



PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated 8 October 2015 determined the appellant did no longer 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 ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under s. 86(b) of the EAR.

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

- The appellant is a single recipient of income assistance for PPMB.
- The appellant had been previously approved for the PPMB designation until 1 October 2015 and had 3 months to apply to renew his PPMB designation.
- A 2-page Medical Report PPMB dated 20 July 2015 by the appellant's physician, a general practitioner (GP) indicated:
 - The appellant's primary medical condition: depression, onset in 2007.
 - Secondary medical condition: insomnia also onset in 2007.
 - The appellant was treated through medication – tried antidepressants but side effects were not tolerable.
 - 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.
- An undated Employability Screen form indicating the appellant scored a total of 12.
- A 2-page letter dated 5 August 2015 from the ministry to the appellant informing him that he no longer meets the requirements for a PPMB designation since 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 2 September 2015, the appellant indicated that his condition has become more intolerable and that he believed that his PPMB designation would continue unless his GP saw a change in his condition. He stated that he was informed his GP had forgotten to fill the restriction box on the Medical Report and that if he brought her back the form she would complete it as she knows the extent of his condition and how limiting it is for him to be employed, having been his GP for over 15 years. He stated: "My conditions do make it very difficult to manage regular day to day responsibilities".

In his Notice of Appeal dated 26 October 2015 the appellant indicated he attached to it a revised copy of the Medical Report:

- A 2-page Medical Report PPMB with the first page partially identical to the report dated 20 July 2015 with the following changes:
 - Dated 26 October 2015 with witness signature illegible;
 - Depression code changed from 311 to 296;
 - "Insomnia" struck out and re-written;
 - The mention "Tried antidepressants – side effects not tolerable" replaced by "Declines counselling, antidepressants and psychiatry referral";
 - To the question "How long has this condition existed" 10 years is replaced by 8 years;
 - Section 3 "Restrictions" is completed as follows: "No motivation for self care or work. Restrictions are mental not physical."

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- Unlike the 20 July Medical Report, page 2 is not completed, not dated and not signed but there is the stamp of the same community health centre.

At the hearing the appellant testified that his GP had forgotten to fill part 3 “Restrictions” at the bottom of the form and when he asked the ministry prior to reconsideration, he did not get any assistance and the worker hung up on him. After the reconsideration decision he obtained a new form and went to see his GP so that she could complete that part and left it with her. A few days later, on 26 October 2015 he went back to her office, retrieved the form completed and signed it in front of the receptionist who also signed as a witness. He did not realize that page 2 had not been completed and signed by his GP. He testified that he could not take anti-depressants because his family had a history of suicidal attempts as a result of taking such medication and when he tried to take them, he also ended up having suicidal thoughts. He said he was on a wait list for sleep therapy because he could not sleep more than approximately 2 hours per night and that in some instances he can be over 2 days without being able to sleep, which is very debilitating and impacts on his ability to work. He said he was approved the first time as PPMB in 2011 and must renew his application every 2 years.

The appellant also testified that his condition started in 2007 and that he was working in his trade and continued working in subsequent years but had difficulties keeping his jobs because of his medical condition. He said that once in awhile he does work in his trade “on the side” and is trying to reconnect with work which he stated would be a good thing for him. When invited to comment on the GP’s comments about declining counselling, he testified that he tried that approximately 6 years ago and the only outcome was that the counsellor recommended he take anti-depressants, which he could not do in any event and that is why he is declining further counselling.

The panel determined the additional documentary and oral evidence was admissible under s. 22 (4) of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration and provided further information about the appellant’s medical condition, including what restrictions his medical condition imposed on him by completing section 3 and corroborated the information already available. However the panel notes that the Medical Report dated 26 October 2015 was not signed by the GP but is satisfied with the appellant’s explanation that it was completed by his GP, given the writing that is similar to the earlier report and the fact that page 2 of the report is stamped by the GP’s office.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that determined the appellant did no longer 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.

The ministry argued that while the appellant met the requirements of s. 2 (1), (2) and (4)(a)(i) of the

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EAR, the appellant failed to meet the requirement of s. 2 (4)(b) because the appellant's GP did not indicate any restrictions in the medical report and because the appellant did not provide any information with his Request for Reconsideration to the effect that his medical condition and subsequent restrictions precluded all forms of employment.

The appellant argued that he had been designated as a PPMB 4 years ago and that his status was renewed 2 years ago and that his situation had not changed as confirmed by his GP. He argued that it was a mistake for his GP not to complete part 3 of the form and that he remedied the situation with the new form that he filed with his Notice of Appeal. He argued that in fact his medical condition precluded him from working as he was depressed and could not sleep and consequently could not reasonably be expected to work in those conditions since he could be a danger to himself and others.

Panel decision:

At the outset, the panel notes that the ministry's reconsideration decision mentioned that the appellant had not demonstrated that his medical condition and subsequent restrictions must preclude *all* forms of employment. However, the legislation does not mention "all" forms of employment but states that it "is a barrier that precludes the person from searching for, accepting or continuing in employment" and the panel will analyze the reconsideration decision under that light. As well, the panel notes that the appellant did not contest the employability screen score of 12 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.

There is no doubt that the ministry reasonably determined there was no evidence of any restriction in the first Medical Report submitted as the GP had not completed that part of the form and the appellant had provided no evidence of restrictions. However, with the additional evidence, there is evidence of restrictions. The GP wrote: "No motivation for self care or work. Restrictions are mental not physical." This must be analyzed jointly with her comment on the same page to the effect that the appellant "declines counselling, antidepressants and psychiatry referral." The appellant explained why he declined counselling and antidepressants and it is quite understandable in his circumstances. In terms of psychiatry referral, the appellant did not express any reluctance at the hearing. Yet, it is difficult for the panel to determine whether the appellant's "restrictions" are caused by his medical condition or a lack of motivation as mentioned by the GP and to what extent they preclude the appellant from searching for, accepting or continuing in employment. The appellant's own evidence at the hearing indicated that he was looking for some work and was able to do some work on the side. Consequently, the panel finds the ministry 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.

Taking into account all the evidence, including the additional evidence provided by the appellant and his GP, 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.