

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated September 20, 2017, which held that the appellant no longer meets the criteria to qualify for the Persons with Persistent Multiple Barriers (PPMB) category under section 2(4)(b) of the Employment and Assistance Regulation (EAR).

The ministry was not satisfied that the appellant's medical condition precludes him from searching for, accepting or continuing in employment.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 2

Relevant Evidence Before the Minister at Reconsideration

Ministry Records

- Employability Screen printout for the appellant, noting a total score of 11.
- *March 20, 2017* - letter from the ministry to the appellant – PPMB Renewal Request
The letter states that clients who qualify for the PPMB category have their status reviewed every two years and the appellant's review is due. A medical report was attached to the letter, with instructions for the appellant to have his doctor complete it.
- *August 14, 2017* – letter from the ministry to the appellant advising him he no longer meets the criteria for the PPMB category. The reasons for the denial were:
 - The appellant's score on the employability screen is less than 15; therefore the minister does not consider that the appellant has barriers that seriously impede his ability to search for, accept or continue in employment as required under the EAR, section 2(3).
 - The appellant's medical condition is not a barrier that precludes him from searching for, accepting or continuing in employment as required under section 2(4)(b) of the EAR.
- *September 3, 2017* - letter from the appellant's doctor, stating that the appellant is unable to work for medical reasons and is currently applying to be designated as a PPMB.
- *June 20, 2017* Medical Report – PPMB completed by appellant's doctor.

Medical Conditions

- The primary medical condition is chronic fatigue syndrome, with the date of onset as longstanding.
- The secondary medical condition is major depression, with the date of onset as longstanding.
- The treatment is supplements, exercise and yoga, and the treatment outcome is partial remediation of symptoms only.
- The condition has existed for over 12 years.

Prognosis

- The expected duration of the medical condition is two years or more.
- The medical condition is not episodic in nature.

Restriction

- Restricted ambulation/physical activity.

Previous Medical Reports – PPMB completed by appellant's doctor

- *April 23, 2015*
Medical Conditions
 - The primary medical condition is chronic fatigue syndrome.
 - The secondary medical condition is depression.Restrictions
 - Extreme fatigue post exercise.
- *June 11, 2013* - Medical Report
Medical Conditions
 - The primary medical condition is chronic fatigue syndrome.
 - The secondary medical condition is depression.Restrictions
 - Extreme fatigue post exertion.

- *May 20, 2011*
Medical Condition
 - The primary medical condition is chronic fatigue syndrome.
 - The secondary medical condition is insomnia/depression.
 Restrictions
 - Extreme fatigue with physical activity.

- *August 6, 2009 - Medical Report*
Medical Conditions
 - The primary medical condition is chronic fatigue syndrome.
 - The secondary medical condition is (2) depression, (3) insomnia.
 Restrictions
 - Extreme fatigue.

- *October 19, 2007*
Medical Condition
 - The primary medical condition is chronic fatigue syndrome.
 - The secondary medical condition is depression.
 Restrictions
 - Unable to perform physical activity greater than one hour.
 - Brain fog with difficulty concentrating, completing tasks, thinking clearly.

Appellant - Reasons for Request for Reconsideration

- The appellant has been following his physician's recommendations with regards to nutrition, simple exercise and lots of rest.
- The renovation last year took a lot of his energy and it took four solid months of looking to acquire affordable housing.
- The appellant is totally motivated toward getting healthy, so he can work again, but he needs more time.

Additional Evidence

In his Notice of Appeal dated September 29, 2017, the appellant wrote that he realized that his doctor's note was not detailed enough as to his recommendations that he is unable to work. He and his doctor will provide a more detailed prognosis with regards to encephalomyelitis, also known as chronic fatigue syndrome.

October 28, 2017 – A letter, from the appellant's doctor includes the following information:
The appellant suffers from chronic fatigue syndrome, which causes extreme fatigue (both physical and mental), leaving him unable to perform any sustained activity (greater than 30 min). These limitations prevent the appellant from any kind of employment.

At the hearing, the appellant stated:

- His chronic fatigue syndrome causes flu-like symptoms with insomnia, or lack of restful sleep, brain fog, lethargy, and body aches. Of course, he has ongoing fatigue.
- As a result of this condition, he has applied for PPMB designation every two years, for over eight years.
- He is looking forward to getting healthy because he does not want this to be his life.

The ministry relied on its reconsideration decision, as summarized at the hearing.

Admissibility of New Evidence

At the hearing, the ministry was asked if it had any objections to the panel admitting the additional evidence. The response was that the ministry respectfully objects to admitting the additional evidence, as this information was not before the ministry at reconsideration.

The appellant's representative responded by stating that the additional evidence was in support of the doctor's confirmation of the appellant's diagnosis, and particularly when all the medical information is read together. The ministry has provided all the previous Medical Reports at reconsideration and this information is available to be considered regarding admissibility, and not only for negative inferences to be drawn for information missing in the current Request.

The panel determined that the additional evidence (letter dated October 28, 2017) was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the minister at reconsideration. These records are outlined below. As the letter was provided by the medical practitioner who completed the subject Medical Report and all previous Medical Reports since at least October 2007, the panel also placed weight on the letter.

The letter verifies the appellant's statement in the Request for Reconsideration, regarding his inability to work.

As well, the letter corroborates the information in the doctor's letter dated September 3, 2017, stating that the appellant is unable to work for medical reasons. In addition, the information in this letter supports the medical information before the minister in the PPMB dated June 20, 2017 and five other PPMBs over the past ten years, detailing both physical and cognitive impacts regarding the appellant's medical conditions and related restrictions.

Findings of Fact

The panel finds that the appellant's doctor provided the ministry with information confirming that the appellant is unable to work due to medical reasons, as well as information confirming the appellant's medical conditions, prognosis and restrictions.

The same doctor provided further information stating that the appellant suffers from chronic fatigue syndrome, which causes extreme fatigue (both physical and mental), leaving him unable to perform any sustained activity (greater than 30 min) and these limitations prevent the appellant from any kind of employment.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision, dated September 20, 2017, which held that the appellant no longer meets the criteria to qualify for the Persons with Persistent Multiple Barriers (PPMB) category under section 2(4)(b) of the EAR.

The ministry concluded that there was insufficient evidence to demonstrate that the medical conditions preclude the appellant from searching for, accepting or continuing in employment as required by section 2(4)(b) of the EAR.

Section 2 of the EAR sets out the requirements for PPMB qualification. The ministry was satisfied that the requirements of subsection (2)(2) were met and as the appellant's employability score was less than 15, subsection (3) does not apply.

As well, the ministry was satisfied that the eligibility criteria under 2(4)(a)(i) of the EAR was met

Relevant Legislation - EAR Section 2

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.

[en. B.C. Reg. 368/2002.]

Ministry Argument

The ministry representative argues that the medical report dated June 20, 2017 and the letter dated September 3, 2017 do not provide evidence to show that the appellant's medical conditions preclude him from searching for, accepting or continuing in employment. Therefore the Request for Renewal to qualify as a PPMB does not meet the eligibility requirement in the EAR, subsection 2(4)(b).

The ministry representative also argues that the ministry doesn't consider past medical records when making a decision regarding the current Request. The ministry only uses current information and looks at what the doctor is currently providing.

Appellant Argument

The appellant argues that he is unable to work. The appellant provided further details on the symptoms experienced with his primary and secondary medical conditions, chronic fatigue syndrome and depression, respectively. The symptoms include, flu-like, brain fog, insomnia, lack of restful sleep and body aches. As well, the medical conditions cause restricted ambulation/physical activity.

The appellant's representative argues that although the ministry states that fatigue is not mentioned, the primary medical condition is chronic "fatigue" syndrome, and so fatigue is part of the syndrome and the appellant's fatigue applies to both physical and mental functioning.

As well, the appellant's representative argues that in the doctor's previous information, the doctor focused on the appellant's physical restriction. However, additional information provided by the doctor, includes both physical and mental restriction.

The doctor's letter, dated September 3, 2017 stated that the appellant is currently unable to work. The appellant's representative stated that the ministry erred in not putting all the pieces together.

Panel Decision

Under section 2(4)(b) of the EAR, the appellant must have a medical condition that, in the opinion of the minister, is a barrier that precludes the appellant from searching for, accepting or continuing in employment. In the reconsideration decision, the ministry considered that the medical practitioner described the appellant's restrictions in the June 20, 2017 report as "restricted ambulation/ physical activity" and wrote that the medical practitioner did not describe the nature or severity of the appellant's restrictions with ambulation or physical activity and did not describe restrictions related to impacts to cognitive and emotional functioning. The ministry also considered the letter dated September 3, 2017 in which the medical practitioner indicated that the appellant is "currently unable to work for medical reasons" and wrote that the medical practitioner does not describe the nature/ details of any restrictions to the appellant's medical conditions.

In the letter dated October 28, 2017, the medical practitioner confirms that the appellant suffers from chronic fatigue syndrome which "causes extreme fatigue (both physical and mental)", leaving him "unable to perform any sustained activity (greater than 30 minutes)", and that "...These limitations prevent him from any kind of employment."

Considering this new evidence, the panel finds that the ministry unreasonably determined that the requirement of section 2(4)(b) of the EAR was not met, which requires that a "person has a medical condition...that is confirmed by a medical practitioner"... and that, in the opinion of the minister, "is a barrier that precludes the person from searching for, accepting or continuing in employment."

Conclusion

For these reasons, the panel finds the ministry's decision was not reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the appellant, and rescinds the decision. Therefore, the appellant's appeal is successful.