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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 8, 2016 which held that the appellant does not meet the criteria for qualification as a Person with Persistent Multiple Barriers (PPMB) to Employment under section 2 Employment and Assistance Regulation (EAR).

In particular, the ministry determined that the appellant did not meet the criteria set out in section 2(4)(a)(i) of the EAR because, in the opinion of the medical practitioner, the appellant’s medical condition, other than an addiction, has continued for at least one year and is not likely to continue for less than two more years.

Further, the minister is not satisfied that appellant’s medical condition is a barrier that precludes him from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2

PART E – Summary of Facts

This is a written hearing.

The evidence before the ministry at the time of reconsideration:

- Several Medical Reports – PPMB the most recent dated January 8, 2016;
- Several Employment Plans the most recent dated November 20, 2015;
- Several Medical Reports– Employability the most recent dated December 8, 2015;
- Letter from the medical practitioner (MP) dated August 19, 2014. The doctor stated that the appellant has shoulder pain and not able to do his job as a painter. He needs to take care of his kids and is not able to pursue other jobs. This physical damage causes some mood instability.
- Letter to appellant dated May 10, 2016 advising him his application for PPMB had not been approved.
- Letter from the appellant dated June 20, 2016 attached to the appellant's Request for Reconsideration. At the bottom of the letter his MP stated, "I can confirm that [the appellant's] right shoulder impairment along with his depression and anxiety are severe enough to preclude him from searching for or accepting employment in the foreseeable future which is crossed out by the MP and replaced with "near future" and dated and signed June 24, 2016.

In the appellant's latest PPMB application dated January 8, 2016 the MP indicated that he had been the appellant's doctor for 6 months or less and that he had examined previous medical records. He reported the appellant's primary medical condition as a right rotator cuff tear onset October 2013 and a secondary medical condition as depression/anxiety onset December 2015. The MP prescribed a steroid injection and physiotherapy for treatment with the outcome of the steroid injection as temporary improvement for one month and minimal improvement with physiotherapy. The MP reported the medical conditions have existed for 2 years 2 months, are not episodic in nature and the prognosis is the expected duration of less than 2 years. The MP reports the restrictions are "restricted range of motion of right arm above shoulder height due to pain".

In the Reconsideration decision the ministry noted that the appellant's Employability Screen initially indicated a total score of 15 but that score was amended to 14 as the appellant's response to question #3 on the report was answered incorrectly. Question 3 asks, "*Apart from your current application, how many times have you been in receipt of Income or Social Assistance anywhere in Canada in the past 3 years?*" His response to Question 3 was "b" – "1-3 times", however the ministry noted that the appellant has been in continuous assistance since February 2013 which means that *apart from his current application*, he has not been in receipt of Income or Social Assistance anywhere in Canada in the last three years. When his Employability Screen Score (ESS) was adjusted to reflect the correct response the appellant's score was 14. The ministry determined that section 2(3) of the EAR did not apply and his application needed to be assessed under section 2(4) of the EAR.

In a written submission the appellant submitted "Since my June 20th letter I have further discussed my prognosis with my MP and my orthopedic surgeon. I am told that rotator cuff repair surgery for a tear from a sudden injury works best if it is done within a few weeks of the injury; that repairs of very large tears are not always successful. My surgery was performed two-and-a-half years after sustaining the injury. I am also struggling with depression and anxiety as detailed in my letter. In light of these

considerations, my MP has agreed that my condition is expected to continue for at least another 2 years. At the bottom of the letter the MP signed a note dated August 9, 2016 which stated, "After further consideration of (the appellant's) medical condition, I agree that the restrictions related to his rotator cuff injury, depression and anxiety are expected to continue for at least another 2 years, precluding him from searching for, accepting or continuing in employment."

In the ministry's written submission, the ministry states there was no evidence to support the appellant's medical condition was expected to continue for at least another two years or that his condition precluded him from searching for, accepting or continuing in employment that has now been provided. This information was not before the ministry at reconsideration.

The panel finds the MP's prognosis on August 9, 2016 on the expected duration of the appellant's medical condition is not consistent with his opinion on the PPMB application or consistent with his opinion footnoted on the June 20, 2016 letter when he deemed that the appellant's medical condition (right shoulder impairment along with his depression and anxiety) are severe enough to preclude him from searching for or accepting employment in the "foreseeable future" is stroked out and "near future" is handwritten in. The change is initialed by the MP. The footnote is signed and dated by the MP on June 24, 2016.

The panel finds that the doctor's prognosis of August 9, 2016 on the expected duration of the appellant's medical condition and that the appellant's medical condition is expected to continue for at least another two years precluding him from searching for, accepting or continuing in employment is new information and was not before the ministry at reconsideration. Accordingly, this information is not admissible as evidence in accordance with s. 22(4) of the *Employment and Assistance Act* as it is not in support of the information and record that was before the ministry at reconsideration.

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 PPMB to employment because he did not meet all the criteria under Section 2 of the EAR. In particular, the appellant has not met Section 2(4), because in the opinion of the appellant's medical practitioner, his medical condition, other than an addiction, has continued for a least one year but is not likely to continue for at least 2 more years; and

Further, that the appellant's medical condition, in the opinion of the minister, is not a barrier that precludes him from searching for, accepting or continuing in employment.

The legislation considered:

Relevant Legislation

Persons who have persistent multiple barriers to employment

Section 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.

In reference to section 2(4)(a)(i) EAR – expected duration of medical condition(s)

Ministry's Position

In the reconsideration decision the ministry argued that to be considered under section 2(4) EAR the appellant must have a medical condition, excluding addictions, confirmed by a medical practitioner, which has continued for at least 1 year and is expected to continue for at least another 2 years and, in the opinion of the ministry, is a barrier that precludes him from searching for, accepting and maintaining employment. The ministry stated that a medical condition is considered to preclude a 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 argued that on the PPMB application the MP indicated that the appellant's medical

conditions have existed for more than 2 years and they are expected to last less than 2 more years and when asked about restrictions the MP wrote “restricted range of motion of right arm above shoulder height due to pain.” The ministry argued that the MP indicated that the appellant’s medical condition is likely to continue for less than 2 years and therefore the legislated criteria in section 2(4)(a)(i) has not been met.

The ministry argued that although the appellant had shoulder surgery and his right arm is incapacitated in a sling restricting his mobility and his depression and anxiety leave him socially isolated with reduced motivation, there is insufficient evidence to suggest that these conditions will last for a least another 2 years.

Appellant’s Position

At the time the Reconsideration decision was made the appellant had not argued the MP’s opinion that the expected duration of the appellant’s medical condition was less than 2 years.

Panel Decision

The evidence is that on January 8, 2016 of the appellant’s PPMB application the MP indicated the expected duration of the appellant’s medical condition to be less than 2 years. The panel finds the ministry’s decision that the appellant did not meet the legislated criteria set out in section 2(4)(a)(i) of the EAR to qualify for PPMB was reasonable.

In reference to section 2(4)(b) EAR – barrier that precludes employment

Ministry’s Position

The ministry’s position is that the appellant has had surgery and his right arm is currently incapacitated in a sling which limits the type of work the appellant is able to do, such as painting, and that his depression and anxiety reduces his motivation and may cause him to isolate himself, but the minister is not satisfied that these restrictions preclude the appellant from searching for, accepting or continuing in all employment, such as part-time work, non-physical labour, or participating in employment related programs such as the Employment Program of British Columbia.

Appellant’s Position

The appellant’s position is that as a result of his shoulder pain and the shoulder surgery his restricted mobility causes him to take significantly longer (4 times) with his personal grooming in the morning and evening. He also argues he only has one good arm and requires daily assistance with basic daily living activities – meals, laundry, opening cans or jars, etc. He also argues that he is socially isolated because of his depression and anxiety and has difficulty motivating himself to get through each day. The appellant argued that considering the degree to which his medical condition impairs his daily living activities it is completely unrealistic to suggest that he could seek or maintain any form of employment.

Panel’s Decision

The evidence is the appellant has been diagnosed with depression and anxiety and has had shoulder surgery resulting in his right arm being currently incapacitated in a sling. The appellant’s position is that his medical conditions are a barrier that precludes him from searching for and accepting employment.

The panel finds that on June 24, 2016 the MP stated the appellant’s medical condition restricts him

“for the near future” in searching for and accepting employment which does not support the appellant’s position. The panel finds the MP’s comment – in near future - relates to the appellant’s “temporary employability”. The panel finds the MP did not provide any medical evidence that the appellant’s medical conditions were a barrier that precluded the appellant from searching for, accepting and continuing in all forms 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.