

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated March 1, 2016 determined that the appellant does not qualify as a person with persistent multiple barriers (PPMB) under Section 2 of the Employment and Assistance Regulation because PPMB designation is a provision of the Employment and Assistance Act and Regulation and may only be provided to persons in receipt of assistance under this Act and Regulation.

The ministry determined that the appellant is in receipt of assistance under the Employment and Assistance for Persons With Disabilities Act and Regulation. Therefore, he may be provided assistance and supplements only as set out within this Act and Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWD), Section 1.

Employment and Assistance Regulation (EAR), Section 2.

PART E – Summary of Facts

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

A 2-page Medical Report PPMB dated October 20, 2015 by the appellant's physician, a general practitioner (GP) indicated:

- The appellant's Primary medical condition: Major Depression Disorder, onset December 1, 2010 and,
- The Secondary medical condition as General Anxiety Disorder, onset October 1, 2014.
- The medical condition has existed 5 years and 10 months and will continue for 2 years or more.
- Under restrictions specific to the reported medical condition, the physician wrote "Poor concentration & short term memory loss. Constant anxiety & panic episodes therefore can't hold a job down."

An Employability Screen indicated a total score of 9 with results that correspond with Expected to Work (score 0-14) which are described as immediately employable/employable with short-term interventions.

The ministry's letter to the appellant dated December 22, 2015 that provided the reasons why his application for PPMB was not approved;

1. The appellant was not in receipt of income assistance under the Employment and Assistance Act, and
2. The appellant was currently in receipt of assistance under the Employment and Assistance For Persons with Disabilities Act and Regulation which does not have a provision for PPMB.

The Appellant was advised that as he does not meet the requirements for PPMB, he was expected to look for employment, work with the ministry to create an Employment Plan and to set up an appointment with the ministry to create the Employment Plan. The letter also specified how to make a request for the ministry to reconsider the decision should the appellant not be satisfied with it.

The appellant's Request For Reconsideration dated February 25, 2016 requested a 10 day extension due to an advocate appointment. The appellant further indicated that he did not agree with the decision.

In the Notice of Appeal dated March 9, 2016, the appellant stated that he has a serious injury from 6 years ago caused by his ex-spouse and that he wished he had died. He states that he has consistent job losses due to massive anxiety attacks in work places. He indicates that more info will be sent as there is lack of space on the form.

At the hearing, the appellant provided 3 documents as follows:

- a Prescription for Spectacle Lenses dated July 31, 2015;
- a Letter from a Police Service's Victim Services Coordinator dated August 11, 2011 referring to the final disposition of the accused in the appellant's case; and
- a Support Letter from the appellant's Mother dated March 4, 2016 who writes about his medical conditions.

The appellant testified that he moved in with his spouse in September 2014 and has not been working. He currently sees 4 different councilors a week, is taking a positive parenting course, travels by bus for 40 minutes to appointments and doesn't have any time between courses and appointments to look for work. He stated that he contributes little to his spouse's rent payments, has no money for gas and hydro and lives off the food bank. The appellant stated that he is 90-95% blind in his right eye. He indicated that his physician had directed him to apply for PPMB status and that is what he did.

The ministry testified that the appellant doesn't have any employment obligations to look for work when his current file falls under PWD legislation. Additionally, the appellant is not required to supply medical records for assistance. In response to a question by the appellant regarding the ministry's letter to him dated December 22, 2015, the ministry representative indicated that the appellant had received a PPMB form letter which was not appropriate under his circumstances. The ministry explained that although the appellant was covered by the PWD legislation, he had applied for PPMB designation and the ministry routinely completed his Employability Screen as part of his application. The ministry representative stated that the appellant would be entitled to apply for Persons with Disability Designation which was an entirely separate process from that of PPMB.

The ministry did not object to the additional evidence presented by the appellant.

The panel determined the appellant's documentary and oral evidence were admissible under Section 22 (4) of the Employment and Assistance Act (EAA) as they were in support of the records before the minister at reconsideration and provided further information about the appellant's medical condition as well as insight in to his personal circumstances.

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 PPMB designation is a provision of the Employment and Assistance Act and Regulation and may only be provided to persons in receipt of assistance under this Act and Regulation.

The ministry determined that the appellant is in receipt of assistance under the Employment and Assistance for Persons With Disabilities Act and Regulation and therefore, he may be provided assistance and supplements only as set out within this Act and Regulation.

Relevant Legislation

EAPWDA

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

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)

Ministry's Position

The ministry argues that the appellant's spouse is a recipient of disability assistance under the EAPWD Act which also includes the designate's spouse so both receive assistance under EAPWD Regulation. As PPMB designation is not a provision under the EAPWD Regulation, there is no legislative jurisdiction for the minister to consider the appellant's application for PPMB designation.

Appellant's Position

The appellant argues that his physician directed him to apply for PPMB status as the physician knows his medical condition and that due to the appellant's constant anxiety and panic attacks, he cannot work. The appellant further argues that he does not understand the ministry's position that he was expected to look for employment, work with the ministry to create an Employment Plan and to set up an appointment with the ministry to create the Employment Plan when his physician has reported that he has persistent multiple barriers to employment.

Panel's Findings

The panel acknowledges that the appellant was directed by his physician to apply for PPMB designation as he was unable to work due to his medical conditions. The panel however is troubled that the appellant received a PPMB form letter which was not appropriate under his circumstances. The panel finds that while the ministry was aware that the appellant was covered by the PWD legislation, the ministry routinely completed his Employability Screen as part of his PPMB application and regardless provided the appellant with employment expectations contrary to PWD legislation. The panel understands why the appellant felt he had no option but to apply for a reconsideration of the ministry's decision.

Nevertheless, the panel finds that the ministry reasonably determined that Persons with Persistent and Multiple Barriers designation may only be provided to persons in receipt of assistance under the Employment and Assistance Act and Regulations and not the Employment and Assistance for Persons With Disabilities Act and Regulations. Therefore, as the appellant receives assistance under the Employment and Assistance for Persons With Disabilities Act and Regulations as the consequence of his spouse's designation, the panel finds that the ministry was reasonable under the legislation as it does not have discretion to consider his PPMB application.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.