



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation’s (the ministry) reconsideration decision dated November 14, 2016 which found that the appellant did not meet the statutory requirements of section 2 of the *Employment and Assistance Regulation* (EAR) for designation as a person with persistent multiple barriers (PPMB).

The ministry found that the appellant met the requirements of EAR section 2(2) in that he had been in receipt of income assistance for more than 12 of the preceding 15 months. The ministry found that the appellant has an Employability Screen score of 11.

The ministry found that the appellant’s physician had confirmed that he has a medical condition that has continued for at least 1 year and is likely to continue for at least 2 more years as required under EAR section 2(4)(a)(i) but that the appellant’s medical condition was not a barrier that precludes him from searching for, accepting, or continuing employment as required by EAR section 2(4)(b).

### PART D – Relevant Legislation

EAR, section 2

## PART E – Summary of Facts

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

- Medical Report – PPMB dated April 16, 2014 (2014 Medical Report) completed by the appellant's general practitioner (the "physician")
- Employability Screen indicating the appellant's total score of 11
- Medical Report – PPMB dated April 23, 2016 (2016 Medical Report) completed by the physician
- Medical Equipment Request and Justification form dated August 26, 2016 completed by the physician
- Orthoses Request and Justification form dated September 1, 2016 completed by the appellant's physical therapist
- The appellant's cable invoice dated October 13, 2016
- The appellant's Request for Reconsideration (RFR) dated November 3, 2016 in which the appellant states that due to 5 heart bypass surgeries, he has had symptoms of short breath in walking, stairs, severe mood stress, angina head pain, shocks and heart panic when lifting and getting up with black outs. The appellant states that due to a fractured wrist he has ongoing problems with writing, lifting, and carrying shopping bags and the pain can last for several days. The RFR also indicates that the appellant has a knee injury that causes him to be unable to walk and his knee gives out on stairs.

### **Additional information provided**

With his Notice of Appeal the appellant provided the following additional documentation:

- Copy of the 2016 Medical Report with the physician's handwritten note stating "enclosed" in response to item four which requests copies of documentation that supports the severity and restrictions of the appellant's medical condition ("Revised 2016 Medical Report")
- CABG Report May 22, 2014
- Cardiovascular Surgery Discharge Summary dated May 27, 2014 indicating that the appellant has triple vessel disease and underwent surgery on May 22, 2014
- Diagnostic Imaging Report Cervical Spine dated January 22, 2016
- X-Ray/Ultrasound Report dated June 27, 2014
- Letter from a cardiovascular clinic dated August 30, 2013 indicating that the appellant had been considered for a therapeutic ISCHEMIA trial but decided not to pursue the trial or increase his medical therapy
- Cardiac Catheterization Laboratory Report dated October 15, 2013 indicating that the appellant had three vessel disease
- Letter from an orthopedic surgeon dated November 19, 2013 indicating that the appellant's right distal radius fracture has healed and that the appellant had full digital range of motion and occasional complaints of residual radial and ulnar sided wrist pain and numbness in the hand. The orthopedic surgeon recommended assessment by a hand therapist
- Letter from a cardiovascular clinic dated November 22, 2013 indicating that the appellant's angiogram showed severe three vessel disease and that he should have a CABG
- Patient Medical Report from a medical office dated December 2, 2013 indicating that the appellant has major depressive disorder, that he was in denial of his problems and that his

prognosis was guarded. The report indicates that the appellant started an anti-depressant medication three days earlier

- Preanesthetic Consultation from a hospital dated April 10, 2014 indicating that the appellant has triple vessel coronary artery disease, hypertension, dyslipidemia, mood disorder and a history of soft tissue injuries to his neck and leg in 2013. The report indicates that the appellant is mainly depressed due to financial reasons
- Operative Report from a hospital dated July 30, 2013 indicating that the appellant underwent an open reconstruction of his nose to repair a nasal obstruction
- Letter from an orthopedic surgeon dated July 16, 2013 indicating that the appellant fell over a cliff approximately 3 feet on July 9, 2013 and sustained a fracture of the distal radius and underwent closed reduction in the emergency department.
- Medical Imaging Report dated 08/07/13 indicating that the appellant had a fracture to his distal radius
- Medical Imaging Report CT Right Wrist dated 09/07/13 indicating that the appellant had a minimally angulated post-reduction right distal radius fracture

At the hearing the appellant provided a three page summary of his injuries and medical conditions from 1986 to November 2016 (the "Summary") indicating that he was in a motor vehicle accident in 1986, injured his neck in August 2012 and injured his right knee and lower back in December 2012. The appellant indicates that he had a broken fracture right hand and wrist in 2013 and underwent an open septorhinoplasty surgery. The appellant indicates that in 2014 he had 5 heart by-pass surgeries and has been unable to work. He states that he has shortness of breath daily, frequent encounters of angina, paranoia and anxiety attacks, difficulty sleeping, and has to stop and rest and catch his breath when carrying shopping bags. The appellant states that in November 2016 the physician prescribed a new time-release heart medication in addition to his previous medications.

At the hearing, the appellant stated that he has suffered injuries to his neck, knee, and fracture to his right hand fracture that still impact him. He stated that his right hand does not bend which makes writing and carrying bags difficult. The appellant stated that his heart is his main problem though as he gets dizzy and has to sit down, has shortness of breath, walking upstairs is a major problem and he has anxiety attacks because he cannot breathe. The appellant stated that the physician has recently prescribed a new heart medication, a nitro spray pump and nitro patch that release medication over a 12 hour period and help to decrease his heart pressure but the new medication has not reduced his ongoing symptoms. The appellant states that the CABG report shows that he has 40% blockage in his heart and he may require further heart surgery. The appellant also states that one of his medications has increased because he is not getting any better.

### **Admissibility of New Information**

The ministry did not object to the new information submitted with the appellant's Notice of Appeal or the Summary.

The panel has admitted the appellant's oral testimony, documents submitted with the Notice of Appeal, and the Summary into evidence as they are in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information provides more detail regarding the appellant's medical conditions.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant PPMB designation 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's medical condition is not a barrier that precludes him from searching for, accepting, or continuing employment as required by EAR section 2(4)(b)?

The relevant legislation is EAR section 2 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*, 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. (B.C. Reg. 263/2002)

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The ministry's position is that as the appellant's employability screen score is 11, EAR section 2(3), which requires an employability screen of 15 is not applicable and the appellant was assessed under EAR section 2(4).

The ministry's position as set out in the reconsideration decision is that a physician has confirmed that the appellant has a medical condition that has lasted at least 1 year and is expected to last at least another 2 years noting that the 2016 Medical Report identifies the appellant's primary medical condition as coronary artery disease with a date of onset of 2008 and secondary medical condition of depression with a date of onset of December 2013.

However, the ministry is not satisfied that the appellant's medical condition, in itself, presents a barrier that precludes the appellant from searching for, accepting or continuing in employment. In particular, the reconsideration decision indicates that the physician does not describe the treatment/medical approaches that have been tried to date or are expected in the future and that the physician does not describe the nature of any restrictions specific to the appellant's medical conditions. The ministry reviewed the 2014 Medical Report and note that the physician had indicated restrictions being wrist pain – deformity, low mood, and shortness of breath/chest angina but that these restrictions are not listed on the 2016 Medical Report.

The ministry's position is that as the physician has not indicated any restrictions on the 2016 Medical Report, it cannot be said that the appellant's medical conditions preclude him from searching for, accepting, or continuing in employment.

The appellant's position is that his medical conditions have not improved, that he has ongoing impacts from his previous injuries and ongoing heart condition so his PPMB status should be renewed. The appellant's position is that as his medications have increased this further demonstrates that his condition has not improved. The appellant's position is that the Revised 2016 Medical Report, in which the physician indicates that the enclosed documentation indicate the appellant's restrictions is evidence that demonstrates that he is unable to work.

Panel Decision:

As the appellant has an employability score of 11, the panel finds that the ministry was reasonable in determining that EAR section 2(3) is not applicable and that the applicable section for assessment is EAR section 2(4). As the ministry determined that a physician confirmed that the appellant has a medical condition that has lasted at least 1 year and is expected to last at least another two years, EAR section 2(4) (i) is met and the only section at issue is whether the appellant meets the criteria required in EAR section 2(4)(b).

At the hearing the appellant acknowledged that the physician had not indicated any restrictions on the 2016 Medical Report. While he argues that the prior medical information and his evidence should be sufficient to demonstrate that his condition has not improved so he should still qualify for PPMB designation, the panel finds that the ministry was reasonable in determining that the medical

evidence provided does not indicate that the appellant is precluded from searching for, accepting or continuing in employment. The panel notes that the legislation does not provide a definition for the word precludes but the reconsideration decision indicates that the common interpretation of precludes is to make impossible or prevent from happening. While the 2016 Medical Report does provide details of the appellant's medical conditions, the physician has not indicated any restrictions resulting from the medical conditions.

In the Revised 2016 Medical Report the physician writes the word "enclosed" by the question requesting information regarding the appellant's restrictions and attaches the various medical records included with the Notice of Appeal. However, the medical information provided with the appellant's Notice of Appeal, while detailing his previous right hand fracture, low mood, and heart condition, does not provide any further detail of the appellant's restrictions and the enclosed documents are all over two years old so they do not provide details of the appellant's current restrictions, if any. While it may be that the physician meant to indicate that the enclosed medical information means that the appellant has the same ongoing restrictions as noted on the 2014 Medical Report, that cannot be assumed and the physician did not provide any further documentation to clarify or confirm whether the appellant has ongoing restrictions.

The panel also notes that the Medical Equipment Request and Justification form dated August 26, 2016 indicates that the physician has recommended that the appellant obtain a knee brace and a wrist brace; however those requests are the subject of a different request and not the subject of this appeal. The Orthoses Request and Justification form dated September 1, 2016 completed by the appellant's physical therapist recommending a patellar stabilizer brace indicates that the appellant's physical functioning has been impaired by a neuro-musculo-skeletal condition. Again this is the subject of a different request. While the appellant provides these documents as further support that he has ongoing symptoms that impact his functioning, and while the physical therapist indicates that the appellant's physical functioning has been impaired by a neuro-musculo-skeletal condition, there are no restrictions noted on either form that indicate that the appellant is precluded from searching for, accepting, or continuing in employment.

In light of the unclear information and lack of information provided by the physician and no noted restrictions resulting from the appellant's medical condition(s) listed on the 2016 Medical Report, the panel finds that the ministry was reasonable in concluding that the appellant's medical condition does not preclude him from searching for, accepting or continuing in employment as required by EAR section 2(4).

### **Conclusion**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's 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 and the appellant is not successful in his appeal.