



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated October 26, 2015, which found the Appellant ineligible for Persons with Persistent and Multiple Barriers (PPMB) qualification under s.2, EAR. The Ministry found that the Appellant's condition (other than an addiction) does not preclude him from searching for, accepting or continuing in employment as required under s.2(4), EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2; Schedule E

PART E – Summary of Facts

Information before the minister at reconsideration included:

- The Ministry's letter to the Appellant dated September 16, 2015 informing him of their decision.
- The Appellant's Employability Screen, undated, with a score of 8.
- The Appellant's Medical Report – Persons with Persistent Multiple Barriers, dated February 10, 2015, with a primary medical condition listed as chronic depression and anxiety, secondary medical condition as back tension/pain, a prognosis of 2 years or more and restrictions listed as "fatigue decreases motivation, poor concentration and focus, anxiety→fear and panic".
- The Appellant's Medical Report – Persons with Persistent Multiple Barriers, dated January 29, 2013, listing depression anxiety as the Appellant's primary medical condition and fatigue + back pain as his secondary medical condition, with restrictions listed as "anxiety→insomnia + decreased motivation concentration focus and [illegible] back pain".
- The Appellant's Request for Reconsideration dated October 16, 2015.

The Appellant included a letter to the Tribunal, a copy of a letter from a physician dated December 5, 2006 and copies of statements of earnings and deductions for the period June to October, 2015 with his Notice of Appeal. The Panel admitted these documents for reference.

In his letter to the Tribunal, the Appellant wrote that he works part-time with variable hours and this should not be considered as an ability to do all types of work, as people on PPMB are permitted to earn \$500 per month. The Appellant wrote a detailed description of his medical condition and that he is unable to do all types of work, especially labour or work involving repetitive motion, and that he definitely has barriers to employment. The letter dated 2006 deals with medical conditions not listed by the Appellant's physician in the Medical report – PPMB. The statements of earnings show the number of hours worked by the Appellant in each of the months referenced. In his Notice of Appeal to the Tribunal, the Appellant wrote that he answers phones and directs people to appointments, which allows him to stand up every 20 minutes to alleviate his back pain. He wrote that this part-time employment does not equate to his being able to do all types of work.

The Ministry, in the Reconsideration Decision, wrote that the Appellant's is required to meet the requirements of s.2(4), EAR, namely that his medical condition is a barrier that precludes him from searching for, accepting or continuing in employment. As the Appellant has been able to maintain part-time employment for more than two years, the Ministry concluded that he does not meet this requirement.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision which found the Appellant ineligible for Persons with Persistent and Multiple Barriers (PPMB) qualification under s.2, EAR. The Ministry found that the Appellant's condition (other than an addiction) does not preclude him from searching for, accepting or continuing in employment as required under s.2(4), EAR.

Legislation

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,
- (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.

Schedule E

Employability Screen

Number	Criteria	Category of Response	Score
1	What is the person's age?	(a) under 19 (b) 19 to 24 inclusive (c) 25 to 49 inclusive (d) 50 to 65 inclusive	0 1 0 0
2	Apart from the current application, how many times has the person been on Income or Social Assistance anywhere in Canada in the last 3 years?	(a) never (b) 1 to 3 times (c) more than 3 times	0 1 3
3	What is the total amount of time the person has spent on Income or Social Assistance in the last 3 years?	(a) less than 2 months (b) 2 to 12 months (c) more than 12 months	0 3 7
4	What is the highest level of education the person has completed?	(a) post-secondary program — degree or diploma (b) some post-secondary (c) high school/GED (d) grade 10 to grade 12 (e) less than grade 10 (f) trade certificate	1 0 1 3 0
5	What is the total amount of time the person has spent in paid employment over the last 3 years?	(a) more than 12 months (b) from 3 to 12 months (c) under 3 months (d) none or very limited work experience (e) volunteer work only	0 1 2 4 3
6	What is the person's English speaking ability or literacy level?	(a) good working knowledge of English (b) English as a second language (ESL) or in need	0 3

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		of English skills training	
TOTAL			

The Appellant's position is that he meets the requirements for qualification as a PPMB, and the fact that he has been able to maintain part-time employment does not equate to being able to do all types of work.

The Ministry's position is that the Appellant's medical conditions and resulting restrictions do not preclude all types of employment as he has been able to maintain part-time employment for more than two years.

The Panel notes that because the Appellant's employment screen score is less than 15, he falls under s.2(4), EAR, which requires that his medical condition, other than an addiction, in the opinion of the minister, is a barrier that precludes the Applicant from searching for, accepting or continuing in employment. The requirement that his condition preclude him from all aspects of employment – searching for, accepting or continuing is not established by the fact that the Appellant has worked up to 32 hours per month in the past year, as shown in the statements of earnings submitted by the Appellant.

The Panel finds that based on the evidence the Ministry reasonably concluded that the Appellant does not meet the requirements of s.2, EAR for qualification as a PPMB.

The Panel therefore confirms the Ministry decision.