

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated July 27, 2017 made by the Ministry of Social Development and Poverty Reduction (the ministry) which determined that the appellant was found to be ineligible for persons with persistent multiple barriers (PPMB) pursuant to section 2 of the Employment and Assistance Regulation (EAR).

The ministry determined that the appellant met the requirement of section 2(2) as he has been in receipt of income assistance for 12 of the immediately preceding 15 calendar months and that his application would be assessed under section 2(4) rather than section 2(3) based on his employability screen score of 10. The ministry was satisfied that the requirement of section 2(4)(a) was met as a medical practitioner confirmed that the appellant has a medical condition, other than an addiction, that has continued at least for 1 year and is likely to continue for at least 2 more years. However, the ministry determined that the requirement of section 2(4)(b) was not met as it could not be determined that the appellant's medical condition precluded him 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 information before the ministry at the time of reconsideration included the following:

- A Medical Report – Employability dated August 2, 2016 which noted a primary medical condition of right-sided carpal tunnel syndrome with onset of 2010 and a secondary medical condition of low back pain with onset of 2010 and restrictions noted as “unable to do lifting or repetitive work”;
- A Medical Report – Employability dated April 1, 2014 which noted a primary medical condition of anxiety/depression with onset of March, 2012 and restrictions as “mental health issue related to stress in his life”;
- Submitted with the Request for Reconsideration:
 - A Medical Report – Employability dated July 13, 2017 which noted a primary medical condition of anxiety/depression with onset 2012 and a secondary medical condition of migraines, right arm weakness with onset of 2013 and restrictions noted as “lack motivation due to anxiety/depression”.
- A letter dated July 5, 2017 from Ministry to the appellant explaining PPMB had not been approved;
- A PPMB Decision Summary dated July 5, 2017 that indicates: that the appellant’s condition has existed for more than one year with expected duration of more than two years; that they cannot confirm that the appellant’s current condition and restrictions preclude employment, which is required as the appellant scored less than 15 on the Employability Screen;
- A Medical Report – Persons with Persistent Multiple Barriers dated June 27, 2017 indicating: a primary medical condition of carpal tunnel syndrome and a secondary medical condition of migraines; treatment noted as “Tylenol 3” and “being investigated for migraines”; that the condition has existed for five years and a prognosis of two years or more with comment “seeing neurologist for investigation of right carpal tunnel”; and restrictions noted as “finds it hard to work with the right hand”; and
- An Employability Screen dated June 30, 2017 which totals 10.

On the Notice of Appeal dated August 4, 2017 the appellant indicated that he was requesting a written hearing and he wrote that his physician had not provided enough information and that the same physician was no longer practising in the area so a different physician was reviewing his file. The appellant also submitted an email dated August 4, 2017 advising that he had an MRI scheduled for November 1, 2017.

The Tribunal sent a letter to the appellant indicating that his written submission must be received by August 25, 2017. The appellant requested an extension, which was granted by the Tribunal who extended the deadline to September 12, 2017. The appellant requested an additional extension as he had an MRI and specialist report due in November and wanted more time to allow for this evidence to be submitted to his file. The extension was granted and the new deadline was set as November 30, 2017.

On November 28, 2017, the appellant submitted:

- a note from a neurologist dated November 28, 2017 which noted a diagnosis of “degenerative neck disease with right arm pain and numbness with negative EMG and no myelopathy or radic on MRI”; and
- an email from the appellant dated November 28, 2017 indicating that he had an MRI and an appointment with his physician, and that he has been directed to physiotherapy.

On December 4, 2017, the ministry sent an email indicating that the ministry’s submission on this matter will be the reconsideration summary provided in the Record of the Ministry Decision.

On December 14, 2017 the appellant submitted two additional typewritten prescriptions dated the same date. One prescribed Tylenol 3 and Ibuprofen and the other indicated the appellant required physiotherapy for degenerative disc disease. As this diagnosis was already included in the appellant’s November 28, 2017 submission, and

documents within the appeal record already noted Tylenol 3 as being prescribed, the Panel Chair did not accept the late submission and elected to proceed with the scheduled written hearing rather than extending the hearing a third time.

With the consent of both parties (Notice of Appeal form indicated a written hearing), the hearing was conducted in writing pursuant to section 22(3)(b) of the Employment and Assistance Act (EAA).

Upon conclusion of the written hearing on December 20, 2017 the Panel received notification that the Tribunal had received a second late submission via e-mail from the appellant, which is date stamped as being received on December 20, 2017. As the hearing had already concluded the panel cannot consider the submission.

Admissibility of New Information

The information that the panel will be making a determination of admissibility on is the information that the appellant submitted on November 28, 2017 which included the handwritten note from the neurologist as well as an email from the appellant that informed that he had had his MRI appointment. The neurologist wrote as a diagnosis "degenerative neck disease with right arm pain and numbness and no myelopathy or radiculopathy on the MRI. After reviewing the reconsideration decision and all the medical reports in the appeal record the panel finds that the diagnosis of degenerative neck disease was not information that was in support of or before the minister at the time of reconsideration so the evidence is not admissible under section 22(4) of the EAA. There is reference in several medical reports that the appellant had right arm pain so this information is not new evidence and does not require a ruling of admissibility.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's conclusion to deny the appellant PPMB designation was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstance of the appellant. In particular, was the ministry reasonable in determining that the appellant's medical condition is not a barrier that precludes him from searching for, accepting, or continuing employment as required by EAR section 2(4)(b).

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 10, 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 its reconsideration decision the ministry reviewed the appellant's medical reports and argues that for each of the medical conditions identified the appellant's medical practitioner did not demonstrate that they are a barrier that precludes him from searching for, accepting or continuing in employment.

Carpel Tunnel Syndrome (primary) and *Low Back Pain* (secondary) (identified in Medical Report – PPMB dated June 27, 2017 and Medical Report – Employability dated August 2, 2016)

For these conditions, the ministry argues that the physician wrote that the appellant “finds it hard to work with the right hand” and “unable to do lifting or repetitive work” however he did not describe the nature or severity of the difficulty in using the right hand to work, nor the nature of employment with which the appellant is restricted due to the limitation of the right hand nor does he describe any employment restrictions. The ministry also argues that restrictions to lifting and repetitive work alone is not sufficient information to establish preclusion from searching for, accepting or continuing in all types of employment such as sedentary or non-labour work.

Anxiety/Depression (identified in Medical Report – Employability dated July 13, 2017 and April 1, 2014)

For this condition the ministry argues that although the physician stated “lack motivation due to anxiety and depression” and “mental health issue related to stress in his life” he does not describe the severity of impacts to motivation nor does he describe the nature of restrictions specific to anxiety, depression or lack of motivation so they could not establish that the appellant was precluded from searching for, accepting or continuing in employment.

Stomach pain (noted in Section 3 of the Request for Reconsideration) and *migraines* (Medical Report – PPMB dated June 27, 2017) were identified as secondary medical conditions and the ministry argues that the physician did not describe any restrictions specific to these conditions.

The appellant wrote in his Notice of Appeal that his first physician had not provided enough information and was no longer practising in the area so a different physician would be reviewing his file. The appellant also wrote a number of emails which confirmed the appointments he had with his new physician, that he'd had an MRI completed and provided information that he had received a different diagnosis after completion of the MRI and that he continued to have problems with his right arm. The appellant did not provide any information that explained how his medical conditions affect his ability to search for or accept employment.

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. The appellant's medical conditions, both

primary and secondary, are identified by a physician however the physician's description of restrictions is limited to "finds it hard to work with the right hand" and "unable to do lifting or repetitive work". Given this description of restrictions associated with the appellant's medical conditions, the panel finds that the ministry was reasonable in concluding that the information provided is insufficient to establish that the appellant's medical conditions preclude him from searching for, accepting or continuing in employment 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 physical.

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.