The appellant's position is that his GP did not provide all the relevant information regarding his restrictions. He has testified about his restrictions regarding remaining seated and walking any distance, as well as how forthcoming surgeries will result in his being bed-ridden for extended periods. On this basis, he submits that his medical conditions preclude him from employment, as required under the legislation.

Panel decision

Subsection 2(4)(b) requires that the minister be "satisfied" that the person seeking PPMB qualification has a medical condition which precludes the person from employment. The panel considers it reasonable that the ministry would rely on the description of the restrictions provided by a medical practitioner in determining whether the minister is "satisfied" that the criterion is met. In the present appeal, in the Medical Report – PPMB the appellant's GP has described the appellant's restrictions as "Unable to unable to lift, push or pull objects." In the GP's letter submitted at reconsideration, the GP stated that the appellant was currently unable to work, without providing any explanation as to restrictions, and listed a list a number a past and current medical conditions. The panel finds that it is unreasonable to expect that the ministry deduce from such a list any further restrictions. The panel finds that the ministry was reasonable in relying on the description of the appellant's restrictions in the Medical Report – PPMB and concluding that the appellant is not precluded from sedentary or light duty work and therefore did not meet the criterion set out in section 2(4)(b) of the EAR.

Accordingly, the panel finds that the Ministry's determination that the information provided did not establish that the appellant met all the criteria to qualify as a person with persistent multiple barriers to employment is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.