

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("Ministry") reconsideration decision dated January 12, 2018 in which the Ministry found that the appellant was not eligible for the *Persons who have persistent multiple barriers to employment* qualification ("PPMB") under section 2 of the Employment and Assistance Regulation ("EAR").

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation - EAR – section 2 and Schedule E

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”) signed by the appellant on January 2, 2018 with the following attached documents:

- A hand-written submission, undated, in which the appellant stated he had been on PPMB for many years prior to moving to his present community. His PPMB was set to expire shortly after his move. The appellant stated that he was unable to locate the doctor who had helped him with his previous applications so he found a new doctor who assessed him for a year before signing the PPMB forms. The appellant stated that on his current budget he is unable to afford the medication prescribed for his condition.
- An excerpt from a Medical-Vocational Assessment dated December 29, 2008 and written by a registered psychologist. The report described the appellant’s medical condition (ADHD with comorbid anti-social features), recommended treatments, and provided a list of employment options in consideration of the appellant’s medical condition.

2. Information from the Ministry’s record of decision which included:

- A letter dated November 12, 2018 in which the Ministry advised the appellant that upon reconsideration, he does not qualify for the PPMB category.
- A letter dated November 22, 2017 in which the ministry advised the appellant that his PPMB application was not approved. An attached Decision Summary indicated it was a new application.
- A PPMB Medical Report dated November 15, 2017 and completed by an ADHD and addictions specialist (“specialist”) who has been the appellant’s medical practitioner for 1.5 years. The appellant’s primary medical condition is ADHD, “chronic” and “lifelong.” A medication was prescribed with the outcome reported as “no change since patient could not afford meds patient did not tolerate first choice, now waiting to see outcomes on second choice.” Under Additional Comments, the specialist wrote, “without treatment he will continue to be unable to meet cognitive demands.” Section 3 of the form, *Restrictions*, which would have listed any restrictions specific to the medical condition, was left blank. No additional documents in support of the severity and restrictions relating to the medical condition were submitted, as indicated in Section 4 of the Medical Report.
- The reconsideration decision which states:
 - The appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months.
 - The Ministry revised the appellant’s Employability Screen score to 14 (from 15 as previously indicated) on the basis of Question 3 on the Screen which asks: *Apart from your current application, how many times have you been on income or social assistance anywhere in Canada in the last 3 years?* The Ministry noted that the correct score for this question is zero as the appellant had been “an un-interrupted recipient of income assistance in British Columbia for the past 3 years.”
 - On November 22, 2017, the Ministry determined that the appellant was not eligible for PPMB. The appellant requested reconsideration of the Ministry’s decision and on January 2, 2018, the Ministry received the appellant’s RFR with submissions attached.
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- The Ministry reviewed previous medical documents from the appellant's income assistance file:
 - A Medical Report - Employability dated February 1, 2017 and completed by the specialist who indicated the appellant has "severe-extreme" ADHD that is lifelong. In the section for describing Restrictions (specific to the medical condition), the specialist wrote "N/A."
 - A PPMB Medical Report dated April 10, 2013 and completed by a general practitioner ("GP") who indicated the appellant's primary medical condition is untreated ADHD. In the section for describing Restrictions, the GP wrote "no restrictions if taking his medication, likely difficulty with concentration if he chooses not to take medication."
 - A PPMB Medical Report dated March 16 2011 and completed by the GP who indicated the appellant's primary medical condition is untreated ADHD. Under Additional Comments, the GP wrote, "will likely require assistance as long as he chooses not to take medication." The section for describing Restrictions was left blank.

3. A letter from a psychiatrist dated January 10, 2003 written when the appellant was a secondary school student and describing the appellant's academic and family difficulties due to ADHD.

4. An Employability Screen indicating a total score of 15. The appellant scored points for number of times on assistance anywhere in Canada in the last 3 years; being on assistance for more than 12 months in the last 3 years; having less than a grade 10 education; and having no/ very limited work experience.

5. A Client Employability Profile dated November 2, 2017 and indicating the following factors (from a list of 11 factors) that affect or limit the appellant's employment options:

- *Affects employment options:*
 - Functional literacy ability;
- *Severely limits employment options:*
 - unemployed for over 3 years;
 - severe lack of employment search and planning skills;
 - grade 0-9 education;
 - severe health condition;
 - persistent disability; and
 - ineffective interpersonal/ communication skills as documented in file history.

Additional information

On January 25, 2018, the Tribunal received the appellant's Notice of Appeal which the panel considers to be argument. At the hearing, the appellant expanded his arguments.

The Ministry did not submit any new evidence.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's reconsideration decision which found that the appellant was not eligible for the PPMB qualification under section 2 of the EAR was reasonably supported by the evidence, or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The Ministry based its reconsideration decision on the following 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.

Schedule E

Employability Screen

Number	Criteria	Category of Response	Score
1	What is the person's age?	(a) under 19 (b) 19 to 24 inclusive (c) 25 to 49 inclusive (d) 50 to 65 inclusive	0 1 0 0
2	Apart from the current application, how many times has the person been on Income or Social Assistance anywhere in Canada in the last 3 years?	(a) never (b) 1 to 3 times (c) more than 3 times	0 1 3
3	What is the total amount of time the person has spent on Income or Social Assistance in the last 3 years?	(a) less than 2 months (b) 2 to 12 months (c) more than 12 months	0 3 7

4	What is the highest level of education the person has completed?	(a) post-secondary program — degree or diploma (b) some post-secondary (c) high school/GED (d) grade 10 to grade 12 (e) less than grade 10 (f) trade certificate	1 0 0 1 3 0
5	What is the total amount of time the person has spent in paid employment over the last 3 years?	(a) more than 12 months (b) from 3 to 12 months (c) under 3 months (d) none or very limited work experience (e) volunteer work only	0 1 2 4 3
6	What is the person's English speaking ability or literacy level?	(a) good working knowledge of English (b) English as a second language (ESL) or in need of English skills training	0 3
TOTAL			
		Office use only: Score only most applicable response	

Analysis

To be eligible for PPMB, the requirement in subsection 2(2) of the EAR (length of time on assistance) must be met. The Ministry noted that the appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months and accepted that the requirement was met.

In addition to the requirement for length of time on assistance, the applicant must meet the criteria set out in subsection 2(3) or 2(4) of the EAR depending on the Employability Screen score. The Employability Screen questions and scoring instructions are set out in Schedule E of the EAR. Where the minister determines that the applicant's score on the Screen is at least 15, the requirements in subsection 2(3) apply. Where the applicant's Screen score is less than 15 the requirements in subsection 2(4) apply instead.

The Ministry assessed the PPMB application under subsection 2(4) of the EAR as the most recent Employability Screen indicates a score of 14. The ministry based the revised score of 14 on information that the appellant has been on income assistance in British Columbia continuously for the last 3 years. The appellant does not dispute that finding.

The appellant expressed frustration at the Ministry's reliance on the Employability Screen in adjudicating his PPMB application. The appellant argued that his situation is "more than just some score" and despite his score on the Screen, "none of those things have to do with my actual situation." The appellant argued that the "actual indicators" for his situation are contained in the Client Employability Profile where more than half of the listed factors are reported to severely limit his employment options. The appellant also highlighted the specialist's additional comment, "unable to meet cognitive demands" if his ADHD is left untreated. The appellant stated that PPMB makes his life easier as the extra income allows him to pick up his medication which is not covered by government health benefits.

The Employability Screen is a tool prescribed by the legislation that guides the Ministry's assessment of the PPMB application. Based on the appellant's revised score of 14, the panel finds that the Ministry's decision to assess the application under subsection 2(4) of the EAR was a reasonable application of legislation.

Subsection 2(4)

Based on the appellant's ADHD diagnosis, the Ministry was satisfied that the appellant meets the criteria under subsection 2(4) that requires confirmation from a medical practitioner of a medical condition other than an addiction. The Ministry was also satisfied that the appellant's application meets the eligibility criteria under subsection 2(4)(a)(i) because the PPMB Medical Report from November 2017 indicates the appellant's condition is lifelong and is likely to continue for at least 2 more years.

However, the Ministry found that the criteria in subsection 2(4)(b) were not met. The Ministry argued that the information provided with the appellant's application does not demonstrate that his ADHD is a barrier that precludes him from searching for, accepting or continuing in employment. The Ministry noted that the November 2017 PPMB Medical Report "does not describe the nature of any restrictions specific to your medical condition." The Ministry argued that without an explanation of restrictions, it is difficult to establish why a client is unable to work and what type of work he can or cannot do.

The Ministry noted that under its policy, a medical condition is considered to "preclude" the client from searching for, accepting or continuing in employment when as a result of the medical condition, the person is unable to participate in any type of employment for any length of time, except in a supported or sheltered-type work environment. The Ministry stated that while it has some discretion in determining whether a medical condition is a barrier to employment, it relies on the information from medical practitioners in making the determination.

The Ministry found that the information provided with the RFR also does not establish that the appellant is precluded from employment-related activities. The ministry argued that the Medical-Vocational Assessment does not speak to the appellant's current circumstances as the assessment is "representative of your medical condition and impacts to cognitive functioning over 9 years ago." The Ministry noted that the assessment indicates the appellant was able to perform specific types of employment at that time. The Ministry further noted that additional information from the appellant's medical practitioner was not provided at reconsideration.

The Ministry considered previous medical documents from the appellant's file and noted that those reports list no restrictions, or state that the appellant "will likely have difficulty with concentration when not taking medication." The Ministry noted that difficulty with concentration was not described in the most recent PPMB Medical Report and argued that "difficulty with concentration alone is not considered sufficient information to establish that you are precluded from searching for, accepting or continuing in employment."

The appellant expressed his frustration with the Ministry's denial of PPMB on the basis that he qualified for PPMB in the past and his condition has not improved. The appellant argued he has had the same restrictions all along and continues to have restrictions as he cannot afford his medication. He stated that he did not have any employment after the 2008 Medical-Vocational Assessment and he is "un-hireable right now and not in a good place." The appellant stated that it took him 1.5 years to find a new doctor and noted that his new doctor (the specialist) indicates in the Medical Report - Employability that the appellant's ADHD is severe. The appellant argued that the specialist's comments in the most recent PPMB Medical Report are evidence of restrictions because the specialist said that "without treatment he will continue to be unable to meet cognitive demands" and "no change since patient could not afford meds." The appellant argued that the Ministry's Client Employability Profile also shows that he has restrictions because more than half of the boxes for *Severely limits employment options* are checked.

Panel's decision

Subsection 2(4)(b) of the EAR requires the ministry to have the opinion that the client's medical condition is a barrier that precludes searching for, accepting or continuing in employment. As the determination is in the opinion of the minister, the panel is tasked with determining whether the Ministry reasonably applied the legislation to the information provided. The panel finds that the Ministry reasonably determined there was insufficient evidence to show that the appellant is precluded from searching for, accepting or continuing in employment. The Ministry noted that the *Restrictions* section in the PPMB Medical Report of November 15, 2017 was left blank, and no current medical information about restrictions specific to employment was provided for the reconsideration. As well, no additional medical documentation was provided on appeal.

Both the appellant and the Ministry supplied copies of previous medical documentation but the ministry was not satisfied that these documents are evidence of any current restrictions pursuant to subsection 2(4)(b) of the EAR. The Ministry explained at the hearing that PPMB is assessed every 2 years and the ministry considers the most recent PPMB Medical Report and any supporting documentation as the basis for information about current restrictions. The panel finds that it was reasonable for the Ministry to rely on recent information to form an opinion on whether the appellant is precluded from employment.

While the appellant argued that the specialist's comments in the November 2017 Medical Report are evidence of restrictions, the November Report does not detail how the symptoms/ features of the appellant's ADHD, including being "unable to meet cognitive demands", prevent him from searching for, accepting or continuing in employment. Regarding the Medical Report - Employability from February 2017, the specialist indicated "N/A" when asked to describe the nature of any restrictions specific to the appellant's ADHD. Furthermore, while the Client Employability Profile of November 2, 2017 specifies factors which "severely limit employment options", the chart contains no information from a medical practitioner or other professional to explain how the checked factors preclude the appellant from searching for, accepting or continuing in employment. Given insufficient detail in the most recent medical documentation, the panel finds that the Ministry reasonably determined that the appellant is not precluded from searching for, accepting or continuing in employment.

Conclusion

The panel finds that the Ministry's reconsideration decision that found the appellant ineligible for PPMB was reasonably supported by the evidence. The panel confirms the decision and the appellant is not successful in his appeal.