

## PART E – Summary of Facts

The documentary evidence before the ministry at reconsideration included the following:

1. A *Medical Report – Persons with Persistent Multiple Barriers* for the appellant dated November 14, 2014 that stated that the appellant's primary medical condition is "*arthritis (not legible)*" with an onset of November 15, 2007. In addition, the report indicated that the appellant's condition has existed for more than one year (onset 2007), is expected to last 2 years or more and is not episodic in nature. Under "Restrictions" the physician wrote: "*Ankle stiff: unable to spend much time on feet.*"
2. A *Medical Report – Persons with Persistent Multiple Barriers* for the appellant dated November 3, 2016 that stated that the appellant's primary medical condition is "*Pain (right) side mainly affecting ankle*" and the physician reported "*unsure*" for the date of onset but the condition is expected to last 2 years or more and is not episodic in nature. The report also indicated that the appellant has been prescribed Naproxen 375 mg. daily. The physician added that "*X-rays were done which showed osteoarthritis affecting ankle*". Under "Restrictions" the physician wrote "*Prolonged walking or standing; unable to continue with job in construction.*"
3. An undated *Employability Screen* for the appellant that records a total score of 14.
4. The appellant's *Request for Reconsideration* dated and signed by the appellant on February January 11, 2017 that was accompanied by a letter from the appellant of the same date that outlined the reasons for requesting reconsideration. In that letter, the appellant states that he was granted PPMB designation two years previously and his medical condition is more severe today than it was when he was granted the PPMB designation. Accordingly he cannot understand why his application for the PPMB designation has been rejected when his medical situation has not improved. In fact, the appellant states that his medical condition has been made worse as a result of a recent fall that has resulted in damage to his lower back, and a broken wrist which may require surgery. The appellant also details the difficulties he has encountered in trying to obtain retraining.

The appellant's *Notice of Appeal* was signed and dated by the appellant on January 26, 2017 and states the following reasons for appeal "*Accepted for PPMB in 2014, denied in 2016 although my situation has not improved. Documents, response, and impartial decision by ministry is questionable; reason and logic lacking.*"

In the *Reconsideration Decision* the ministry states that the appellant is currently a sole recipient of income assistance and has been in receipt of assistance for at least 12 of the past 15 months. The ministry also confirms that the appellant meets the criteria for EAR section 2(2) but not the criteria for 2(4).

The appellant's written submission was dated February 7, 2017. In that submission the appellant states that the employability screen that reports an employability score of 14 was the same one used in 2014 when he was granted the PPMB designation. The appellant notes that the "Summary of Facts" in the *Reconsideration Decision* reported that the appellant's file was re-opened January 12, 2011 but the appellant notes that his Employability Screen indicates that he has never applied for assistance before. Consequently, he concludes that he meets the eligibility criteria for EAR section 2(2) as well as 2(3) and 2(4). The rest of the applicant's submission is considered argument and is included in Part F.



The ministry's written decision explains that clients must reapply for the PPMB designation every two years at which time the application is reassessed by independent decision makers within the ministry. Consequently, past PPMB designation approvals do not necessarily confirm future eligibility. The rest of the ministry's submission is considered argument and is included in Part F.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that determined that the appellant was not eligible to qualify for PPMB designation because he did not meet the criteria outlined in section 2 of the EAR 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 has an employability screen score of less than 15 and in the ministry opinion, the appellant's medical condition does not preclude him from searching for, accepting, and maintaining employment.

The relevant legislation is as follows:

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
  - (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.

### Appellant's Position

The appellant argues that his medical condition has worsened since he was last assessed for the PPMB designation. He was previously granted the PPMB designation based upon his earlier medical condition and the *Employability Screen* score of 14. Accordingly, he cannot understand why he has been rejected for the PPMB designation when he qualified previously. The appellant also argues that he should actually have an *Employability Screen* score of 15 since his file was closed by the ministry and then re-opened in January 2011. Since his file was closed and re-opened he argues that he has previously been on income or social assistance and should receive one additional point on the

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*Employability Screen* score which would result in his application being considered under section 2(3) rather than section 2(4) of the EAR.

#### Ministry Position

The ministry acknowledges that the appellant was previously granted the PPMB designation but argues that in doing so, the ministry “. . . *failed to recognize that his restrictions do not necessarily preclude him from all types of employment, as no evidence is presented that he is unable to participate in sedentary work.*” The ministry noted that the appellant’s physician specifically stated in the 2016 Medical Report that the appellant is simply unable to continue with work in construction but the physician does not provide information relating to restrictions in other forms of employment. The ministry also notes that legislation requires that a client must reapply for the PPMB designation every two years at which time it is assessed as a new application. Consequently, past PPMB designation approvals do not necessarily confirm future eligibility.

The ministry also argues that the appellant’s *Employability Screen* score of 14 is accurate. The ministry explained that the appellant’s file was “auto-closed” in December 2010 because the appellant failed to respond to ministry requests for information. Nonetheless, the ministry indicated that the appellant was issued income assistance for November and December 2010 and therefore no break in assistance occurred. Consequently, the ministry argues that the appellant’s score of 14 on the *Employability Screen* score is accurate.

#### Panel Decision

The panel notes the appellant’s argument that there was an interruption in his income assistance resulting from his file being “auto-closed” in December 2010. Nonetheless, the panel recognizes that there was no interruption in the appellant receiving income assistance and the reason for the auto-closure was the appellant’s failure to respond to the ministry’s request for information. Since there was no interruption in the appellant’s income assistance funding, the panel concludes that there was no actual interruption as claimed by the appellant. Consequently, the panel concludes that the ministry reasonably determined that the appellant’s *Employability Screen* score was 14 and the appellant was required to meet the criteria of EAR section 2(4) rather than 2(3).

The panel notes the appellant’s confusion regarding the ministry’s refusal to grant him the PPMB designation when it was granted previously, but recognizes that the re-application for the PPMB designation is treated as a new application. Accordingly, having been awarded the PPMB designation in the past can offer no assurance that it will be awarded in the future. Moreover, the panel accepts the ministry position that the appellant’s medical report dated November 3, 2016 indicates that the appellant is restricted from prolonged walking or standing and is unable to continue to work in construction but the medical report does not indicate that the appellant is precluded from all forms of employment, including sedentary work. Accordingly, the panel concludes that the ministry reasonably determined that the appellant did not meet the criteria for EAR section 2(4).

#### **Conclusion**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry’s determination that the appellant was not eligible for PPMB designation was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry’s reconsideration decision.