

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated December 14, 2016 which held that the appellant did not meet all of the applicable statutory requirements of section 2 of the Employment and Assistance Regulation (EAR) for status as a person with persistent multiple barriers to employment (PPMB).

The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. In addition, the ministry found that EAR subsection 2(3) is not applicable to the appellant on the basis of his score on the Employability Screen and his PPMB application therefore needs to be assessed under subsection 2(4).

However, in assessing the application under subsection 2(4) of the EAR, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to subsection 2(4)(b).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified of the date and time of the hearing, the hearing proceeded in the absence of the ministry as allowed under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Medical Imaging Report dated March 10, 2015 with an x-ray of the appellant's cervical spine that shows "severe disc space narrowing at C5-6 level; mild to moderate disc space narrowing seen at C6-7"; an x-ray of the lumbar spine shows "moderate disc space narrowing is seen at L1-2 and L2-3"; an x-ray of his right shoulder shows "mild osteoarthritis noted in the acromioclavicular joint;"
- 2) Pages from a Persons With Disabilities (PWD) application, including part of a self-report, physician report and an assessor report dated March 23, 2015. In the physician report, the medical practitioner (MP) diagnosed cervical and lumbar spondylosis, osteoarthritis right shoulder, eczema, asthma and chronic anxiety. The MP noted the generalized eczema flares up when the appellant is working with metals. In the self-report, the appellant wrote that:
 - He has both physical and mental health issues that are chronic and severe in nature.
 - He gets severe eczema with constant itching, nerve pain and bleeding hands.
 - He also has anxiety and mood swings.
 - He also has asthma and Irritable Bowel Syndrome (IBS).
 - He gets depressed about having the eczema, the anxiety increases the frequency of IBS, and pain in his back and neck make it hard to sleep, causing more fatigue and anxiety;
- 3) Letter dated September 7, 2016 in which the MP wrote that the appellant suffers from a contact metal allergy which causes severe atopic dermatitis of his hands and he cannot work [with metals]. The appellant also suffers from chronic neck and low back pain and he is physically unable to perform heavy labour;
- 4) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated October 25, 2016, in which the MP indicated, in part, that:
 - the appellant's primary medical condition is severe atopic dermatitis of hands, with date of onset of 2013;
 - the appellant's secondary medical condition is chronic neck and low back pain, with an onset in 2006.
 - the treatment described "hydrocortisone cream for hands" and the outcome is "unimproved;"
 - this condition has existed for 3 years; the prognosis sets out that the expected duration of the medical condition(s) is 2 years or more;
 - the physician indicated that the medical condition is not episodic in nature;
 - when asked to describe the nature of any restrictions specific to the medical conditions, the physician wrote "...unable to work full-time in labourer type occupations."
- 5) Employability Screen print-out for the appellant, noting a total score of "11." Points were assigned for being on income assistance for more than 12 months in the last 3 years and having none or very limited work experience over the last 3 years;
- 6) PPMB Checklist and Decision Summary dated November 4, 2016;
- 7) Note dated December 5, 2016 in which the MP wrote that the appellant suffers from chronic anxiety and he has an appointment with a psychiatrist on December 13, 2016;
- 8) Appointment confirmation for December 13, 2016 with a mental health clinic;

9) Undated note in which the appellant's partner stated that:

- The Medical Report form only has two spots for listing medical conditions and the appellant has 3 primary problems: degenerative back, neck, shoulder issues including arthritis, severe eczema and anxiety disorder.
- His anxiety disorder has been a challenge for a long time and he cannot look for or maintain a job when he is unable to handle daily things "without losing his mind". He gets scattered and cannot focus or stand long; and,

10) Request for Reconsideration dated November 18, 2016.

In his Request for Reconsideration, the appellant wrote that:

- When he applied, he did not have any idea how his condition would affect his [ability to work].
- Struggles for over 3 years with this condition, with no change in his atopic dermatitis, and his back and neck pain and anxiety disorder are worse.
- He is unable to do labour and prolonged standing and sitting.
- He has severe fatigue and anxiety due to pain in his back and hands.
- His hands bleed and itch constantly.
- He would not be able to work in the food industry or customer service.
- He loses focus and stresses out, and his anxiety, pain, and depression would be worse.

Additional Information

In his Notice of Appeal dated December 28, 2016, the appellant stated that he disagrees with the ministry's reconsideration decision and wrote that:

- The ministry does not recognize the severity of his condition.
- The doctor has additional verification of the symptoms that were mentioned that hinder him from looking for and keeping all or any kind of employment.
- He will be seeing a psychiatrist to add more information.

Prior to the hearing, the appellant provided a letter dated January 4, 2017, in which the MP wrote that:

- The appellant has been his patient since September 1990, and the appellant suffers from multiple medical conditions.
- The appellant has severe refractory eczema to his hands despite medical treatment and the entire skin surface of his hands and fingers are scaling, fissured and bleeding. He is unable to work with metals and he cannot work in the food industry or any occupation that requires frequent hand washing.
- The appellant suffers from chronic neck and low back pain and he cannot work in heavy/medium labor because of his chronic neck and back pain. His standing tolerance, walking tolerance, and sitting tolerance are poor and he is "unfit for full-time work even in sedentary jobs."
- The appellant also suffers from chronic anxiety disorder and he has been referred for a mental health assessment and is awaiting an appointment with a psychiatrist.
- These are the appellant's multiple barriers to employment. The appellant can work as a part-time musician as his medical conditions do not preclude employment in this category.

At the hearing, the appellant and his partner stated that:

- They went to the ministry because they were in crisis. While the Medical Report allows for two medical conditions, a primary and a secondary medical condition, the appellant has three

significant medical conditions. All of these conditions cause the appellant's ability to be affected.

- He applied for PWD designation and was not successful but they did not pursue an appeal because the ministry suggested that he apply for Persons for Persistent Multiple Barriers to employment and he was led to believe there would be no problem getting the designation.
- The appellant also has anxiety but his doctor did not elaborate and referred him to a psychiatrist. The appellant's mental health is not good. He has a short attention span and is prone to angry outbursts. He has recently attended an appointment with a psychiatrist but has not yet received any written assessment from the psychiatrist. Even for simple tasks, he "runs around like a chicken with its head cut off." It is impossible for the appellant to do a job when he cannot focus.
- The appellant tried to vocalize his symptoms to his doctor but the doctor did not word the impacts correctly and he provided insufficient information. The appellant has a hard time with communicating and gets "foggy" so his partner went to the doctor to follow up.
- They thought that their oral testimony to the ministry during the application process would be enough for the appellant to qualify. The ministry told them that the appellant could do some form of sedentary work or take a program to help with his employability, but his medical conditions do not allow for this.
- The appellant is in the 50 to 65 age category and this needs to be considered. There are only a few years before he will be eligible for old age supplement. He currently receives CPP pension of a small amount each month.
- The appellant has many symptoms. He scratches his hands and they bleed and he has to wrap them and apply ointment. He most definitely would not be able to work in the food industry or customer service or any job where he has to wash his hands frequently. He gets nerve pain that makes it almost impossible for him to focus on anything.
- He also has back pain and this makes his probability of getting employment nil.
- The appellant currently does part-time contract work 3 or 4 times per month, but this work is stress free, sporadic and there are no guaranteed hours.

The ministry relied on its reconsideration decision.

Admissibility of Additional Information

The panel considered the letter dated January 4, 2017 in which the MP reviews the same medical conditions that were before the ministry at reconsideration; however, the MP comes to a different conclusion about the appellant's employability based on this information. The conclusion drawn by the MP in the January 4, 2017 letter, namely that the appellant is "unfit for full-time work *even in sedentary jobs*," [emphasis added], indicates more restrictions in the appellant's abilities and does not tend to corroborate the conclusion of the MP as set out in the materials before the ministry at reconsideration, which indicated that the appellant is unable to work with metals or full-time specifically in "labourer type" occupations.

The MP's conclusion in the January 4, 2017 was drawn after a further review by the MP of the appellant's medical conditions and tends to change the character of the original application, which is information that the ministry has not yet had an opportunity to consider. Therefore, the panel finds that the information in the January 4, 2017 letter is not in support of information and records that were before the ministry at the time of the reconsideration and, in accordance with section 22(4)(b) of the *Employment and Assistance Act (EAA)*, is not admissible on the appeal.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of section 2 of the EAR to qualify as a PPMB; in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes him from searching for, accepting, or continuing in employment, as required under section 2(4)(b) of the EAR.

The criteria for being designated as a PPMB are set out in section 2 of the EAR 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 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.

Under section 2(2), the person must have been the recipient of one or more of a number of types of

assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then the PPMB application must be assessed under section 2(3). If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then section 2(4) applies to the assessment of the application. Under section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a MP and that, in the opinion of the MP, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, 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's position is that the appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of section 2(2) of the EAR. However, the ministry argued that the evidence has not established that the appellant has met all the remaining applicable criteria of section 2. As the appellant scored 11 on the employability screen, he must meet the requirements of section 2(4) of the EAR to qualify for designation as a PPMB. The ministry acknowledged that the appellant has a medical condition, other than an addiction, that has been confirmed by a MP; however, the panel noted that there appear to be two typographical errors in the reconsideration decision. The first typographical error indicated that while the appellant's medical condition, in the opinion of the MP, has continued for at least 1 year, it is both likely to continue for at least 2 more years and has an expected duration of less than two years. The second apparent typographical error in the reconsideration decision is a statement that the eligibility criteria in Section 2(4)(a)(i) had "not" been met. The ministry was not present at the hearing to verify, but the rest of the narrative and the conclusion indicated that the ministry had been satisfied that the eligibility criteria set out in Section 2(4)(a)(i) of the EAR had been met. However, the ministry wrote in the reconsideration decision that the evidence does not establish that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, as required under section 2(4)(b) of the EAR.

The ministry wrote that while it is accepted that the appellant has medical conditions that affect his employability, the MP's response to the question in the Medical Report dated October 25, 2016 regarding restrictions associated with the appellant's medical condition, that he is "...unable to work full-time in labourer type occupations," was not sufficient evidence that the restrictions caused by his condition preclude him from searching for, accepting, or continuing in employment. The ministry wrote that although the MP indicated in his note dated December 5, 2016 that the appellant has chronic anxiety, he did not describe the nature of any restrictions specific to anxiety. The ministry wrote that the MP reported in his letter dated September 7, 2016 that the appellant cannot work [with metals] and he is "physically unable to perform heavy labour" but this does not establish that the appellant is precluded from searching for, accepting, or continuing in any other types of employment, such as sedentary work. The ministry also wrote that the MP noted in the physician report dated March 23, 2015 that the appellant's generalized eczema flares up when the appellant is working with metals but, again, does not establish that the appellant is precluded from searching for, accepting, or continuing in all types of employment, such as sedentary work.

Appellant's position

The appellant's position is that he has three significant medical conditions that cause his abilities to be impacted. The appellant wrote in his Request for Reconsideration that he has struggled for over 3

years with atopic dermatitis, with no change in the condition, and his back and neck pain and anxiety disorder are worse. The appellant wrote that he is unable to perform heavy labour, he is unable to stand or sit for prolonged periods, he has severe fatigue and anxiety due to pain of his back and hands, his hands bleed and itch constantly, and he would not be able to work in the food industry or in customer service. The appellant's partner wrote in her note that the appellant's anxiety disorder has been a challenge for a long time and he cannot look for or maintain a job when he is unable to handle daily things "without losing his mind." At the hearing, the appellant's partner added that the appellant has a short attention span and is prone to angry outbursts. He has attended an appointment with a psychiatrist but they have not yet received the psychiatrist's written assessment. The appellant's partner stated that the appellant has a hard time communicating, is sometimes "foggy," and his doctor did not provide the full impacts of the appellant's medical conditions in the documents.

Panel decision

The panel notes that the MP has provided a medical opinion, in the Medical Report dated October 25, 2016, that the appellant is diagnosed with a primary medical condition other than an addiction, namely severe atopic dermatitis of his hands, which he has had since 2013, and his secondary medical condition is chronic neck and low back pain, which he has had since 2006. The ministry confirmed in the reconsideration decision that the appellant's primary and secondary medical conditions listed in the Medical Report have, in the opinion of the MP, continued for at least 1 year and are likely to continue for at least 2 more years.

Regarding the ministry's assessment of the appellant's PPMB application under EAR subsection 2(4) as opposed to subsection 2(3), there was no evidence to show that the ministry made any error in calculating the Screen score of 11. The appellant's partner pointed out at the hearing that the appellant is in the 50 to 65 age category and it was confirmed that this information had been accurately recorded on the Employability screen considered by the ministry. The panel therefore finds that in the circumstances of the appellant, the ministry reasonably determined that an assessment of PPMB eligibility is to 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) was not met, the panel notes that the MP wrote in a letter dated September 7, 2016 that the appellant suffers from a contact metal allergy which causes severe atopic dermatitis of his hands and the appellant, therefore, cannot work [with metals], and the appellant also suffers from chronic neck and low back pain and he is physically unable to perform heavy labour. In the physician report submitted as part of the appellant's previous PWD application in March 2015, the MP noted that the appellant's generalized eczema flares up when the appellant is working with metals. The appellant also wrote in his Request for Reconsideration that he cannot work in the food industry or customer service, or any occupation that requires frequent hand washing, for the same reason that his eczema would flare up. The Medical Imaging Report dated March 10, 2015 includes summaries of x-rays of the appellant's cervical and lumbar spine that show disc space narrowing at various levels and a summary of an x-ray of the appellant's right shoulder shows "mild osteoarthritis." In describing the nature of restrictions specific to the appellant's primary and secondary medical conditions, the MP wrote in the PPMB Medical Report dated October 25, 2016 that the appellant is: "...unable to work full-time in labourer type occupations." The panel finds that the ministry reasonably determined that while the appellant is restricted from certain types of work, including "full-time", "labourer-type," "heavy labour," working with metals, and in the food industry or customer service, he is not restricted from all types of employment, such as sedentary work.

The appellant's partner wrote in her note that the appellant's anxiety disorder has been a challenge for a long time and he cannot look for or maintain a job when he is unable to handle daily things "without losing his mind." The MP who completed the Medical Report wrote in the Note dated December 5, 2016 that the appellant suffers from chronic anxiety; however, this condition can result in a wide range of impacts and the MP did not describe the resulting restrictions to employability. The appellant stated at the hearing that he has met with the psychiatrist he was referred to by his doctor, but there was no additional information provided from the psychiatrist on the appeal to describe the restrictions to employment as a result of the appellant's anxiety or the efficacy of any treatments undertaken. The panel finds that the ministry reasonably relied on the information provided by the MP, as supplemented by the appellant and his partner, and reasonably concluded that there is insufficient evidence to establish that the appellant's medical conditions are a barrier that precludes him from searching for, accepting or continuing in [all types of] 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 *EAA*. The appellant's appeal, therefore, is not successful.