

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development and Social Innovation (“the ministry”) dated October 28, 2015 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because he did not meet all the criteria under Section 2 of the Employment and Assistance Regulation (EAR). In particular Section 2(4)(b) was not met because in the opinion of the minister, his medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as he has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant scored 14 on the employability screen as set out in Schedule E, not meeting the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as the appellant’s physician has confirmed that the appellant’s condition has continued for at least 1 year and is likely to continue for at least 2 more years.

PART D – Relevant Legislation

Employment and Assistance Regulation (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 section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration included:

- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated May 19, 2015;
- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated Dec 19, 2012;
- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated April 1, 2009;
- a Medical Report - Persons With Persistent Multiple Barriers (PPMB) dated June 20, 2007;
- an undated Employability Screen with a Total Score of 14;
- a Client Employability Profile dated June 16, 2015;
- the appellant's Request For Reconsideration dated October 16, 2015.

In the May 19, 2015 Medical Report, the physician reported that the appellant's primary medical condition is Adjustment Disorder and Anxiety with an onset of 1998. No secondary medical condition is indicated. Under treatment/remedial approaches that have been tried to date or are expected in the future, the physician indicates that the appellant is taking Ativan and under outcome specifies no change. The medical condition is not episodic in nature and the episodes are noted as continuous. Under restrictions specific to the reported medical condition, the physician wrote "has memory loss, anxiety".

To be noted is that the same physician has completed all the earlier dated PPMB Medical reports and the primary medical condition, treatments and restrictions specific to the reported medical condition are very similar, if not identical. Also, no secondary medical conditions have been indicated.

The Employability Screen indicated a total score of 14 with results that correspond with Expected to Work (score 0-14) which are described as immediately employable/employable with short-term interventions.

The Client Employability Profile indicates the following:

- Under Work Experience; the appellant has been unemployed for over 3 years,
- Under Employment Search Skills; a severe lack of employment search and planning skills,
- Under Education/Training; between grade 0 - 9,
- Under Literacy; fluent written/spoken English,
- Under Transportation; no accessible transport ,
- Under Child Care; n/a,
- Under Shelter; adequate shelter,
- Under Health (excluding addictions); severe health condition,
- Under Disability; persistent disability, severely impacts on employment options, and
- Under Communication Skills; good communication and interpersonal skills.

In the appellant's Request for Reconsideration, he writes that he has Adjustment Disorder and Anxiety as well as;

- head and hand injuries,

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- broken fingers on left hand,
 - experiences memory loss,
 - loses control of left hand,
 - black outs time to time,
 - lack of strength in arms,
 - sleep deprivation, and
 - rapid heartbeat.

In the Notice of Appeal, dated November 2, 2015, the appellant submitted that due to his severe mental and physical impairments his ability to work is affected as he is unable to use his hands and other parts of his body, and also because of loss of concentration, memory, vision and balance.

At the hearing the appellant testified that he has had PPMB designation since 1999 – 2000 which has been continuous until recently. He stated that his injuries as noted above which began 16 years ago still affect him today and he doesn't know what is happening to him. The appellant stated that his physician has indicated that he would provide more information about his medical conditions should it be required.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision which held that the appellant does not qualify as a person with persistent multiple barriers to employment because he did not meet all the criteria under Section 2 of the Employment and Assistance Regulation. In particular, the appellant has not met Section 2(4)(b), because in the opinion of the minister, his medical condition other than an addiction is not a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry determined that the appellant met Section 2 (2) as he has been a recipient of income assistance for at least 12 months of the preceding 15 calendar months. Also, the ministry determined that the appellant's score on the employability screen as set out in Schedule E, did not meet the required 15 under Section 2(3) and was subsequently assessed under Section 2(4) of the EAR. The appellant has met Section 2(4)(a) as it has been established that in the opinion of a medical practitioner, he has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

Relevant Legislation

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, or (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 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. (B.C. Reg. 263/2002).

In accordance with the legislation to be designated as a PPMB the appellant must meet the all the criteria set out in Section 2, subsection (2) and subsection (3) or (4). The criteria in Section 2, subsection 2, and subsection (4)(a), have been met.

Ministry's Position

The ministry's position is that a medical condition is considered to preclude the appellant from searching for, accepting or continuing in employment when, as a result of the medical condition, the appellant 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 noted that the information provided in the medical Report – PPMB dated May 19, 2015 does not speak to restrictions to the appellant's employability, except to note that he experiences memory loss and anxiety. For these reasons, in the minister's opinion, the appellant's medical condition and resultant restrictions do not preclude him from searching for, accepting or continuing in all types of employment or in a program that will work with the appellant to overcome his barriers; therefore, he does not meet the eligibility requirement of EAR, Section 2(4)(b).

Appellant's Position

The appellant's position is that his medical condition has not changed for 16 years which has been confirmed by his physician and that he doesn't understand why his requalification for PPMB designation has been denied.

Panel's Findings

The panel notes that in the appellant's Medical Report - PPMB dated May 19, 2015, the primary medical condition is reported as Adjustment Disorder and Anxiety and the appellant's restrictions specific to the reported medical conditions are memory loss and anxiety.

The panel finds that although the appellant's physician confirms that the patient's primary medical condition's onset was 1998 and that the prognosis is 2 years or more and that the appellant has restrictions specific to the reported medical condition, this is quite different from the legislation which requires that in the opinion of the minister, the nature of the restriction(s) is a barrier that precludes the person from searching for, accepting or continuing in employment. Additionally the panel acknowledges that while the appellant states that his medical condition has not changed and that he is not able to work, the panel finds that this recent medical information does not support the appellant's statement or establish that he is prevented from participating in a program that would work with him to overcome the barriers for employability.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical condition(s) are a barrier that precludes him from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not met and he does not qualify as a person with persistent multiple barriers to employment. The panel confirms the reconsideration decision.