

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision (the “Reconsideration”) of the Ministry of Social Development and Poverty Reduction (the “Ministry”), dated August 10, 2017, which denied the Appellant Persons with Persistent Multiple Barriers (“PPMB”) status on the basis that the Appellant had not met the criteria required under section 2(3) of the *Employment and Assistance Regulation* (“EAR”), as the score on his employability screen was less than 15, or the criteria required under section 2(4)(a) because the Appellant’s medical practitioner did not confirm that the Appellant’s medical condition was expected to last for at least another two years.

PART D – Relevant Legislation

EAR, section 2, Schedule E

PART E – Summary of Facts

Information before the ministry at Reconsideration

The following information was before the Ministry at the Reconsideration:

- the Appellant's undated Employability Screen (the "ES");
- Medical report from the Appellant's doctor, dated April 27, 2017 (the "MR");
- PPMB Decision Summary, dated June 13, 2017;
- letter from the Ministry to the Appellant, dated June 13, 2017;
- the Appellant's Request for Reconsideration, dated July 12, 2017;
- MRI report of the Appellant's cervical spine, dated June 24, 2017;
- Four page handwritten letter from the Appellant, dated August 9, 2017 (the "Letter");

As per the MR, the Appellant suffers from degenerative disc disease ("DDD") which began in 2012. The Appellant's medical condition is not episodic in nature and the Appellant has restrictions with respect to lifting and long standing. The Appellant's doctor indicated that he was "Unsure" of the expected duration of the DDD in the MR.

The Appellant scored 12 on the ES.

The Letter sets out the Appellant's history of having been assaulted and suffering several head injuries. The Letter also describes the intensity of the Appellant's pain and the fact that pain medication renders the Appellant incapable of carrying out even basic activities and that he can lose consciousness from lifting or other activities which result in overexertion.

Information provided on appeal

The only additional item submitted in respect of this appeal was the Appellant's Notice of Appeal, dated August 18, 2017, which contained no additional information.

In his oral testimony at the appeal, the Appellant stated that, at the time of completing the MR, his doctor did not have the Appellant's complete medical file and that the Appellant was unable to have his doctor complete a new medical report for so long as his application was under appeal. The Appellant stated that his doctor has since confirmed that the Appellant is disabled from employment. Finally, the Appellant described being unable to tilt his head without losing consciousness and being unable to take medications for his pain as they render him largely non-functional.

The Panel admits the Appellant's evidence regarding his being unable to tilt his head without losing consciousness and being unable to take medications for his pain as the panel finds that both are in support of information that was before the Ministry at Reconsideration.

However, the panel does not admit the Appellant's evidence regarding the information his doctor may not have had at the time of completing the MR, his evidence regarding his doctor's current opinion regarding the Appellant's employability or the Appellant's evidence about his being unable to have his doctor complete a new medical report while his file was under appeal as none of the Appellant's testimony pertaining to these matters was in support of information and records that were before the Ministry at Reconsideration.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's denial of Persons with Persistent Multiple Barriers ("PPMB") status to the Appellant, on the basis that the Appellant had not met the criteria required under section 2(3) of the *Employment and Assistance Regulation* ("EAR"), as the score on his employability screen was less than 15, or the criteria required under section 2(4)(a) because the Appellant's medical practitioner did not confirm that the Appellant's medical condition was expected to last for at least another two years, was a reasonable application of those statutory provisions in the Appellant's circumstances or was reasonably supported by the evidence before the Ministry.

Applicable Legislation

Section 2 of the EAR sets out the criteria for PPMB designation:

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.

Positions of the Parties

Appellant's Position

The Appellant's position is that he is caught in a bureaucratic loop and that his pain precludes him from working. The Appellant described being unable to tilt his head without losing consciousness and being unable to take medications for his pain as they render him largely non-functional. The Appellant's position is that he would be working if he was capable of doing so.

Ministry's Position

The Ministry's position is that the Appellant's eligibility for PPMB level assistance is subject to determination under section 2(4) of the EAR, as the Appellant scored less than 15 on his employability screen. In the Reconsideration, the Ministry accepted that the Appellant's DDD was a barrier that precluded him from searching for, accepting, or continuing in employment, satisfying the requirements of section 2(4)(b) of the EAR. However, the position of the Ministry is that it did not have confirmation from a medical practitioner that the Appellant's DDD was likely to continue for at least two more years, despite having made efforts to contact the Appellant's doctor to obtain clarification regarding the expected duration of the Appellant's DDD.

Panel's Decision

Eligibility for PPMB status for applicants who score 15 or higher on the employability screen set out in Schedule E to the EAR is governed by Section 2(3) of the EAR. As the Appellant scored 12 on his employability screen, the panel finds that the Ministry reasonably determined that Appellant does not meet the criteria for eligibility set out in section 2(3) of the EAR and that the Appellant's eligibility for PPMB status is instead governed by section 2(4) of the EAR.

Section 2(4) of the EAR requires that an applicant have "a medical condition, other than an addiction that is confirmed by a medical practitioner" and meets the following criteria:

- (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 Appellant's DDD is a condition that is not an addiction and has been confirmed by a medical practitioner. The Ministry, moreover, was satisfied that the Appellant's medical condition precluded the Appellant from searching for, accepting, or maintaining employment on the basis that the Appellant's DDD would require accommodation or support in any work environment and that, in the result, the Appellant had met the criteria set out in section 2(4)(b) of the EAR.

With respect to section 2(4)(a) of the EAR, the opinion of the Appellant's medical practitioner is that the Appellant's medical condition has existed for five and a half years, satisfying the first part of the criteria set out in section 2(4)(a)(i). However, the prognosis of the Appellant's doctor as to the expected duration of the Appellant's medical condition (his DDD) was "Unsure." Although the Ministry appears to have made efforts to contact the Appellant's doctor for clarification as to the expected duration of the Appellant's DDD, the evidence is that the Ministry was unable to do so. In the result, the panel finds that the Ministry reasonably determined that application of the Appellant for PPMB status was not supported by the opinion of a medical practitioner which confirmed that the Appellant's medical condition was "likely to continue for at least 2 more years", as is also required by section 2(4)(a)(i) of the EAR and would have been required under 2(4)(a)(ii), had that sub-section been applicable to the Appellant.

In view of the foregoing, the panel finds that the Ministry's reconsideration decision, which denied the Appellant PPMB level assistance, due to the lack of a medical opinion confirming that the Appellant's medical condition was likely to continue for at least two more years, was a reasonable application of section 2(4) of the EAR.

In the result, the panel confirms the Reconsideration decision and the Appellant is not successful in the appeal.