

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated March 9, 2018 made by the Ministry of Social Development and Poverty Reduction (the “ministry”), which determined that the appellant no longer meets the eligibility criteria for designation as a Person with Persistent Multiple Barriers to Employment (PPMB) set out in Section 2 and Schedule E of the *Employment and Assistance Regulation* (EAR).

PART D – RELEVANT LEGISLATION

EAR - Section 2 and Schedule E

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration included:

- PPMB medical report dated October 20, 2017 completed by the appellant's family physician ("the GP") with employability screen indicating a total score of 11. The GP noted that the appellant has the following medical conditions: major depression (onset 1998) and chronic pain/chemical dependence (onset 1990). He listed the medications prescribed to the appellant and commented that they have produced a "stable" outcome. The GP noted that he expects the medical conditions to continue for 2 or more years and comments "stable".
- PPMB decision summary dated December 29, 2017;
- PPMB medical report dated February 20, 2018 completed by the GP with primary medical condition listed as "*chronic neck pain C4 fracture (onset 2015)*" and secondary conditions listed as "*mood disorder/chronic drug dependence (onset 1998)*". The GP noted that the following treatments have been implemented: "*No surgeries required. Methadone – helps addiction and chronic pain. Venlafaxine and Clonazepam – reduces mood disorder.*" The GP noted that he expects the medical conditions to continue for 2 or more years and commented: "*MVA C4 fracture stable, chronic pain issues since then. Long term mood disorder and drug dependency*". He described restrictions as follows: "*Restricted motion of neck. Pain on activity of back, upper arm*".
- appellant's Request for Reconsideration submitted March 8, 2018 with the following enclosures:
 - appellant's handwritten self-report ("SR") summarized as follows:
 - he has recently been diagnosed with Hepatitis C, which he believes accounts for his general lethargy and low energy;
 - his Testosterone levels are very low;
 - these new conditions combined with his longstanding anxiety and chronic depression have been treated by the GP to prevent another suicide attempt;
 - he has attempted suicide twice in the past;
 - he has made slow progress in eliminating illicit drugs from his life;
 - he had a severe and physically violent reaction to withdrawal from an antidepressant medication;
 - several years ago he broke his clavicle;
 - 2 years ago he broke his neck in a motor vehicle accident ("MVA");
 - he now suffers chronic and relentless upper back, shoulder and neck pain and as a result has been unable to further reduce his methadone dose because he requires the drug for pain management;
 - recently he obtained his high school Dogwood diploma.
 - court documents pertaining to a 5-year weapons ban arising from appellant's attempted suicide in 2002, which expired in 2007;
 - medical receipt for a cervical neck support collar;
 - January 23, 2018 letter from health region confirming appellant's Hepatitis C antibody result and recommending confirmation by additional blood testing;
 - employment planning documents dated January 26 and February 16, 2004;
 - previous PPMB medical reports for the period 2009 to 2015.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant no longer meets the eligibility criteria for designation as a PPMB set out in Section 2 and Schedule E of the *Employment and Assistance Regulation* (EAR) was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the appellant's circumstances.

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.

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	

The appellant argues that his health has deteriorated since his last PPMB medical report was submitted in 2015 and that his GP failed to include all of his health problems and related restrictions in the 2017 and 2018 PPMB medical reports. He does not believe that new reports should negate older reports which were considered sufficient to meet PPMB eligibility criteria. He also argues his PPMB eligibility has been prejudiced by the fact that he recently obtained a high school diploma, which dropped his employability screen total score from 15 to 11.

The ministry's position is set out in the reconsideration decision, summarized as follows:

- EAR Section 2(1) states that in order to qualify for PPMB designation a person must meet the following criteria:
 1. be a recipient of income assistance; **AND**
 2. have an employability screen of 15 and a medical condition that in the opinion of a medical practitioner has lasted for at least 1 year and will continue for at least 2 more years and in the minister's opinion is a barrier that seriously impedes the person's ability to search for, accept or continue in employment; **OR**
 3. has a medical condition that in the opinion of a medical practitioner has lasted for at least 1 year and will continue for at least 2 more years and in the minister's opinion is a barrier that precludes the person from searching for, accepting or continuing in employment.
- the appellant has met criterion #1 [above] but has not met criterion #2 because his 2017 employability screen total score is less than 15;
- the appellant has not met criterion #3 because the GP did not provide sufficient information to explain that the restrictions experienced by the appellant amount to a barrier that precludes the appellant from seeking or continuing in any form of employment.

Panel Decision

1. Recipient of Income Assistance

The evidence indicates that the appellant has been a recipient of income assistance since at least 2009. The panel finds that the ministry reasonably determined that the appellant meets the initial eligibility criterion set out in Subsection 2 (2) of the EAR.

2. Employability Screen Total Score of 15

There is no dispute that the appellant's most recent employability screen total score is 11, which is 4 points lower than the minimum score of 15. The panel finds that the ministry reasonably determined that the appellant does not meet the eligibility criteria set out in Subsection 2 (3) and Schedule E of the EAR.

3. Medical Conditions are a Barrier that Precludes Employment

In the October 2017 PPMB medical report the GP described the appellant's treatment solely in terms of medication, with a "stable" outcome. He noted that the prognosis is "stable". He did not explain the degree to which the treatment has improved the appellant's medical conditions. Although the word "stable" can be interpreted as "unchanged from earlier reports", the GP failed to complete Section 3 of the report entitled "Restrictions". No information was provided as to degree of restriction or the expected impact of any restrictions on the appellant's ability to engage in any form of employment.

In the February 2018 PPMB medical report the GP provided more detail regarding treatment approaches. He noted that surgery is not required, that methadone helps addiction and chronic pain and the remaining medications stabilize the appellant's mood disorder. He also noted that the appellant's C4 fracture is stable but has caused chronic pain since the appellant's 2015 MVA that is likely to continue for 2 or more years. He repeated his comments concerning the appellant's long-term mood disorder and drug dependency. In response to Section 3 "Restrictions" the GP noted restricted motion of neck and pain in back and upper arm upon activity. He did not describe the degree of restricted motion and pain experienced by the appellant and did not comment on the impact of the restrictions on the appellant's ability to seek or carry out any type of employment.

The panel also notes that in the 2017 and 2018 medical reports the GP did not repeat the comments that he had included in the 2009, 2011, 2013 and 2015 reports, namely: "*poor concentration, poor focus, lack of energy and motivation, intermittent leg pain*" and did not explain the reason for the omission, even when asked to complete the revised. 2018 report.

In his SR the appellant provided lengthy and compelling evidence of the pain he is experiencing and the impact of his new medical conditions – Hepatitis C and low Testosterone – upon his energy levels and mood. The SR and the additional documents submitted by the appellant were taken into account by the ministry at reconsideration.

However, the legislation makes it clear that the determination of whether the specified medical conditions constitute a barrier that precludes a person from searching for or continuing in employment is at the discretion of the minister, taking into account all of the evidence. In coming to its decision the ministry places significant weight upon the evidence from the medical practitioner as contained in the PPMB medical report. As noted earlier in this section the GP failed to describe the nature of the appellant's restrictions in the 2017 report, did not explain how the appellant's pain and limited motion impact the appellant's ability to seek or continue in employment in the 2018 report and made no reference to the restrictions that were deemed to be a barrier to employment during the period 2009 – 2015.

The panel therefore finds that the ministry decision which determined that the appellant is no longer eligible for designation as a PPMB is a reasonable application of the legislation in the circumstances of the appellant, and confirms the decision. The appellant is not successful in his appeal.