

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 29, 2016 which held that the appellant does not qualify as a person with persistent multiple barriers (PPMB) to employment because he did not meet all of 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 12 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 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.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2.

## PART E – Summary of Facts

The ministry did not attend the hearing. The panel being satisfied the ministry was notified of the date and time of the hearing, the hearing proceeded under section 86(b) of the EAR.

The evidence before the ministry at the time of reconsideration:

- Medical Report – Persons with Persistent Multiple Barriers Application signed by the appellant on February 3, 2016 and signed by the medical practitioner (MP) on February 3, 2016.
- An Employability Screen indicating the appellant score was 12;
- PPMB Decision Summary dated May 17, 2016;

The appellant's Request For Reconsideration dated June 17, 2016 indicated the appellant has symptoms in arms, right wrist, hand, ankle, and foot. He had x-rays and seen specialist who says no operation. He has chronic pain for which he takes ASA with codeine and Celebrex which helps with pain and arm band help as well. Also has limited mobility as well which is probably caused by his Hep (Hepatitis) C. These problems are starting to affect his daily routines in life. He wants to get back in the workforce, but due to his medical issues that would not be fair to potential employers as the smallest of tasks in flame his conditions. He believes further medical tests are needed to figure out his ailments.

In the Medical Report, the physician (MP) indicated that he had been the appellant's medical practitioner for 6 months or more, reported that the appellant's primary medical condition is Chronic Right Arm Tennis Elbow – onset 2013 and the secondary medical conditions are Hepatitis C, chronic-onset is unknown. The appellant's treatment is indicated as cortisone injections right elbow, Celebrex capsules and awaiting antiviral therapy for Hep C. The outcome for the cortisone injections being limited transient benefit and the Celebrex being partial help. The MP reported the medical conditions have existed for 2 years 5 months, are not episodic in nature and the prognosis is they will continue for 2 years or more. The MP reports the restrictions are "Unable to do manual labor activities due to left arm pain".

A copy of the Employability Screen indicated a total score of 12 with results that correspond with Expected to Work (score 0-14) which are described on the Employability Screen form as immediately employable/employable with short-term interventions.

At the hearing the appellant stated that he first received the PPMB designation in 2013. In January 2016 the ministry contacted him and advised that a review of this designation was being conducted and he needed to complete the PPMB application again and submit it to the ministry office. The ministry advised him that if the completed application was not received by March 4, 2016 the designation would be removed from his file. The appellant stated that he took the application to his MP and submitted it to the ministry before March 4, 2016. He stated this application had the same information as his last one with the exception that he has now been diagnosed with Hepatitis C. He stated that at the present time he receives 10 cortisone injections into his left elbow which his specialist is recommending be stopped because the injections are damaging the cartilage in the left elbow. He stated that the same symptoms he is experiencing on his left side are now appearing on the right side so he is undergoing more testing to determine the cause. He stated the smallest of tasks will enflame his right elbow causing severe pain. The appellant stated he has not worked since 2012 and all his previous jobs involved manual labor and he doesn't have any skills nor has he received any training to do doing anything else.



In response to questions from the panel the appellant stated:

- that he could answer a telephone all day;
- has not applied for any work as jobs are few and far between;
- that the doctor's reference to his condition restricting his left arm is a mistake as the reference should be to his right arm.

The panel found that the appellant's oral testimony provided additional information that was in support of the information and record that was before the ministry at reconsideration and accordingly, has admitted this information in accordance with s. 22(4) of the *Employment and Assistance Act*.

## 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 scored 12 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 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)

### Ministry's Position

In the reconsideration decision the ministry argued that an applicant's medical condition and subsequent restrictions must preclude the appellant from all forms of employment. The ministry argued that there is insufficient evidence to support that his medical conditions confirmed by the MP and the resulting restrictions (unable to do manual labor activities due to left arm pain) precludes the appellant from all forms of employment. The ministry argued that the appellant did not provide any supporting documentation that he has symptoms in both arms, right wrist, hand, ankle and foot and these medical issues are starting to affect his daily activities and his mobility and restricting him from employment.

### Appellant's Position

The appellant argued that he the smallest amount of manual labor causes inflammation, soreness

and pain. He argued that the same information, with the exception of his Hepatitis C condition, was submitted in 2013 and his application was approved and he doesn't understand why this application was denied.

### **Panel Decision**

The panel noted both the ministry and the MP provided conflicting statements.

In the reconsideration decision the ministry's comment in paragraph 6, under section 2(4), the 2<sup>nd</sup> sentence, the ministry stated "Based on the additional information you have provided, it can be determined your medical conditions and restrictions preclude all forms of employment activities." In the next two bullets under this paragraph, the ministry provides argument that insufficient evidence has been provided that precludes the appellant from all forms of employment. The panel finds that based on the statements in the two bullets under the sentence in question beginning "Based on the additional information ...", that the ministry may have omitted the word "not" in this sentence.

On the PPMB application the MP provided conflicting information. Under Medical condition – primary medical condition and Treatment - the MP refers to the appellant's right arm and in the Restrictions area the MP refers to the appellant's left arm – "due to left arm pain". The panel noted that the MP did not make reference to the appellant's left arm anywhere else on the PPMB application. The panel finds the MP's reference to the appellant's left arm under Restrictions was made in error and the statement should have referred to the appellant's right arm.

After reviewing both the PPMB Medical Report and the appellant's reasons for reconsideration, the panel finds that while the appellant had indicated that more medical information may be forthcoming, there is no other medical information at this time to substantiate the other conditions as described by the appellant or their potential impact on his employability. The panel finds in the appellant's evidence he stated that he probably could do other type of employment but is only skilled in labor jobs. The legislation 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. The panel acknowledges that the appellant has had PPMB designation previously; nevertheless, there is insufficient information to support that the appellant's medical conditions preclude him from all types of employment.

Therefore, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant's medical conditions are a barrier that precludes him from searching for, accepting or continuing in employment and confirms the ministry's decision.