

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

The decision under appeal is the Ministry of Social Development and Social Innovation's (ministry) reconsideration decision dated January 15, 2018 which held that the appellant is not eligible for Persons with Persistent Multiple Barriers (PPMB) qualification pursuant to section 2 of the Employment and Assistance Regulation (EAR). The ministry found that the appellant has been in receipt of income assistance for at least 12 of the past 15 months as required by section 2 (2) (a), he does not qualify for PPMB under section 2 (3) of the EAR because his employability screen score was less than 15, and that in the opinion of a medical practitioner the appellant has a medical condition other than an addiction that is likely to continue for at least two years as required by section 2 (4) (a). However, the ministry was not satisfied that:

- the evidence establishes that the appellant's medical condition other than an addiction presents a barrier that precludes him from searching or accepting or continuing in employment, as required by section 2 (4) (b) of the EAR.

### **PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation – EAR- Section 2

## **PART E – SUMMARY OF FACTS**

The evidence before the ministry at the time of reconsideration consists of:

1. Medical report (MR) – PPMB dated September 8, 2017, which lists the primary medical condition (PMC) as whiplash (onset unspecified) and in the secondary medical condition (SMC) section the GP wrote “in rehab facility for addiction”, it is indicated that the expected duration of the medical condition is 2 years or more and that the medical condition(s) is not episodic in nature. In the restrictions section, the GP wrote “unable to work at present time”.
2. Employability screen with a score of 9.
3. Request for reconsideration (RFR), signed and dated January 4, 2018, in which the appellant described that he had a second surgery on May 15, 2017 and now has to go for a third surgery in 2018 to remove the rod in the tibia. He indicated that there is a need for time to heal from the surgery and that he has not properly healed from the first surgery.
4. Note from the GP dated January 4, 2018 which stated that the appellant “has had fractured right tibia, required surgical treatment. He still has hardware in his right leg [and] would need another surgery to remove it. He is deemed to be unfit for employment at present time [and] needs to have [PPMB].

### **Evidence On Appeal**

A Notice of Appeal (NOA), signed and dated January 23, 2018, in which the appellant stated “the doctor did not fill out the correct information! I broke my tibia, fibula, shoulder. I had two surgeries and will be going for a third one on my leg. I have a metal rod in my leg”.

The appellant also submitted the following information prior to the hearing:

- A written statement dated February 8, 2018, in which the appellant reiterated his statements from the RFR and NOA.
- X-ray report, dated January 2, 2018, regarding the right tibia and fibula.
- 2-page outpatient clinic note dated January 18, 2018.
- Results review report dated January 18, 2018.
- 2-page operative report dated May 15, 2017.
- 2-page operative report dated March 10, 2016.
- MR-PPMB dated February 8, 2018, which lists the PMC as fractured right tibia (onset unspecified) and in the SMC section the GP wrote, in part, “with need for surgery”, it is indicated that the expected duration of the medical condition is 2 years or more and that the medical condition(s) is not episodic in nature. In the treatment and outcome section the GP wrote “waiting for surgery”. In the restrictions section, the GP wrote “unable to work due to pain in right leg and need for repeat surgery”.

### **Evidence at the Hearing**

At the hearing the appellant stated, in part, the following:

- He has not healed from the second surgery he had.
- He cannot walk properly due to the metal rod and his third surgery is coming up this year.
- His first surgery was in 2016, the second was in 2017 and now the third will be in 2018.
- He experiences pain within 10 minutes of walking and he has troubling keeping up with his young daughter.
- He cannot concentrate due to the pain killers he takes.
- His whiplash is his third medical issue not the primary medical condition.
- The main problem is the rod in his leg which sticks out and cause depression for which he turned to substance. He tried rehab but just wants to get back to his life.
- His GP wrote down the wrong information but he has now submitted the correct information.
- The pain caused by walking is his restriction to employment.
- His back was compromised with the use of crutches.

In response to questions from the panel, the appellant stated:

- The 100lbs squat he performed at the gym was a one-time event and he is used to lifting more than 100lbs.
- Since his injury he has not searched for work
- He does not have the skills for a desk job and his leg pain (muscle and tissue pain) prevents him from sitting for longer than 10 minutes with out moving.

#### **Admissibility of Additional Evidence**

On review of the evidence, the panel finds that the 'written statement dated January 2, 2018', 'X-ray', both operative reports, and 'results review' was not "new evidence" but rather, it specifically related to and referred to the documents that were before the ministry at reconsideration. The panel therefore finds that the above mentioned evidence is admissible as it is in support of the information and records that were before the minister when the decision being appealed was made, pursuant to section 22(4)(b) of the *Employment and Assistance Act*. However, the panel finds that the information provided in the above mentioned documents does not speak to how the appellant's medical conditions restrict his ability to be employed and therefore the panel places little weight on these documents.

On review of the evidence, the panel finds that the MR-PPMB dated February 8, 2018, and the appellant's reference to depression and back pain was "new evidence" as it is a new application and was not before the ministry at reconsideration. The panel therefore finds that the MR-PPMB dated February 8, 2018, and any reference to depression and back pain is not admissible as it is not in support of the information and records that were before the minister when the decision being appealed was made, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry decision to deny the appellant PPMB qualification on the grounds that the information provided did not establish that the appellant's medical condition was a barrier that precluded him from seeking, accepting, or continuing employment as required by section 2 (4) (b) of the EAR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 2 of the EAR sets out the eligibility requirements which are at issue on this appeal as follows:

### 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.

#### *The Appellant's Position*

The appellant argued that the ministry was misinformed of his medical conditions and that his leg pain that is caused by a fracture of the tibia, is his primary medical condition which prevents him from working. He argued that he is not qualified for other types of employment (other than construction) and that the leg pain prevents him from sitting longer than 10 minutes and therefore he would not qualify for sedentary employment.

#### *The Ministry's Position*

The ministry's position is that the information provided does not establish that the appellant's medical conditions preclude him from searching for, accepting or continuing in employment pursuant to section 2 (4)(b) of the EAR. Specifically, the appellant's GP does not describe the nature of restrictions that are specific to the appellant's medical condition. Therefore it is difficult to establish that he is restricted from searching for, accepting or continuing in all types of employment, including sedentary employment.

The legislation requires that in order to qualify for the designation of a Person with Persistent Multiple Barriers an individual must meet specific requirements as outlined. The ministry concedes that the appellant meets the requirements of section 2 (2) (a) and (4) (a), but concluded that the appellant does not meet the requirements of section 2 (4) (b) of the EAR. The medical report established that the appellant has a medical condition but in it the GP did not provide information regarding the appellant's restrictions. If the appellant's medical conditions cause restrictions which precluded him from participating in all types of employment, it is then reasonable to expect that information regarding restrictions is provided. Although the appellant provided additional information at appeal, the panel finds that the additional information does not speak to restrictions to the ability to be employed or that the appellant's medical conditions precluded him from searching for, accepting or continuing in employment. The January 18, 2018 outpatient clinical note made reference to pain however it was only in the context of lifting heavy weights in the gym and not about pain that may or may not be experienced in a work setting.

Given the above, the panel finds that the ministry reasonably concluded that the evidence does not establish that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment as required by section 2 (4) (b) of the EAR.

#### **Conclusion**

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a Person with Persistent Multiple Barriers qualification because the requirements of Section 2 (4) (b) of the EAR were not met, was reasonably supported by the evidence and a reasonable application of the applicable legislation. The panel confirms the ministry's decision. The appellant is not successful in the appeal.