



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of August 2, 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 section 2(4)(b) EAR has not been met because, in the opinion of the minister, the appellant’s medical condition is not 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

On September 6, 2016 and September 22, 2016 the appellant requested and was granted an adjournment.

The evidence before the ministry at the time of reconsideration:

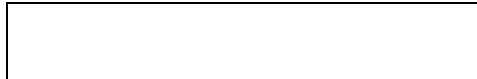
- Medical Report – Person with Persistent Multiple Barriers (PPMB) dated February 17, 2016;
- Ministry PPMB Decision Summary dated June 6, 2016;
- Request for Reconsideration dated February 14, 2016 with a note from appellant attached;
- PPMB reports dated December 6, 2005; dated October 16, 2009; August 9, 2011; October 24, 2013; June 18, 2015; February 17, 2016
- Medical Report Employability dated April 21, 2011;
- Employability Screen indicating a score of 11;

In the appellant's latest PPMB application dated February 17, 2016 the medical practitioner (MP) indicated that he had been the appellant's doctor for 6 over months. The MP didn't indicate if he had or had not examined previous medical records. He reported the appellant's primary medical condition as lumbar and cervical disc degenerative disease (DDD) onset 2010 and a secondary medical condition of chronic obstructive pulmonary disease (COPD) onset 2015. The MP prescribed lumbar facet blocks, inhalers and narcotic analgesics for treatment with the outcome of stable for the three conditions. The MP reported the medical conditions have existed for 5+ years and are not episodic in nature. The expected duration for the appellant condition(s) is 2 years or more. The MP reports the restrictions are "physical labor would be very difficult given COPD and lumbar back pain.

On the Notice of Appeal dated August 12, 2016, the appellant attached a note which stated his reason(s) for appeal is lack of info, from his doctor and himself. He lives with chronic pain every day. His neck at C-4 – C-5 is fused; his right hand fused, also his back is very bad. He can't walk far, stand long or lift anything heavy. Doing dishes, laundry, sweeping or washing floors takes a lot out of him and he will pay for it in pain.

At the hearing the appellant called one witness. He stated that the appellant has lived at his residence for five years and during that time he has seen the appellant's mobility steadily decline. The witness stated that the appellant can no longer cut firewood or ride his bike and that the appellant even finds it very difficult to climb the stairs from the basement up into the kitchen to cook his meals. The witness stated the appellant complains of chronic pain in his neck, back and hands. The witness stated that the appellant wouldn't last 5 minutes at his job site.

The appellant testified that he had his neck fused 14 to 15 years ago, that he has DDD and it is not getting any better and he injured his left hand getting firewood. The appellant stated he had several surgeries on his left hand to straighten out the fingers and is now in constant pain. The appellant stated that he had a PPMB designation between 2011 and 2015 and doesn't understand why the designation was removed since his health and mobility had declined, not improved. The appellant stated he discussed the matter with his doctor and his doctor told him he was not sure what to do except to have the appellant tested but there is no facility to do that for him. The appellant stated that in the past he was a taxidermist but given the situation with his left hand he is unable to do that work. The appellant also stated that because of his DDD and neck pain he has difficulty standing, sitting and lifting.



The panel finds the information provided by the appellant and his witness is in support of the information and record that was before the ministry at the time the reconsideration decision was made and is admissible as evidence under section 22(4) of the *Employment and Assistance Act* (EAA).

The ministry relied on the facts in the Reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of August 2, 2016 which held that the appellant does not meet the criteria for qualification as a PPMB to employment under section 2 of the EAR.

In particular, the ministry determined that the criteria in section 2(4)(b) EAR has not been met because, in the opinion of the minister, the appellant's medical condition is not a barrier that precludes him from searching for, accepting or continuing in employment.

The legislation considered: EAR

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.

(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.

Ministry's Position

The ministry stated the appellant had an Employability Screen score of 11 and therefore his application was assessed under section 2(4) EAR. The ministry stated that on the PPMB application the MP indicated that the appellant's medical conditions have existed for 5+ years and they are expected to last two more years which meets the criteria set out in section 2(4)(a)(i) EAR. The ministry stated the MP wrote the appellant's restrictions are "physical labor would be very difficult given COPD and Lumbar back pain".

The ministry stated that it has some discretion in determining whether a medical condition is a barrier that precludes a person's ability to search for, accepting or continuing in employment and does rely on the information and opinion of the MP in making such a determination.

The ministry argued that previous medical documents from his Income Assistance file were reviewed as well and although previous medical reports by his MP describe the appellant's restrictions as range of motion and unable to do physical work, awaiting surgery and unable to do heavy lifting/carrying, these restrictions are not listed on his most recent PPMB dated February 17, 2016. The ministry argued that although the appellant has restrictions no additional medical information was provided with his application and the MP's statement does not establish that he is precluded from

searching for, accepting and continuing in all forms of employment, such as sedentary work.

Appellant's Position

The appellant's position is that his back hurts him all day long and that he struggles with his domestic chores, i.e. housework, laundry, mopping, etc. The appellant argued he is not getting better, that some days he can't get out of bed. He argued that he had his right hand reconstructed some years ago, it also hurts. He argued that his neck has been fused due to DDD and that it is still quite painful which can make him quite ill or gives him headaches and muscle pain. He argued he gets very sleepy and needs to rest a few times a day.

Panel Decision

The panel finds the EAR legislation requires that to qualify for PPMB a person must meet all the requirements of section 2(1) EAR which states that you must meet the requirements of section 2(2) EAR and section 2(3) or section 2(4) EAR. The panel finds that since the appellant's Employment Screen score was 11 and not at least 15 as required by section 2(3) EAR that he must meet the requirements of section 2(2) and 2(4) to qualify for a PPMB designation.

The panel finds that the ministry acknowledges the appellant has met the requirements of section 2(2) – has been a recipient of assistance for 12 or the past 15 months and section 2 (4)(a) EAR – has a medical condition, other than an addiction, that is confirmed by a medical practitioner and, in the opinion of the medical practitioner, has continued for a least 1 year and is likely to continue for at least 2 years. Since the appellants Employability Screen score was 11 his application was assessed under section 2(4) EAR.

The evidence is the appellant has been diagnosed with lumbar and cervical DDD and COPD with a date onset of 2010 and 2015 respectively. The appellant's position is that his back hurts him every day all day and he struggles with doing household chores. The PPMB designation is about his medical condition restricting him from searching for, accepting and continuing in employment and not about whether his daily living activities are restricted.

The appellant's position is that his medical conditions restrict his mobility and his ability to work; that he is unable to do most everything and these conditions are a barrier that precludes him from searching for and accepting employment. The appellant had a PPMB designation from 2011 to 2015 and when his 2016 application was reviewed the PPMB designation was not approved. Although each application must stand on its own merits the ministry did review and consider the MP's information on previous PPMB applications.

The appellant's witness testified that the appellant has lived in their home for the last 5 years and during that time he has seen the appellant's mobility steadily decline. The witness stated that the appellant can no longer ride his bike or go out and cut firewood due to his restricted mobility and the constant pain. The witness stated the appellant even has a hard time climbing the basement stairs up to the kitchen to prepare his meals.

On past PPMB applications one restriction noted by the MP is "awaiting surgery". The appellant testified that he is still waiting for back surgery and that he does not want to have surgery as he considers that his last resort. The panel notes the restrictions on previous PPMB's were decreased ROM in neck, pain upper limbs, unable to do heavy lifting/carrying and awaiting surgery. The

appellant had surgery on his neck and his testimony is that he suffers with constant pain. The panel notes the appellant receives injections and medication treatments for his conditions and the MP noted the outcome as stable condition.

The evidence from the MP noted “under restrictions” that the appellant would find physical labor very difficult given that he has COPD and lumbar back pain. The MP did not provide any further medical evidence or make reference to the previous restrictions on the PPMB to assist the ministry in making their determination that those restrictions are current. The evidence from the witness supports that the appellant’s mobility appears more restricted but his evidence does not support the employment issue; that his ability to search for, continue or maintain employment is restricted.

The evidence before the panel is that the appellant is not able to return to his former labor-type employment and has stayed at home suffering from back and neck pain and been unemployed for the past five years. The panel finds that although the appellant’s medical conditions remain the same and his mobility appears to be declining, the restrictions identified by the MP on the PPMB supports the ministry’s position and does not support that the appellant is not able to do all types of work and is unable to search for, accept or continue in employment.

Therefore, the panel finds that the ministry reasonably determined that the evidence does not establish that the appellant’s medical condition(s) are a barrier that precludes him from searching for, accepting or continuing in employment and therefore the criterion under section 2(4)(b) of the EAR was not established.

The panel confirms the ministry’s decision.