



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated June 20, 2016 which held that the appellant did not qualify as a person with persistent multiple barriers to employment (PPMB) under section 2 of the Employment and Assistance Regulation (EAR).

The ministry determined that the appellant met the requirement of subsection (2) as he has been in receipt of income assistance for 12 of the immediately preceding 15 calendar months and that his application would be assessed under subsection (4) rather than (3) based on her employability screen score of 12. The ministry was satisfied that the requirement of subsection (4)(a) was met as a medical practitioner has confirmed that the appellant has a medical condition, other than an addiction, that has continued at least for 1 year and is likely to continue for at least 2 more years. However, the ministry determined that the requirement of subsection (4)(b) was not met as it could not be determined that the appellant's medical condition precluded him from searching for, accepting or continuing in all types of employment.

PART D – Relevant Legislation

EAR, section 2

PART E – Summary of Facts

The appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. His employability screen score is 12.

In support of his PPMB application the appellant provided a “Medical Report - Persons with Persistent Multiple Barriers” (MR) form dated February 26, 2016 and completed by a medical practitioner. It identifies chronic back pain with left leg radiculopathy as primary medical condition and osteoarthritis as secondary medical condition. Treatment is described as activity as tolerated, non-steroidal anti-inflammatory medication and physiotherapy; the outcome of this treatment is termed as minimal change. The medical practitioner observes that the appellant’s symptoms are likely exacerbated by a motor vehicle accident 8 years ago and that the appellant’s range of motion, strength and gait are normal. The medical practitioner notes the appellant’s limited ability for physical work and identifies the restrictions specific to the diagnosed medical conditions as “activity as tolerated with limited bending and twisting”.

In his June 4, 2016, request for reconsideration the appellant writes that for the last 2 years he has been suffering from chronic back pain which advanced to his left shoulder and arm and developed to distressing pain in his left hand, left leg and all joints. This pain leaves him restless during the day and at night and increases with movement, whether sitting, standing, taking a shower, changing his clothes, tying his shoe, cooking a meal, lifting an object. He lives by himself and has no one to help him. For the past 2 years he has seen 4 different doctors multiple times and taken various medications from pain killers to arthritis medications but they did not help relieve the pain. The doctors agree that he needs physiotherapy once or twice a week but he cannot afford the fees. He already pays \$40 more to cover his rent and ends up with \$170 to cover his living expenses.

In his Notice of Appeal dated June 30, 2016 the appellant states that his condition is not improving and he needs medical help. He takes medication but has been living in pain for a long time.

At the hearing the appellant said he needs physiotherapy but cannot afford it. His pain started as back pain over 2 years ago and has become worse since the time of his application. Some areas of his body have become numb and he has now pain in all joints and he can only sit for ½ hour - any movement triggers pain. He suffers lack of sleep, his pain has become unbearable despite taking arthritis medication and pain killers, and he cannot do any work. He believes he will need help for around 1 year. He has not been able to see a specialist. The appellant took a course and obtained a license as a security guard but did not find work in this field. He is still in contact with WorkBC – they try to help him but he has a hard time getting a job.

Pursuant to section 22(4) of the Employment and Assistance Act, the panel admits the appellant’s statements in his Notice of Appeal and at the hearing as being in support of the information and record that was before the ministry at the time of reconsideration; specifically, these statements further illustrate the appellant’s medical condition and the difficulties he suffers as a result.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision which held that the appellant did not qualify for PPMB designation because he had not met the requirement of section 2(4)(b) of the EAR that her medical condition precludes him from employment is reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

Relevant Legislation – section 2 of 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*;
- (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.

Appellant's position

The appellant's position is that his severe pain precludes him from any work and should qualify him for PPMB status. His pain medications do not work and he needs physiotherapy which he cannot afford without PPMB designation.

Ministry's position

The ministry's position is that the information provided does not demonstrate that the appellant's medical condition presents a barrier precluding him from searching for, accepting or continuing in employment; restrictions described by the medical practitioner as "Activity as tolerated (limited bending/twisting)" / "Limited ability for physical work" do not establish that the appellant is precluded from searching for, accepting, or continuing in all types of employment such as sedentary work, light physical labor, part time employment, or participating in a program that will work with the appellant to overcome his barriers. Consequently, the appellant's application does not meet the requirements set out in the EAR, section 2(4)(b).

Panel Decision

Section 2 of the EAR sets out the requirements for PPMB qualification. The requirements of subsection (2) must be met as must the requirements of either subsection (3) or (4). The requirements of subsection (3) apply where an applicant has an employability screen score of at least 15, otherwise, the requirements of subsection (4) apply.

In the appellant's case, the ministry determined that the requirements of subsection (2) were met and that the appellant's application must be assessed under subsection (4) based on his employability screen score of 12. That the appellant's employability screen score is 12 is not in dispute and accordingly, the requirements of subsection (4) apply in the appellant's circumstances. The requirements of subsection (4)(a) were found to have been met. The only basis for denial was the requirement of subsection (4)(b) that the ministry be of the opinion that the medical conditions confirmed by the medical practitioner are a barrier that precludes the appellant from searching for, accepting or continuing in employment.

While the appellant argues that his chronic pain precludes him from any kind of work the ministry finds that the restrictions described by the medical practitioner - "Activity as tolerated (limited bending/twisting)"/"Limited ability for physical work" - do not establish that the appellant is precluded from searching for, accepting, or continuing in all types of employment such as sedentary work, light physical labor, part time employment, or participating in a program that will work with the appellant to overcome his barriers.

While the medical practitioner confirms the appellant's limitation for physical work and limitations concerning bending and twisting he does not elaborate on the extent of these limitations. As a result the panel finds that there is insufficient evidence that the appellant is precluded from searching for, accepting, or continuing in all types of employment such as sedentary work, light physical labor, part time employment; therefore the panel finds the ministry reasonably concluded that the information did not establish that the appellant's medical conditions preclude him from all types of employment activities.

The panel finds that the ministry reasonably determined that the information provided did not establish that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment as required by section 2(2)(b) of the EAR.

As the reconsideration decision was reasonably supported by the evidence, the panel confirms the decision.