

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of August 3, 2017 wherein the ministry determined the appellant does not meet the criteria for qualification as a Person with Persistent Multiple Barriers (PPMB) to employment under section 2 Employment and Assistance Regulation (EAR).

In particular, the ministry determined that it cannot substantiate that the appellant has a medical condition that is confirmed by a medical practitioner to be of the required duration, that, in the opinion of the minister, is a barrier that precludes the appellant from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR

PART D – Relevant Legislation

EAR, section 2

PART E – Summary of Facts

. The evidence before the ministry at the time of reconsideration:

- The appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months.
- July 10, 2015 – the ministry approved the renewal of the appellants' qualification for PPMB (effective May 1, 2015) and he was advised that eligibility for PPMB was to be reviewed in two years.
- March 10, 2017 – the ministry mailed the appellant a letter advising that his qualifications for PPMB were due for review. The letter included a blank Medical Report-PPMB and requested that the appellant return the form, completed by a medical practitioner, by May 2017.
- May 3, 2017 – the appellant attended the ministry office asking for an extension to his PPMB through July in order for him to see a doctor. The appellant states that his doctor's office closed and he is having trouble finding a new doctor.
- June 15, 2017 – the ministry denied the appellant's renewal for PPMB stating – as there has been no response to the ministry's request, the appellant's designation as PPMB cannot be determined and the higher rate of support will end effective August 2017.
- July 24, 2017 - Request Reconsideration where the appellant states, in part, the following:
 - Upon receiving the ministry's PPMB renewal letter, he attended the ministry office to request an extension of his PPMB benefits, and
 - He requested the extension to allow more time to retain a doctor, and
 - He did not receive a ministry response to his request for an extension until he received the ministry denial letter dated June 15, 2017, and
 - He has been looking for a new doctor for a year and a half. He was previously attending a medical clinic which is now closed, and
 - His search for a new doctor is limited due to travel restrictions, and
 - He has applied for a yearly bus pass which will open up his travel options when received, and
 - He requires a new doctor not only for PPMB renewal, but also for ongoing blood tests.
- Employability Screen – reporting a total score of 9 in 2015 and 2017. Therefore, the ministry has considered the appellant's application under EAR s. 2(2) and 2(4). Based on the results of the appellant's Employability Screen, the minister must be satisfied that: 1) the appellant has a medical condition other than addiction, that 2) in the opinion of a medical practitioner has lasted or occurred frequently for at least 1 year and is likely to continue for at least 2 more years, and 3) the medical condition, in itself, presents a barrier that precludes the appellant

from searching for, accepting or continuing in employment. The ministry is unable to determine that the appellant has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years, or that the appellant has a medical condition that has occurred frequently in the past year and is likely to continue for at least 2 more years. Therefore, it cannot be established that the appellant meets the eligibility criteria set out in the EAR s.2(4)(a)(i) and 2(4)(a)(ii) and the ministry cannot determine that the appellant's medical conditions present a barrier that precludes him from searching for, accepting or continuing in employment.

Notice of Appeal dated August 14, 2017, the appellant stated the following:

"The ministry made a fundamental error in interpreting Section 2(4)(a)(ii) specifically, I have multiple health conditions that will continue for 2 more years and any given time because they are permanent. Furthermore, the legislation does not actually specify a termination date on defining length of time to receive benefits."

At the hearing

The appellant referred to inconsistencies in the reconsideration decision where the document states on May 3, 2017: "Client attended office asking for an extension to his PPMB *through* July, in order for him to see a doctor.... Client states his Doctor's office closed and he is having trouble finding a new doctor." Then in another section of the reconsideration decision states: "It is noted that when (the appellant) attended the ministry office on May 3, 2017, he requested an extension of his PPMB benefits *until* July 2017." In his opinion, this is an inconsistency. The appellant further questioned the requirement to re-qualify for PPMB and could not find anything in the legislation that would require this. He states that he has been receiving PPMB for 10 years and there is no change to his condition. He has brain trauma, PTSD and depression along with Hepatitis C. He can't walk very well and his condition is not curable. He states that it is not reasonable for the ministry to demand a new qualification for PPMB. He states that his medical office was closed one and one-half years ago and he is having difficulty finding a new doctor. He is pretty much house bound and his only social life is on-line. He states that he is not easy to get along with.

At the hearing, the ministry re-stated the information and reasons contained in the reconsideration decision. The ministry requires a medical report, and in the absence of a report from a medical practitioner, the ministry cannot determine if the appellant's medical condition is likely to continue. In response to the appellant's statement that there is nothing in the legislation that requires him to re-qualify for PPMB every two years, the ministry referred to EAR s.(4) which states "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." In the absence of a report from a medical practitioner, the ministry cannot make a determination for PPMB. The ministry further stated that the appellant had sufficient time to comply as he was provided with the renewal letter on March 10, 2017 and was given until July 2017 to provide the medical report.

The panel admitted the testimony in accordance with section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the appellant does not meet the criteria for qualification as a PPMB under section 2 EAR.

In particular, the ministry determined that it cannot substantiate that the appellant has a medical condition that is confirmed by a medical practitioner to be of the required duration that, in the opinion of the minister, is a barrier that precludes the appellant from searching for, accepting or continuing in employment as set out in section 2(4)(b) EAR.

Relevant Legislation:

Section 2 EAR

(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

Position of the Appellant:

The ministry made a fundamental error in interpreting Section 2(4)(a)(ii) specifically, the appellant states I have multiple health conditions that will “continue for 2 more years and any given time because they are permanent. Furthermore, the legislation does not actually specify a termination date on defining length of time to receive benefits.

Position of the ministry:

The ministry position is that the appellant qualified for PPMB status on May 1, 2015 and was advised that eligibility for PPMB was to be reviewed in two years. On March 10, 2017 the ministry mailed a letter to the appellant advising that his PPMB was due for renewal. The letter included a blank Medical Report-PPMB and requested that the appellant return the form, completed by a medical practitioner, by May, 2017. On May 3, 2017 the appellant attended the ministry office and requested an extension to his PPMB through July 2017 in order for him to see a doctor, stating that his Doctor’s office is closed and he is having trouble finding a new doctor. On June 15, 2017 the ministry denied the appellant’s renewal for PPMB as there has been no response to the ministry’s request and the appellant’s designation as PPMB cannot be determined. Based on an Employability Screen of 9, the ministry has considered the appellant’s application under EAR S. 2(2) and 2(4). The minister must be satisfied that: 1) the appellant has a medical condition other than addiction, that 2) in the opinion of a medical practitioner has lasted or occurred frequently for at least 1 year and is likely to continue for at least 2 more years, and 3) the medical condition, in itself, presents a barrier that precludes the appellant from search for, accepting or continuing in employment. The ministry is unable to determine that the appellant has a medical condition that has continued for at least one year and is likely to continue for at least 2 more years, or that the appellant has a medical condition that has occurred frequently in the past year and is likely to continue for at least 2 more years. Therefore, it cannot be established that the appellant meets the eligibility criteria set out in the EAR s.2(4)(a)(i) and 2(4)(a)(ii) and the ministry cannot determine that the appellant’s medical conditions present a barrier that precludes him from searching for, accepting or continuing in employment as set out in EAR s.2(4)(b).

Panel Decision

To qualify as a person who has persistent multiple barriers to employment, section 2(1)(a) EAR states that a person must meet the requirements set out in section 2 EAR and section 2(1)(b) states that a person must meet the requirements set out in section 2(3) or section 2(4) EAR. Section 2(3)(a)(i) states that “the minister has determined that the person scores at least 15 on the employability screen set out in Schedule E.” The appellant scored 9 on the employability screen. The panel finds that the ministry reasonably relied on section 2(4) based on the results of the appellant’s employability screen score of 9. Section 2(4) EAR requires that the person has a medical condition, other than an addiction, that is confirmed by a medical practitioner to have continued for at least 1 year OR occurred frequently in the past year AND is likely to continue for at least 2 more years, and that (b) in the opinion of the minister, is a barrier that precludes the person from searching for, accepting or continuing in employment.

The evidence before the panel is that the appellant qualified for PPMB status on May 1, 2015 and was advised that eligibility for PPMB was to be reviewed in two years. On March 10, 2017 the ministry mailed a letter, including a blank Medical Report-PPMB, to the appellant advising that his PPMB was due for renewal and instructing the appellant to return the form, completed by a medical practitioner, by May 2017. The panel finds that the appellant did not provide the medical report

completed by his medical practitioner to the ministry by May 2017 and as a result the ministry is unable to determine the appellant's eligibility for the PPMB qualification. While the appellant argues that PPMB eligibility is not limited to a 2 year period under the legislation, as the ministry notes, the legislation clearly requires information from a medical practitioner addressing an applicant's medical condition over a specified time period. The panel finds that the ministry has reasonably concluded that without updated information upon the expiration of the two year period referenced in section 2(4), the ministry would be unable to determine eligibility for PPMB.

The panel finds that the ministry reasonably determined that, without evidence provided by a medical practitioner, there is not sufficient evidence to establish that the appellant has a barrier that precludes him from searching for, accepting or continuing employment and has not met all the requirements set out in section 2(4) EAR.

Conclusion:

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for PPMB designation as he did not meet all the criteria set out in section 2(4) EAR was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.