



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision dated 2016/10/03 which held the appellant did not meet the criteria for Persons with Persistent Multiple Barriers (PPMB) as he did not meet all the requirements of section 2 and schedule E of the Employment Assistance Regulation (the "EAR"), specifically, that the appellant's medical condition does not present a barrier that precludes him from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2; and
Employment and Assistance Regulation (EAR), Schedule E.

PART E – Summary of Facts

The Appellant is re-applying for Persons with Persistent Multiple Barriers (PPMB) qualification. He has no dependents.

The evidence before the Ministry at the time of reconsideration included the following documents:

1. Medical Report – PPMB: dated June 3, 2016, completed by the appellant’s general physician stating that the appellant’s medical condition was expected to last two years or more and that his restrictions were “cannot carry more than 30 lbs. weight and cannot walk long distances.”
2. Medical Report – PPMB: dated August 11, 2014, completed by the appellant’s general physician
3. Medical Report – PPMB: dated September 7, 2012, completed by the appellant’s general physician
4. Medical Report – Employability: dated August 31, 2010, completed by the appellant’s general physician
5. Medical Report – Employability: dated October 3, 2007, completed by the appellant’s general physician
6. Request for Reconsideration: page 3, dated September 9, 2016, wherein the appellant states he suffers from chronic pain and related insomnia. His physician has told him that although his condition may have improved, it may take a couple of years before the pain subsides.
7. Note from the appellant’s general physician: dated September 13, 2016, stating that the appellant *“Has been unemployed and [complains of] chronic pain and depression. He has initial insomnia and severe sleep disturbance. He will be considered unemployable for the next 3 months on medical concerns”*
8. Medical Imaging Report: dated September 26, 2016
9. Request for Reconsideration: dated August 31, 2016
10. Employability Screen: no date indicated, listing a total employability score as 14
11. Letters from the BC Cancer Agency: dated February 13, 2012, June 4, 2012, December 3, 2012 and December 23, 2012.
12. Letter from a genetics laboratory: dated April 1, 2014
13. Letters from a medical clinic: dated November 6, 2014 and April 25, 2016
14. Letter from the Ministry: dated May 2, 2016, stating that a two year review would be conducted
15. Letter from the Ministry: dated August 17, 2016, stating that after conducting the two year review, the ministry concluded that the appellant no longer met the requirements for PPMB
16. PPMB Decision Summary: dated August 8, 2016 stating *“the physician lists the applicant’s restrictions as the inability to “carry more than 30 pounds weight” and “walk long distances”. While it is noted that the applicant may not be able to work in environments that require “walking long distances” or “carrying more than 30 pounds, this information does not confirm that the applicant would be precluded from any and all types of employment. Although the client’s conditions may create some limitations in certain circumstances; based upon the applicant’s limited restrictions, we have no confirmation they prevent (the) client from participating in all types of employment activities. As such, the client’s current conditions and restrictions do not preclude employment”.*
17. PPMB Employment Checklist: dated August 17, 2016

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In the Notice of Appeal, dated October 7, 2016 the appellant submitted the reason for appeal as being *“Chronic pain persists. Subsequent chronic exhaustion contributing to depression. Have consulted [physician].”*

At the hearing the appellant provided the following testimony:

- He continues to suffer from chronic pain, depression, anxiety and insomnia
- Exhaustion causes him to have poor concentration and energy levels
- The occurrence of insomnia is unpredictable but frequent
- He discontinued the medication prescribed for his depression as he had suicidal thoughts while taking it
- He has difficulty spelling and writing as well as carrying on a fluent conversation, partly because of his lack of education (elementary school level) and partly because of his medical conditions
- He does not remember completing the employability scale
- He occasionally volunteers his time to a charity to clean up their shop
- He states that on a “good day” he could work a bit
- He states that he understands it will take a couple of years for his pain to subside and he is trying to learn to live with this

The Ministry did not submit additional evidence on appeal and relied exclusively on the Reconsideration Decision. During the hearing the ministry representative mistakenly referred to section 2(3), explaining the appellant’s condition impeded with his ability to seek employment rather than (4) which was the basis for the Reconsideration Decision. During the final summary the ministry explained their interpretation of what precluded meant which is that the appellant had no ability to seek or search for employment as required by section 2(4) by way of explanation of the ministry’s decision.

PART F – Reasons for Panel Decision

The issue is whether the ministry's reconsideration decision dated 2016/10/03 which held the appellant did not meet the criteria for Persons with Persistent Multiple Barriers (PPMB) as he did not meet all the requirements of section 2 and schedule E of the Employment Assistance Regulation (the "EAR"), specifically, that the appellant's medical condition in itself does not present a barrier that precludes him from searching for, accepting or continuing in employment was a reasonable application of the applicable legislation.

The ministry provides the following interpretation of "Precludes" in Policy in their Reconsideration Decision:

When determining if the nature of the employment is as minimal or insignificant as to effectively "preclude" the recipient from employment, the following factors are used when assessing eligibility:

- *Is the focus of the work on socialization where the activities are highly supported or supervised (eg., recycling workshop).*
- *Is the recipient limited by the medical condition to very minimal hours on an infrequent basis (eg., 1-2 hours of babysitting once or twice a month).*
- *Is the recipient's involvement very sporadic or casual (eg., occasional lawn mowing or housekeeping; or delivering flyers once a month).*
- *Is the work more likely to be considered volunteering and compensation, if any, minimal (eg., covers the cost of volunteering).*

The Employment and Assistance Regulation Section 2 and Schedule E are as follows:

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

**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 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	0 3

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		(b) English as a second language (ESL) or in need of English skills training	
TOTAL			
		Office use only: Score only most applicable response	

Ministry's Position

The ministry found at reconsideration that the information provided does not demonstrate that the appellant's medical conditions present a barrier that precludes him from searching for or accepting employment. The appellant's physician states that his employment restrictions are "cannot carry more than 30 lb. weight and cannot walk long distances". There are no other medical assessments or documents that describe the nature of any restrictions specific to his medical conditions. This does not establish that he is precluded from preparing for, searching for or accepting employment that meets his medical restrictions. At the hearing, the ministry noted that the appellant may receive employment preparation counselling and training applicable to his circumstances. It was also noted that the appellant may apply for Persons With Disabilities status with the ministry.

Appellant's Position

The appellant argued that his medical conditions have not significantly changed since he was approved for PPMB benefits years ago. The chronic pain and depression he suffers from causes him to have frequent but unpredictable insomnia. Lack of sleep and pain result in poor concentration and energy levels. He questions whether he could be a reliable employee, as his pain levels and exhaustion are erratic. He also states that due to his elementary school level education, he has difficulty with writing and spelling as well as carrying on fluent conversation. He does not use a computer often as he finds it to be complicated. All of this has made it difficult to find employment in the past. On a "good day" he volunteers his help to clean up the shop of a local charity.

Panel Decision

The panel notes that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated June 3, 2016, that the appellant is diagnosed with a primary medical condition other than an addiction, namely chronic osteomyelitis, and with a secondary medical condition of osteoarthritis. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years.

Regarding the ministry's assessment of the appellant's PPMB application under EAR subsection 2(3) as opposed to subsection 2(4), there was no evidence to show that the ministry made any error in calculating the Screen score of 14. The panel therefore finds that in the circumstances of the appellant, the ministry reasonably determined that an assessment of PPMB eligibility should be made under subsections 2(1), 2(2) and 2(4) of the EAR.

Regarding whether the ministry reasonably determined that the criteria in EAR subsection 2(4) were not met, the panel notes that in describing the nature of restrictions specific to the appellant's medical condition, the physician wrote in the PPMB Medical Report: "cannot carry more than 30 lb weight and cannot walk long distances". The appellant indicated that he does volunteer work when he is feeling well enough. The panel finds that the ministry reasonably relied on the information provided by the medical practitioner in the Medical Report and reasonably concluded that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR.

Conclusion

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1) (a) and 24(2) (a) of the Employment and Assistance Regulation.