

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 24, 2015 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the *Employment and Assistance Regulation* (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. In addition, the ministry found that EAR subsection 2(3) is not applicable to the appellant on the basis of his score on the Employability Screen and his PPMB application therefore needs to be assessed under subsection 2(4).

However, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

## PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), Section 2

## PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

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

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated August 17, 2015, in which the medical practitioner indicated, in part, that:
  - the appellant's primary medical condition is discitis of the cervical spine at C4-5 and C6-7, with chronic neck and shoulder pain, with date of onset in December 2012,
  - his secondary medical condition is low back pain, discitis radicular pain with an onset in April 2015;
  - the treatment described is physiotherapy, massage, and pain medications and these treatments have not improved chronic neck pain but have decreased ongoing neck spasms and helped mobility;
  - this condition has existed for 2 years and 8 months; the prognosis sets out that the expected duration of the medical condition(s) is 2 years or more and the medical is not episodic in nature.
  - when asked to describe the nature of any restrictions specific to the medical conditions, the physician wrote "...patient unable to work as of his chronic pain, unable to stand for long periods, unable to lift heavy object, lost tools or object, left worse than right."
- 2) Employability Screen print-out for the appellant, noting a total score of "8." Points were awarded for being on income assistance for more than 12 months in the last 3 years and having been on income assistance 1 to 3 times in the last 3 years;
- 3) Client Employability Profile which included information that the appellant has a minor or short-term health problem as well as a persistent disability which severely impacts on his employment options. The recommendation for employment plan activities is "need to finish rehabilitation and be retrained in different work;"
- 4) Letter from an advocate signed November 17, 2015 in which the medical practitioner agreed that:
  - The appellant has chronic pain,
  - The appellant can stand and sit for 1 hour maximum,
  - The appellant can walk 1 kilometer maximum,
  - The appellant can lift/carry 10 to 15 pounds (note: "hands numb"),
  - He uses the handrail when climbing stairs,
  - Kneeling/bending causes pain,
  - His concentration levels are affected by pain,
  - He has sleep disturbance and 4 to 5 hours of sleep a night, and
  - Numbness in his hands causes difficulty gripping things; he drops dishes, pens and coins.
  - The medical practitioner wrote: "...not able to do any heavy lifting, bending, or strenuous activity." and,
- 5) Request for Reconsideration dated November 13, 2015.

### **Additional Information**

In his Notice of Appeal dated November 27, 2015 the appellant stated that he disagrees with the ministry's reconsideration decision and he wrote that:

- He wonders how he is supposed to work when he is sore or injured and has strength loss.

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- He cannot lift heavy things and bending to pick up something hurts his neck and shoulder.
  - It hurts to turn his head or to move his arm.
  - He always has pain in his neck and shoulders and his hands are numb all the time.
  - He is a single father who needs to be healed before he can go back to work.
  - He needs to be retrained in a different job or career so he can get back into the work force.

The ministry relied on its reconsideration decision as the ministry's submission on the appeal.

***Admissibility of Additional Information***

The ministry did not raise an objection to the admissibility of the information in the appellant's Notice of Appeal, which the panel considered as information that corroborates the extent of the appellant's impairment as diagnosed in the Medical Report, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the *Employment and Assistance Regulation* (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes him from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

The criteria for being designated as a PPMB are set out in Section 2 of the EAR as follows:

### **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 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.

Under Section 2(2), the person must have been the recipient of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then the PPMB application must be assessed under Section 2(3). If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies to the assessment of the application. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, in the opinion of the minister, is a barrier that precludes the person from searching for, accepting, or continuing in employment.

#### *Ministry's position*

The ministry's position is that the appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. However, the ministry argued that the evidence has not established that the appellant has met all the remaining applicable criteria of Section 2. As the appellant scored 8 on the employability screen, he must meet the requirements of Section 2(4) of the EAR. The ministry acknowledged that the appellant has a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry argued that the evidence does not establish that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment.

The ministry submitted that a medical condition is considered to preclude a recipient from searching for, accepting, or continuing in employment when as a result of the medical condition the recipient is unable to participate in any type of employment activities for any length of time, except in a supported or sheltered-type work environment. The ministry argued that while it is accepted that the appellant has medical conditions that affect his employability, given the doctor's response to the questions regarding restrictions associated with his medical condition, that he cannot stand for long periods or lift heavy objects, and he is not able to engage in strenuous activity, the ministry is not satisfied that the restrictions caused by his condition preclude him from searching for, accepting, or continuing all employment, such as light labour, part-time or more sedentary work.

#### *Appellant's position*

The appellant's position is that there is sufficient evidence that the discitis of his cervical spine, which causes chronic neck, shoulder and referred low back pain, is a barrier that precludes him from searching for, accepting, or continuing in employment. In his Notice of Appeal, the appellant argued that he cannot work because he is sore or injured and has strength loss. The appellant argued that he cannot lift heavy things, bending hurts his neck and shoulder, and it hurts to turn his head or to move his arm. The appellant argued that he always has pain in his neck and shoulders and his hands are numb all the time. The appellant argued that he is a single father who needs to be healed before he can go back to work, and he needs to be retrained in a different job or career so he can get back into the work force.

#### *Panel decision*

The panel notes that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated August 17, 2015, that the appellant is diagnosed with a primary medical

condition other than an addiction, namely discitis of the cervical spine at C4-5 and C6-7, with chronic neck and shoulder pain, and a date of onset in December 2012, and with a secondary medical condition of discitis radicular pain causing low back pain, with an onset in April 2015. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years.

Regarding the ministry's assessment of the appellant's PPMB application under EAR subsection 2(4) as opposed to subsection 2(3), there was no evidence to show that the ministry made any error in calculating the Screen score of 8. The panel therefore finds that in the circumstances of the appellant, the ministry reasonably determined that an assessment of PPMB eligibility should be made under subsections 2(1), 2(2) and 2(4) of the EAR.

Regarding whether the ministry reasonably determined that the criteria in EAR subsection 2(4) were not met, the panel notes that in describing the nature of restrictions specific to the appellant's medical condition, the physician wrote in the PPMB Medical Report: "patient unable to work as of his chronic pain, unable to stand for long periods, unable to lift heavy object, lost tools or object, left worse than right." In the November 17, 2015 letter, the medical practitioner provided more information that the appellant can stand and sit for 1 hour maximum, walk 1 kilometer maximum, lift/carry 10 to 15 lbs. (note: "hands numb"), and the appellant uses the handrail when climbing stairs, kneeling/bending causes pain, his concentration levels are affected by pain, he has sleep disturbance and 4 to 5 hours of sleep a night, and numbness in his hands causes difficulty gripping things; he drops dishes, pens and coins. Although the appellant wrote in his Notice of Appeal that he cannot work because he is sore or injured and has strength loss, he also wrote that he cannot lift 'heavy' things, other movements hurt his neck and shoulder and his arm, and that these injuries need to be healed and he needs to be retrained in a different job or career so he can get back into the work force.

When specifically asked to comment regarding the appellant's restrictions to employment, the medical practitioner wrote in the November 17, 2015 letter that he is: "...not able to do any heavy lifting, bending, or strenuous activity." The panel finds that the ministry reasonably required that the restrictions caused by his condition must preclude him from searching for, accepting, or continuing all forms of employment, such as light labour, part-time or more sedentary work. The panel finds that the ministry reasonably relied on the information provided by the medical practitioner in the Medical Report and the additional letter dated November 17, 2015 and reasonably concluded that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR.

#### *Conclusion*

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.