



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 21, 2016, which denied the appellant’s request to renew his designation as a person with persistent multiple barriers (PPMB) under the Employment and Assistance Regulation subsections 2(2) and 2(4) because the application form was not completed by a medical practitioner and the ministry was not satisfied that the appellant’s medical condition precluded him from all forms of employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2 and Appendix E

PART E – Summary of Facts

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

- A letter dated March 10, 2016 reminding the appellant that it was time to review his eligibility for PPMB and requesting that he ask his doctor to complete an attached medical report.
- A medical report for PPMB dated March 18, 2016 completed by a nurse practitioner in which she indicates:
 - She is a medical practitioner;
 - That the primary condition the appellant is dealing with is COPD with an onset in 2011; for which he is treated with medications (Flovent, Atrovent, Ventolin) which provide an outcome described as “stabilize”;
 - The medical condition duration is expected to be 2 years or more and is not episodic in nature; and
 - Under restrictions she writes “severely limited exercise tolerance”.
- An Employability Screen form assessing the appellant with a score of 14.
- Confirmation that the appellant has been on Assistance for 12 of the last 15 months.
- A blank Client Employability Profile.
- A Request for Reconsideration dated May 27, 2016 in which the appellant reports:
 - He has had breathing problems for at least 10 years;
 - He is due for further testing which is being organized by his doctor’s office;
 - His medications don’t help most of the time;
 - He can no longer perform the type of work he used to do;
 - Even walking downhill causes him problems;
 - He has difficulty with fatigue due to stomach problems.
- An older medical report completed by the appellant’s physician in 2014 in which the physician indicates:
 - The medical condition is COPD which was verified by chest x-ray but not seen on spirometry, the condition has an unknown date of onset and expected to last 2 years or more and is not episodic; and
 - That the appellant has difficulty walking and shortness of breath on exertion.

Additional information provided

At the hearing the appellant provided oral evidence indicating he hasn’t worked for three years. He used to work with heavy equipment and in the construction industry but finds it harder to continue in that line of work because he is exposed to diesel fumes emitted by the equipment. Working in these industries is no longer an option. He has little education and no experience with computers so cannot do other types of more sedentary work.

He finds it difficult to walk any kind of distance and frequently has to stop just to catch his breath. The puffers he has for his condition help minimally and improve his lung capacity by about 4% but he still finds it difficult to take deep breaths. This is an ongoing problem and not episodic. Not all the puffers he requires are covered by the ministry so he has to use substitutes to treat his illness.

He has been subject to more in-depth testing for his breathing issues but not all the test results are available yet.

The appellant's advocate explained that he has been a patient of the local clinic for many years and his condition has worsened in the last three years. She also questioned why the ministry had a problem with the nurse practitioner filling out the PPMB Medical Report since she is a medical professional and in this clinic the nurse practitioner has the same status as a doctor for filling out such reports.

At the hearing the ministry representative stated the PPMB Medical Report must be completed by a medical practitioner who is a member of the College of Physicians and Surgeons. Nurse practitioners belong to a different college and therefore the ministry cannot accept the form as meeting the requirement of the Act. Forms required for some designations under the Act, such as for Persons With Disabilities (PWD), can be assessed by other medical practitioners but the PPMB designation requires an assessment by a physician.

The ministry representative also stated that the appellant's score on the Employability Screen was 14 and therefore the appellant's condition does not preclude the applicant from seeking, accepting and performing any kind of employment except where the appellant would be supported or sheltered. In the applicant's case, the nurse practitioner's report indicates the only restriction for the appellant as "severely limited exercise tolerance", which is not enough information or specific enough to rule out all types of employment including sedentary work.

Admissibility of New Information

Neither the ministry nor the appellant raised any objection to the oral evidence presented at the hearing and the panel did not consider the evidence to be new as it was deemed to be clarification of the facts before the ministry at the time the reconsideration decision was made.

The panel therefore admitted the oral testimony of both parties in accordance with section 22(4) of the Act.

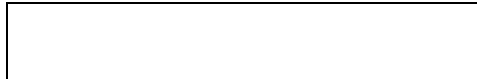
PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant designation as a PPMB was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant does not qualify because the application was not filled out by a medical practitioner and that his medical condition does not preclude him from all forms of employment based on the information provided.

The relevant legislation is as follows:

EAR:

- 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,

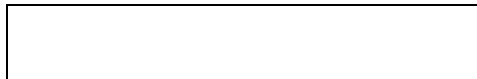
(a) in the opinion of the medical practitioner,

(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.

[en. B.C. Reg. 368/2002.]



Schedule E

Schedule E

Employability Screen

Number	Criteria	Category of Response	Score
1	What is the person's age?	(a) under 19 (b) 19 to 24 inclusive (c) 25 to 49 inclusive (d) 50 to 65 inclusive	0 1 0 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 (b) 1 to 3 times (c) more than 3 times	0 1 3
3	What is the total amount of time the person has spent on Income or Social Assistance in the last 3 years?	(a) less than 2 months (b) 2 to 12 months (c) more than 12 months	0 3 7
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 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			
		Office use only: Score only most applicable response	

EAPWDR section 2(1):

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

- (i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or
- (ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

Medical Practitioner or Prescribed Professional

The appellant's position is that the nurse practitioner has the same authority as a physician to complete forms at the clinic that the appellant regularly attends. He has been a patient there for a long time and his condition has only deteriorated. Therefore, he should continue to be qualified as he was in his previous application.

The ministry's position is that unlike applications for other designations under the Act, which permit other Prescribed Professionals to fill out the required forms, the Act requires a physician who belongs to the College of Physicians and Surgeons to fill out the PPMB Medical Report. Since the nurse practitioner belongs to a different professional college she is not eligible to fill out this report and the report therefore cannot be accepted as meeting this legislative requirement.

Panel Decision:

The panel notes that section 2 of the EAPWDR defines who is a prescribed professional for the purpose of the Act. The definition differentiates between a nurse practitioner and a medical practitioner and so they are not the same thing for the purposes of the Act. The panel also notes that the person filling out the PPMB Medical Report is required to confirm that they belong to the College of Physicians and Surgeons of British Columbia. Since nurse practitioners belong to a different college the panel finds the ministry was reasonable in determining the application was not properly completed and therefore does not meet this requirement of the Act.

Employability Screen and Barriers to Employment

The appellant's position is that between the time that he previously qualified for the PPMB designation and the reassessment of his status, his health has only deteriorated. Therefore, if he was deemed not to be able to work before he should still be deemed unable to work now. He emphasized that his breathing difficulties preclude him from doing any kind of work and that it is difficult for him to walk even short distances without taking breaks. He also pointed out this is an ongoing condition which is helped only minimally by the medications he is on. He is waiting for results from testing which has already occurred, which will substantiate and support his evidence.

The ministry's position is that the Act requires anyone with an employability screen score of less than 15 as in the present case to satisfy the ministry that they are incapable of any type of meaningful employment including sedentary work. The only exception would be for work that is highly supervised or sheltered. The ministry stated that there was insufficient evidence presented by the appellant to conclude that his health precluded him from doing some other type of work other than what he has traditionally done. The ministry also emphasized that the only restriction indicated in the medical report is that the appellant had severely limited exercise tolerance, and that the medications the appellant is using to treat his medical condition were described as stabilize. This, they submit, is insufficient information to confirm that the applicant is incapable of doing any kind of work.

Panel Decision:

Section 2 of the EAR sets out the requirement for qualification for the PPMB designation. This section requires that an applicant must meet the requirement set out in subsection 2 and one of either subsection 3 or 4. The evidence at the hearing established that the appellant has been receiving income assistance under the Act for at least 12 of the last 15 months, this satisfies the requirement under section 2, subsection 2.

Section 2, subsection 3 applies to applicants with a score of 15 or greater on the employability screen and is not applicable in this case, so the requirements under subsection 4 must be satisfied.

Section 2, subsection 4 requires an applicant to have a medical condition other than an addiction which is confirmed by a medical practitioner and which in the medical practitioner's opinion has continued for at least one year or has occurred frequently in the past year, and is likely to continue for at least 2 years. In the applicant's case it is likely that this requirement would be met if a medical practitioner and not a nurse practitioner had verified this to be true. That is the requirement as provided for under the Act. The minister would then also need evidence, which confirms that the applicant is precluded from searching for, accepting or continuing in employment. In this case the application falls short on both counts because it was not completed by a medical practitioner who is a

member of the College of Physicians and Surgeons of BC and because there was insufficient evidence to convince the ministry that the appellant's medical condition was severe enough to preclude some form of employment.

Conclusion

The panel acknowledges that the appellant's medical condition has not improved since the previous application for PPMB status was granted. However, we note that the application falls short of the legislative requirements because the person who filled out the form does not hold the credentials required for that purpose and the information provided in the form was not sufficient.

Having reviewed and considered all of the evidence and the relevant legislation, the panel find that the ministry's reconsideration decision finding the appellant ineligible for PPMB designation is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.

The appellant is not successful on appeal.