

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 December 18, 2017, which held that the appellant did not meet the legislated requirements set out under section 2 of the Employment and Assistance Regulation (EAR) for qualification as a Person with Persistent Multiple Barriers (PPMB).

The ministry determined that, based on the appellant's Employability Screen score, his application should be considered under subsections (2) and (4). The ministry accepted that the requirement of subsection (2) respecting the time the appellant has been a recipient of income assistance was met, as was the requirements of subsection (4)(a) that a medical practitioner had confirmed that the appellant has a medical condition, other than addiction, that has either continued for at least 1 year or has occurred frequently in the past year, and is likely to continue for at least 2 more years. However, the ministry determined that the requirement of subsection (4)(b) was not met as the ministry was not of the opinion that the medical condition is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), section 2

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

The appellant submitted a Medical Report – Persons with Persistent Multiple Barriers (“the Medical Report”) dated November 15, 2017, completed by a medical practitioner of whom the appellant has been a patient for over 6 months, setting out the following information:

- Primary medical condition is “Adult ADHD” with an onset date of about 2007.
- Secondary medical conditions are Sleep Apnea Syndrome (onset about 2007) and Chronic Sinusitis (onset about 2015).
- Treatment and outcomes are described as “CPAP at night” which is “not well tolerated.” Takes Ritalin – helps a little.” and “Multiple treatments for sinusitis – antibiotics and steroids.”
- Expected duration of medical conditions is 2 years or more. The medical conditions are not episodic in nature.
- Where asked to describe the nature of any restrictions specific to the above medical condition(s) [for example, restricted motion in arms or legs) and to attach additional pages if required, the medical practitioner did not provide a response.

Following denial of PPMB qualification, the appellant submitted his Request for Reconsideration, which included the Medical Report as amended by the medical practitioner, who added the following information where asked to describe the nature of any restrictions:

- “He feels he is unable to work full time due to fatigue. He is able to work part time.”

Also before the ministry at reconsideration was a copy of the appellant’s Employability Screen, showing a score of 12.

Information provided on appeal

The only additional information provided on appeal is a written submission included as part of the appellant’s Notice of Appeal (NOA) dated December 22, 2017. The appellant states that the doctor did not properly describe his restrictions specific to his medical conditions, which have worsened since the Medical Report. Currently, he experiences daytime drowsiness, focus and concentration issues, fatigue due to sleep apnea/ worse case as indicated in doctor’s file, shortness of breath due to chronic sinusitis, irregular heartbeat causing numbness in face and legs due to high blood pressure, difficulty lifting or standing for extended periods, adult ADHD causing concentration issues. “Would you hire me???”

Admissibility of information provided on appeal

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA – to determine whether the ministry’s reconsideration decision is

reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

The panel determined that the additional information respecting Adult ADHD, Sleep Apnea Syndrome and Chronic Sinusitis, the medical conditions diagnosed by the medical practitioner in the Medical Report, is admissible in accordance with section 22(4) of the EAA as being in support of the information before the ministry at reconsideration. Information respecting medical conditions not diagnosed by the medical practitioner, including the references to high blood pressure and heartbeat irregularities, is not admissible as it introduces new information that was not before the ministry at reconsideration and is not in support of the information before the ministry. The balance of the information is accepted as argument.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision that found the appellant did not meet the requirements to qualify as a PPMB was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable to conclude that the requirements of section 2(4)(b) of the EAR were not met because it was not of the opinion that the appellant's medical conditions are a barrier that precludes the appellant from searching for, accepting or continuing in employment?

Relevant Legislation

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
 - (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.

Panel Decision

The appellant's position is that the medical practitioner did not complete the Medical Report properly. The appellant further argues that his medical conditions have worsened since the Medical Report was completed and that the symptoms of his medical conditions establish his eligibility for PPMB qualification.

The ministry's position is that the information provided does not demonstrate that the appellant's medical condition presents a barrier that precludes the appellant from searching for, accepting or continuing in employment.

The ministry notes that in accordance with its policy, an applicant is considered to be precluded from searching for, accepting or continuing in employment if the applicant is unable to participate in any type of employment for any length of time, except in a supported or sheltered-type work environment. Factors used to determine if the nature of employment is as minimal or insignificant as to effectively preclude the recipient from employment are:

- if the focus of the work is on socialization where the activities are highly supported or supervised (e.g. recycling workshop),

- the recipient is limited by the medical condition to very minimal hours on an infrequent basis (e.g. 1-2 hours of babysitting once or twice a month),
- involvement is very sporadic or casual (e.g. occasional lawn mowing or housekeeping, or delivering flyers once a month), and
- the work is more likely to be considered volunteering and compensation, if any, is minimal (e.g. covers the cost of volunteering).

Commenting that it has some discretion in determining whether a medical condition is a barrier that precludes an applicant's ability to search for, accept or continue in employment, the ministry add that it relies on information provided by medical practitioners when making such a determination. The ministry also argues that an explanation of restrictions is helpful in assessing why an applicant is unable to work and what type of work an applicant can or cannot do. Noting that no description of restrictions was included when the Medical Report was initially submitted, the ministry considers that the use of the term "he feels" in the amended Medical Report suggests that the medical practitioner's statement is based on the appellant's self-report as opposed to the medical assessment of the medical practitioner, and that that the medical practitioner also write "He is able to work part time." The ministry also indicates that it reviewed previous medical documents from the appellant's file, specifically a Medical Report – Employability dated April 21, 2015, completed by the same medical practitioner. This report identified restrictions as "Daytime drowsiness [and] concentration issues" resulting from the diagnosed primary medical condition of Sleep Apnea Syndrome and the secondary medical condition, Adult ADHD. The ministry notes that the drowsiness and concentration restrictions were not described in the original or amended Medical Report submitted with the current request for PPMB qualification.

The ministry concludes that as the description of the restrictions specific to the appellant's medical conditions describes the appellant's personal feelings about being unable to work full time and the medical practitioner states that the appellant is able to work part time, it has not been established that the appellant is precluded from searching for, accepting or continuing in employment.

The panel finds that the appellant's Employability Screen score of 12 is not in dispute and that the ministry appropriately considered the appellant's PPMB application under section 2(4) of the EAR. Subsection 4(b) requires that the minister be of the opinion that an applicant's medical condition, other than addiction, be a barrier that precludes the person from searching for, accepting or continuing in employment. The panel considers the ministry reasonable when exercising its decision-making discretion under the legislation, and in accordance with its policy, to place significant weight on the information provided by the medical practitioner who under the legislation is required to provide both diagnoses and information respecting the duration of an applicant's medical condition.

In this case, the medical practitioner was asked to provide information respecting any restrictions arising from the diagnosed medical conditions on two occasions, affording ample opportunity to provide relevant details respecting functional limitations that impact the appellant's employability. As the ministry notes, restrictions identified in 2015 by the medical practitioner were not identified when he originally completed the current Medical Report or when he amended it. Respecting the current information provided by the medical practitioner, the panel finds that the ministry has reasonably considered the information from the medical practitioner respecting the inability to work full time as a reflection of the appellant's own assessment, rather than that of the medical practitioner. It is possible that the subsequent statement "He is able to work part time", reflects a continuation of the appellant's view, or reflects the medical practitioner's own assessment that the appellant can work part time. In either case, no further explanation is provided, and the panel considers that the ministry has reasonably concluded that being limited to part time employment does not meet the legislated test, as guided by ministry policy, of being precluded from searching for, accepting or continuing in employment.

Conclusion

The panel concludes that the ministry's reconsideration decision, which determined that the appellant has not met the legislated requirement set out under section 2(4)(b) of the EAR for qualification as a PPMB, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.