

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated August 03, 2017 which found that the appellant is not eligible for Persons with Persistent Multiple Barriers designation as the appellant had not been in receipt of assistance for 12 of the immediately preceding 15 months as required by Section 2 (2) of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR)- Section 2 (2) and Section 15

PART E – Summary of Facts

The appellant is in receipt of income assistance as a sole recipient.

The appellant's income assistance file was re-opened February 14, 2017. He has been in receipt of income assistance for 9 of the preceding 15 calendar months. (June, July, August 2016 and February, March, April, May, June and July 2017).

June 23, 2017 the appellant was advised he was not eligible for Persons with Persistent and Multiple Barriers (PPMB).

July 24, 2017 the appellant completed a Request for Reconsideration

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

In the appellant's Request for Reconsideration, the appellant wrote:

- although he has only been on social assistance for 5 months, he was on social assistance prior to 5 months of incarceration and on assistance prior to that for 3 months and that was after an additional 20 months of incarceration.
- between issues with trauma and knee injuries working has always lead to an inability to cope and then drug use which has a 30 year pattern of incarceration, which is not a problem at this stage of his life.
- he does not want to return to this pattern

In the appellant's Notice of Appeal, the appellant wrote:

- the ministry in their decision did not mention PTSD (Post Traumatic Stress Disorder)
- as well as injury to both knees and his hand

At the hearing the appellant stated:

- the idea to apply for PPMB was not his idea but was his doctors, probation officer and case worker
- it was clear that he did not meet the criteria
- he plans to go back to work
- he tried to contact his doctor to obtain evidence about his PPMB but was not able to
- he thought while being incarcerated he may still qualify for PPMB

At the hearing the ministry stated:

- the appellant was not denied PPMB based on medical but rather on section 2 (2) of the EAR which requires the appellant be on assistance for 12 of the 15 immediately preceding months.
- the appellant was not eligible for assistance while he was incarcerated so those months do not count towards his application for PPMB

PART F – Reasons for Panel Decision

Panel decision:

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant is not eligible for PPMB as he was not in receipt of assistance for 12 of the immediately preceding 15 months, was reasonably supported by the evidence or was a reasonable application of the applicable regulation in the circumstances of the appellant. The ministry found that the evidence does not establish that the appellant met the criteria as set out in Section 2 (2) of the EAR.

The relevant legislation is as follows:

EMPLOYMENT AND ASSISTANCE REGULATION

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.

Effect of being in prison or other lawful place of confinement- Section 15

15 A person is not eligible for income assistance or supplements while the person

(a) is detained in a lawful place of confinement, such as a federal or provincial correctional institution, jail, lockup, prison or camp, or

(b) is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.

Section 2 (1) of the EAR- Persons who have persistent multiple barriers to employment.

For the appellant to qualify as a person who has persistent multiple barriers to employment, the appellant must first meet the requirements set out in subsection (2), which requires the person has been a recipient of assistance for at least 12 of the immediately preceding 15 calendar months.

The appellant's position is that he realizes he does not meet the criteria of section 2 (2) as he has only been on assistance for 9 months but felt that his time while incarcerated may help.

The ministry's position is as the appellant's income assistance file was re-opened February 14, 2017, he has only been in receipt of assistance for 9 months of the preceding 15 calendar months therefore does not qualify as a PPMB in terms of the legislation.

The panel finds that the ministry was reasonable to determine that the appellant was not qualified for PPMB designation. The appellant has not met the requirement of section 2 (2) of the EAR which requires the appellant be a recipient of assistance for at least 12 months of the immediately preceding 15 calendar months. The appellant is unable to include his time while he was incarcerated as section 15 of the EAR states a person is not eligible for income assistance or supplements while in prison.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PPMB designation pursuant to Section 2 (2) of the EAR was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful in his appeal