

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“the ministry”) dated 02 October 2017 that held that the appellant was not eligible for qualification as a person with persistent multiple barriers to employment (PPMB). The ministry determined that the appellant’s employability screen score was 12 and therefore assessed his PPMB eligibility under sections 2(2) and 2(4) of the Employment and Assistance Regulation (EAR). The ministry found that the appellant met the requirements of sections 2(2) 2(4)(a). However, the ministry was not satisfied that the information provided established that the appellant met the criterion set out in section 2(4)(b) of the EAR, that to qualify for PPMB a person must have a medical condition confirmed by a medical practitioner that in the opinion of the minister is a barrier that precludes the person from searching for, accepting or continuing in employment.

### **PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR), section 2.

## **PART E – SUMMARY OF FACTS**

The evidence before the ministry at reconsideration included the following:

1. The appellant's employability screen score is 12.
2. Medical Report – PPMB dated 03 August 2017, completed by a general practitioner (GP) who provides the following information:
  - Primary medical condition: OA [osteoarthritis], (onset – 2000).
  - Secondary medical condition: none given.
  - Treatment/outcome:
    - Exercise/chronic pain.
    - NSAIDS/none given.
  - How long has this condition existed? 16 years.
  - Prognosis: expected duration of medical condition – 2 years or more.
  - The medical condition is not episodic.
  - Restrictions: the GP writes:
    - “Reduced power/mobility to back limiting physical capacity.”
3. From the ministry's files, as reported in the reconsideration decision, past medical reports on file:
  - Medical Report – PPMB completed by the same GP, dated 02 April 2015, containing essentially the same information as in the 03 August 2017 Medical Report – PPMB.
  - A note from the GP, provided to the ministry on 20 June 2015, stating, “This confirms the above noted patient is disabled from seeking gainful employment due to chronic back pain with limitation to physical exertion.”
4. The appellant's Request for Reconsideration is dated 20 September 2017. Under Reasons, the appellant writes that his paramount barriers are worsening with time. The arthritis in his back, elbows, knees, and ankles has become more painful throughout the past 16 years. His doctors give him painkillers that have little effect. He notes that that in 2015 his PPMB application was accepted and since then the pain he is in is worse now. The balance of his Reasons goes to argument (see Part F, Reasons for Panel Decision, below).

### **Notice of Appeal**

The appellant's Notice of Appeal is dated 09 October 2017. Under Reasons for Appeal, the appellant writes:

“My back pain is worsening and spreading throughout my legs, knees, elbows, feet. I lack feeling in left foot and all toes making standing, walking for long periods impossible. When my back goes into spasms it's completely immobilizing and I cannot stand at all. MRI testing in 2012 and surgical screening show degenerative bone disease. Various medications have been and are currently prescribed [list of prescription medications provided].

After many years of prescription medications, they have little or no effect. The doctors have exhausted all prescription options covered by my current medical plan. I see other doctors and clinics in [city], most of which have seen the MRI results and agree I am unable to work.

I need to point out that I have been on assistance since 2008 in [another city]. This should be noted as I see the [reconsideration decision] says [his current income

assistance file opened] “in 2014.”

I was approved for PPMB in 2015. [The GP] filled out both applications identically, yet the current application was denied for changes that the ‘system’ implemented.

As my medical condition progressively worsens I feel it may be necessary to apply for disability [assistance] in light of the current changes to PPMB qualifications.”

### **The hearing**

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

The appellant did not provide a submission for the hearing.

In an email to the Tribunal dated 03 November 2017, the ministry stated that its submission is the reconsideration summary provided in the Record of Ministry Decision.

### **Admissibility of new information**

The panel finds that the information provided by the appellant in his notice of appeal is in support of the information and records before the ministry at reconsideration, as it tends to corroborate the information provided by the appellant in his request for reconsideration. The panel therefore admits this information as evidence under section 22(4) of the EAA. The panel notes however that this information has not been confirmed by the appellant’s medical practitioner.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in determining that the appellant did not qualify for PPMB because he did not meet the criterion set out in section 2(4)(b) of the EAR. More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant:

- the information provided did not establish that the appellant met the criterion set out in section 2(4)(b) of the EAR, that in the opinion of the minister the person has a medical condition confirmed by a medical practitioner that is a barrier that precludes the person from searching for, accepting or continuing in employment.

The relevant legislation is 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 .....[not applicable to this appeal]
- (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.

### Analysis

In the reconsideration decision, the ministry began by noting that to qualify for PPMB, a person must first meet the eligibility requirements under subsection (2) of section 2 of the EAR. The ministry found that, as the appellant had been a recipient of income assistance for more than 12 of the preceding 15 months, he met this eligibility requirement.

In accordance with the “either/or” provisions of subsection (1) and noting that the appellant's employability screen score is 12, the ministry found that subsection (3) does not apply and, appropriately in the panel's view, assessed his PPMB eligibility under subsection (4). The ministry found that the appellant met the requirements under subsection 4(a), as having a medical condition, other than an addiction, that is confirmed by a medical practitioner, which has continued for at least one year and is expected to continue for at least another 2 years. However, the ministry was not satisfied that under subsection 4(b) the medical condition, as confirmed by a medical practitioner, is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

#### *Medical condition as a barrier precluding employment*

In the reconsideration decision, the ministry acknowledged that the appellant stated that his condition has gotten worse over the years and that he also has arthritis in his elbows, knees, and ankles. The ministry notes however that the GP only reports that the appellant has osteoarthritis in his back and that his restrictions include reduced power and mobility with limited physical capacity. The ministry also noted that the GP has not provided any further detail. It is the ministry's opinion that the information provided to the ministry is insufficient to establish that his condition currently precludes his ability to search for, accept, or maintain employment, and does not establish that his medical condition requires a supportive or sheltered work environment in order for him to maintain any type of employment for any length of time. The ministry stated that it is unclear why the appellant would not be able to manage a sedentary job or light duty type employment that is not physically demanding without restrictions or support.

In his Notice of Appeal the appellant notes that he was approved for PPMB in 2015, on the basis of an application completed by the GP identical to the current application. He attributes his current denial for PPMB qualification to “system” changes.

Unlike in 2015, the appellant did not submit any supplementary information from his GP. Further, there have been no changes to this section of the legislation over the past several years. The panel considers the appellant's application for renewal for PPMB qualification to be a new application and the ministry's reconsideration decision to also be a new decision. Neither the panel nor the ministry is bound by any ministry decision regarding a previous application.

The legislation is clear that the medical condition, which in the opinion of the minister is a barrier precluding employment, must be based on the opinion of a medical practitioner, in this case the appellant's GP. The panel interprets “medical condition” as to encompass both the osteoarthritis diagnosis provided by the GP and the restrictions he describes. As the ministry noted, the GP's description of restrictions is limited to “Reduced power/mobility to back limiting physical capacity.” Given this description of restrictions associated with the appellant's osteoarthritis, the panel finds that the ministry was reasonable in concluding that the information provided is insufficient to establish that the appellant's condition requires a supportive or sheltered work environment in order to maintain any type of employment for any length of time, and leaves open the question as to why he would not be able to manage a sedentary job or light duty type employment that is not too physically demanding without restrictions or support.

#### **Conclusion**

Based on the foregoing analysis, the panel finds that the ministry's decision that found that the appellant does not meet the qualification criteria for PPMB is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.