

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated 14 December 2016 that held that the appellant was not eligible for qualification as a person with persistent multiple barriers to employment (PPMB). The ministry determined that the appellant’s employability screen score was 8 and therefore assessed his PPMB eligibility under sections 2(2) and 2(4) of the Employment and Assistance Regulation (EAR). The ministry found that the appellant met the requirements of sections 2(2) and 2(4)(a). However, the ministry was not satisfied that the information provided established that the appellant met the criterion set out in section 2(4)(b) of the EAR, that to qualify for PPMB a person must have a medical condition, other than an addiction, that in the opinion of the minister is a barrier that precludes the person from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2.

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. The appellant's employability screen score is 8.
2. Medical Report – PPMB dated 11 November 2016, completed by a general practitioner (GP) who provides the following information:
 - Primary medical condition: COPD and ADHD.
 - Secondary medical condition: CVD.
 - Treatment: the GP lists 4 prescription medications. No outcome given.
 - How long has this condition existed? 1½ to 2 years.
 - Prognosis: expected duration of medical condition – 2 years or more.
 - The medical condition is not episodic.
 - Restrictions: the GP did not complete this section of the form.
3. Attached to the Medical Report – PPMB is a note from the appellant who writes, "I also have problems with my teeth and back, knees, elbows -- the chipped bones in both of them from when I worked at [former workplace]. The doctor cannot help me."
4. The appellant's Request for Reconsideration dated 30 November 2016. Under Reasons, the appellant writes that he has breathing problems all the time, waking up in the middle of the night with back pain. This is from an accident resulting in a chipped bone in both knees and elbow at his former workplace. He adds that his teeth are broken, he gets headaches and has a hard time eating food. The right side of his body is always numb from his toes to his head and he gets cramps in his legs at night.

In his Notice of Appeal, dated 03 January 2017, the appellant writes under Reasons for Appeal, "I don't feel it was fair. I'm still finding out stuff about my injuries and disabilities."

The hearing

At the hearing, the appellant reviewed his employment history, describing how he got chipped bones stacking wood in one workplace place and how he had to be hospitalized at another workplace while working as a security guard, but helping out doing extra work on machinery, with the result that WCB would not cover his lost income.

He explained that his physician wanted to give him cortisone shots to relieve the pain due to his chipped bones, but that he was reluctant to become dependent on cortisone, wanting to have the chipped bones removed instead.

The appellant emphasized that he has worked hard all his life and very much wants to work, but is unable to do so now because of the pain in his knees and elbows and his COPD. He stated that with all the medications he takes, he sleeps a lot, sometimes not getting up until noon, and that because of his medications is dangerous for him to drive.

When asked why his GP left the section on restrictions blank in the Medical Report – PPMB, he stated that the GP was new to Canada and was probably not familiar with how to fill out ministry forms properly. In answer to a question, the appellant stated that he had not sought the help of an advocate in completing the Medical Report – PPMB.

The ministry stood by his position and reconsideration. The ministry representative noted that in the Appeal Record there is a page listing advocate organizations in the appellant's local area. He stated that these advocates do a good job in helping applicants and medical professionals in filling out forms required by the ministry and urged the appellant to contact one of them for help in completing ministry forms.

Admissibility of new information

The panel finds that the information provided by the appellant in his testimony at the hearing is in support of the information and records before the ministry and reconsideration, as this information tends to corroborate the information provided by the appellant in the note attached to the Medical Report – PPMB and in his Request for Reconsideration. The panel therefore admits this testimony as evidence under section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in determining that the appellant did not qualify for PPMB because he did not meet the criterion set out in section 2(4)(b) of the EAR. More specifically, the issue is whether the ministry's decision, which held that the information provided did not establish that the appellant has a medical condition, other than an addiction, that in the opinion of the minister, is a barrier that precludes him from searching for, accepting or continuing in employment, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the EAR:

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*[not applicable to this appeal]*
- (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.

The positions of the parties

The appellant's position

The appellant's position is that, with his COPD, ADHD and CVD, together with the resulting pain from bone chips in his knees and elbows and the effects of his medications, it is unreasonable for the ministry to have determined that his medical conditions do not preclude him from working.

The ministry's position

The position of the ministry, as set out in the reconsideration decision, is that it recognizes that the appellant may face certain challenges relating to employment as a result of his medical conditions. However the ministry found that there is insufficient evidence to support that he is unable to do any type of work for any length of time or participate in employment-related activities as a result of his medical conditions. As a result, the ministry is not satisfied that because of his medical conditions he is precluded from searching for, accepting or continuing in any type of employment for any length of time as required by section 2(4)(b) of the EAR.

Panel decision

Section 2(4)(b) of the EAR requires that the minister be "satisfied" that the person seeking PPMB qualification has a medical condition which precludes the person from employment. The panel considers it reasonable that the ministry would rely on the description of the restrictions provided by a medical practitioner in determining whether the minister is "satisfied" that the criterion is met. In the Medical Report – PPMB, the appellant's GP, while providing diagnoses of COPD, ADHD and CVD, did not complete the section on restrictions, and therefore did not describe, as requested, the nature of any restrictions specific to these medical conditions. The panel finds that it is unreasonable to expect that the ministry deduce restrictions that may preclude employment from a list of diagnoses.

Accordingly, the panel finds that the ministry's decision that the information provided did not establish that the appellant met all the applicable criteria to qualify as a person with persistent multiple barriers to employment is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.