

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 3, 2015 which found that the appellant did not meet the statutory requirements of section 2 of the *Employment and Assistance Regulation* (EAR) for designation as a person with persistent multiple barriers (PPMB).

The ministry found that the appellant's most recent Employability Screen indicates a score of 12 so EAR section 2(3) which requires an employability score of 15 was not applicable and therefore considered the application under EAR sections 2(2) and 2(4).

The ministry found that the appellant met the requirements of EAR section 2(2) in that he had been in receipt of income assistance for at least 12 of the immediately preceding 15 months. The ministry determined that the appellant has a medical condition that has lasted at least one year and is expected to last at least another two years as required under EAR section 2(4)(a)(i). However the ministry found that the appellant's medical condition does not present a barrier that precludes him from searching for, accepting, or continuing employment as required by EAR section 2(4)(b).

PART D – Relevant Legislation

Employment and Assistance Regulation, Section 2  
Employment and Assistance Regulation, Schedule E

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months.
- The appellant's Employability Screen (undated) showing a score of 14.
- The appellant's recent Employability Screen (undated) showing a score of 12, adjusted from 14 because the Regional Adjudicator had determined that two questions had been answered incorrectly:
- Question 3: Apart from your current application, how many times have you been on Income or Social Assistance anywhere in Canada in the last 3 years? The original answer was never; the revised answer on the second report with a score of 12 is "1 to 3 times."
- Question 7: What is your English speaking ability or literacy level? The original answer was English as a second language (ESL) or in need of English skills training; the revised answer on the recent report with a score of 12 is "Good working knowledge of English."
- A Medical Report PPMB dated August 2, 2011 completed by the appellant's physician who has known him for more than 6 months:
  - Primary medical condition: substance addiction
  - Secondary medical condition: depression
  - Treatment: methadone and anti-depressants
  - The condition has existed for 15 years; depression 1 year
  - Expected duration: 2 years or more
  - The medical condition is not episodic
  - Restrictions: problem is addiction and mental illness
- A Medical Report PPMB dated August 22, 2013 completed by the appellant's physician who has known him for more than 6 months:
  - Primary medical condition: anxiety (7 yrs), depression (7 yrs), drug addiction (7 yrs)
  - Secondary medical condition: insomnia
  - Treatment: for drug addiction, initially on methadone maintenance; benzodiazepine, gets panic attacks, cannot cope with crowds
  - Expected duration: 2 years or more
  - The medical condition is not episodic
  - Restrictions: cognition, struggles in group situations
- A Medical PPMB dated October 6, 2015 completed by the appellant's physician who has known him for more than 6 months:
  - Primary medical condition: major depressive disorder
  - Secondary medical condition: asthma
  - Treatment: anti-depressants
  - The condition has existed for 8 years
  - Expected duration: less than 2 years
  - The medical condition is not episodic
  - Restrictions: no motivation, poor concentration, depressed mood, fluctuating mood
- October 8, 2015 – The appellant submitted an application for renewal of his qualification for PPMB.
- November 5, 2015 – The ministry denied the request for the PPMB category.

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- November 17, 2015 – The appellant requested a reconsideration of the decision.
  - A Medical PPMB dated November 26, 2015, completed by the appellant's physician who has known him for more than 6 months and submitted with the Request for Reconsideration (November 26, 2015):
    - Primary medical condition: opiate addiction (19 yrs)
    - Secondary medical condition: depression (10 yrs)
    - Treatment: citalopram, buspirone, quetiapine, methadone
    - Outcome: depression has improved; addiction under control
    - The condition has existed for 10+ years
    - Expected duration: 2 years or more
    - The medical condition is not episodic
    - Restrictions: unable to work
  - November 27, 2015 – The appellant submitted a completed Request for Consideration.

In the Reason for Request, the appellant wrote that "The medical report from October 8, 2015 was not correct as to the expected duration of medical conditions. [He] was only a temporary doctor who only does my refills. I didn't get my regular doctor to fill it out and it was incomplete as to my other condition of drug addiction which is unstable and needs more than 2 years of expected duration as also my depression, anxiety, insomnia and asthma. I'm taking Buspirone, Methadone, Quetiapines, Citalopram and asthma inhaler. Also [the doctor] does not know how serious my depression is. And it has occurred frequently in the past. I've been on PPMB for more than two years already so my condition has existed for more than a year."

In his Notice of Appeal, dated December 18, 2015, the appellant wrote that although his doctor did not specify what his restrictions are, he did state that the appellant could not work and his condition will last more than two years, in support of his two physicians from his previous times on PPMB. He did not get better but got worse.

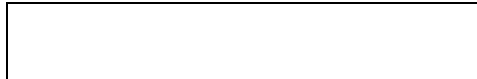
At the hearing, the appellant explained that he has been on PPMB assistance for the past two years and his condition now is worse than two years ago; not better. He said he continues to suffer from mental problems, anxiety and depression.

The appellant stated that when he was denied PPMB, he spoke with a ministry representative who told him that the medical report was not completed properly; that it did not provide enough information. That report (October 6, 2015) had been completed by a physician who had seen him only twice and only when he needed prescription renewals. He subsequently went to the physician he had been seeing for 4 years to get another report (November 26, 2015) which he submitted with his Request for Reconsideration.

When asked by the panel to confirm the length of time that he has had his medical condition, he said 10 years.

The ministry stated that it upholds its position and did not provide further information.

When asked by the appellant why he suddenly does not qualify for PPMB, the ministry replied that he does not meet the requirements under the legislation. The ministry explained that the scores on both his Employability Screens (current and previous) are under 15 which must be the primary



reason.

The appellant replied that two years ago his medical information was the same and questioned why, with the same information, is he suddenly disqualified. The ministry replied that the medical reports indicate that his condition is not episodic in nature and therefore his condition does not preclude him from searching for, accepting or continuing in employment.

Again the appellant asked for an explanation to help him understand what is different in the ministry's opinion; now he has more problems than he did two years ago. He explained that he did as he was advised by the ministry by obtaining a second Medical Report PPMB from the physician who knows him well. The ministry explained that the physician did not explain his condition in enough detail.

The appellant replied that his physician wrote in the report that he is unable to work; why is the ministry not accepting that information from the physician. The ministry replied that the physician did not specify why he could not work.

The panel asked the ministry to clarify how the appellant's situation has changed with respect to his eligibility as required by the legislation, comparing his previous application and his current application. The ministry replied that the appellant's medical condition had changed and that the only reason he is not eligible is that the physician did not provide the ministry with enough information to confirm that his medical condition precludes him from searching for, accepting or continuing in employment. The ministry explained that PPMB eligibility is reviewed every couple of years; it is not indefinite because medical conditions can change and that such would not be the case if he were receiving Persons with Disability (PWD) assistance.

The panel finds that the information provided by the appellant at the hearing is in support of the information before the ministry at reconsideration. The panel therefore admits as evidence the appellant's testimony under section 22(4) of the Employment and Assistance Act.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision which denied the appellant PPMB designation because it found that he did not meet the criterion set out in section 2(4)(b) of the EAR requiring a medical practitioner confirm that his medical condition presents a barrier that precludes him from searching for, accepting, or continuing employment as required by EAR section 2(4)(b), is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The ministry found that the appellant's most recent Employability Screen indicates a score of 12 so EAR section 2(3), which requires an employability score of 15, was not applicable and therefore considered the application under EAR sections 2(2) and 2(4).

The ministry found that the appellant met the requirements of EAR section 2(2)(i) in that he had been in receipt of income assistance for at least 12 of the immediately preceding 15 months. The ministry also found that the appellant has a medical condition that has lasted at least one year and is expected to last at least another two years as required under EAR section 2(4)(a)(i).

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*, or

(d) disability assistance or hardship assistance under the *Employment and Assistance for Persons with Disabilities Act*.

(3) The following requirements apply

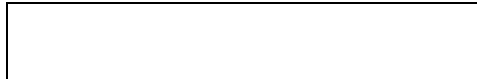
(a) the minister

(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,

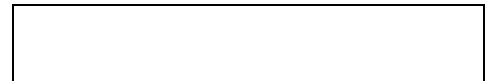
(i) in the opinion of the medical practitioner,



- (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)

### Schedule E - Employability Screen

Number	Criteria	Category or Response	Score
1	What is the person's age?	(a) under 19	0
		(b) 19 to 24 inclusive	1
		(c) 25 to 49 inclusive	0
		(d) 50 to 65 inclusive	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	0
		(b) 1 to 3 times	1
		(c) more than 3 times	3
3	What is the total amount of time the person has	(a) less than 2 months	0
		(b) 2 to 12 months	3
		(c) more than 12 months	7



	spent on Income or Social Assistance in the last 3 years?		
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 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 of English skills training	0 3
Total			
		<b>Office use only:</b> Score only most applicable response	

In the Reconsideration Decision, the ministry noted that, based on the results of the appellant's Employability Screen which is a score less than 15, the minister must be satisfied that: 1) the appellant has a medical condition *other than addiction*, that 2) in the opinion of a medical practitioner has lasted or occurred frequently for at least 1 year and is likely to continue for at least 2 more years, and 3) the medical condition, *in itself*, presents a barrier that *precludes* the appellant from searching for, accepting or continuing in employment.

The ministry found that the appellant has a condition other than addiction. The ministry also determined that the appellant has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years.

However, the ministry determined that the information provided does not demonstrate that the appellant's medical condition in itself presents a barrier that precludes the appellant from searching

for, accepting or continuing in employment.

The ministry clarified “precludes” as per ministry policy: *A medical condition is considered to preclude the 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 for any length of time except in a supported or sheltered-type work environment.*

The ministry concludes the information provided does not establish that the appellant’s medical conditions preclude him from searching for, accepting or continuing in all types of employment as per section 2(4)(b) of the EAR.

The position of the appellant is that his condition has not improved but has worsened since he applied for PPMB status two years ago. His medical reports clearly show that he suffers from depression and he is unable to work; he would be a danger to himself and others. The appellant argues that the ministry’s decision is unfair and he does not understand why the medical information he provided when he applied two years ago was sufficient to demonstrate his eligibility for PPMB designation and suddenly now it is not.

#### *Panel Decision*

To qualify as a person who has persistent multiple barriers to employment, an individual must meet the requirements as set out in section 2(2) and section 2(3) or 2(4) of the EAR.

The ministry found that the appellant’s most recent Employability Screen indicates a score of 12 so EAR section 2(3) which requires an employability score of 15 was not applicable and therefore considered the application under EAR sections 2(2) and 2(4). The ministry also found that the appellant met the requirements of section 2(2); that the appellant has a medical condition that has lasted at least one year and is expected to last at least another two years.

However the ministry found that the appellant’s medical condition does not present a barrier that precludes him from searching for, accepting, or continuing employment as required by EAR section 2(4)(b), which is the reason the ministry denied the appellant’s application for renewal of PPMB designation.

The ministry confirmed that it had reviewed four medical reports in making its determination: two that were submitted with the appellant’s request for reconsideration dated October 6, 2015 and November 26, 2015, and two from his Income Assistance file, dated August 2, 2011 and August 22, 2013,

In the 2011 report, the appellant’s physician described his primary condition as *substance addiction* and secondary condition as *depression*, citing restrictions as *problem is with addiction and mental illness*. In the 2013 report the appellant’s physician described his primary condition as *anxiety, depression* and secondary condition as *insomnia*, and that he gets *panic attacks and cannot cope with crowds*. Restrictions cited are *decreased cognition, struggles in group situations*.

The October 2015 report was completed by a physician who had known the appellant for six months but as the appellant testified had seen him only twice for prescription refills and was not well known to him. The appellant stated that this is the report that the ministry advised was incomplete. The



physician lists *major depressive disorder* as the primary condition with *stable mood* as an outcome; and *asthma* as the secondary condition. Restrictions cited include *no motivation, poor concentration, depressed mood fluctuations*. The final report, which was completed by the physician who knows the appellant well, indicates *opiate addiction as a primary medical condition* which he describes as under control due to prescribed medication, and *depression* as a secondary condition, indicating that it is improved due to prescribed medication. The physician notes in restrictions *unable to work*.

The appellant's position is that his current medical reports are basically no different from his previous medical reports and he is confused as to why his application for renewal of his PPMB designation was denied.

The panel is sympathetic to the appellant's position. The language in all the reports is very similar and in comparing the 2015 reports to the 2013 report, it is difficult to discern a significant change in the appellant's medical condition.

The appellant's primary medical condition was opiate addiction and section 2(4) EAR specifically considers medical conditions other than addictions. The panel must consider whether the ministry's decision that the appellant's secondary medical conditions of major depressive disorder and asthma are barriers that preclude him from search for, accepting or continuing in employment is reasonably supported by the evidence or a reasonable application of the legislation in the circumstance of the appellant.

In the Medical Report dated October 6, 2015 the physician did not describe outcomes of the appellant's treatment or provide information to describe the severity, frequency or duration of fluctuations in the appellant's medical condition which might establish that the appellant is precluded from searching for, accepting or continuing in employment.

In the Medical Report dated November 26, 2015, the physician listed the outcomes of the appellant's treatment as "depression improved/addiction under control." Although he wrote that the appellant is "unable to work" he did not provide further details to explain why such is the case considering the described outcomes.

The panel finds that although the appellant's 2015 medical reports describe ongoing medical conditions, they do not provide sufficient information to support that they are barriers that preclude the appellant from searching for, accepting or continuing in employment.

On the basis of the foregoing, the panel finds that the ministry's decision that the appellant did not qualify for PPMB was a reasonable application of the legislation and reasonably supported by the evidence.

The panel therefore confirms the ministry's decision.