

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“Ministry”) reconsideration decision dated March 14, 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 March 6, 2018 with the following attached document:

A questionnaire (“reconsideration questionnaire”), completed and signed by a physician (“Dr. P.”) on March 5, 2017 [sic], with the following information:

- The appellant’s *disabling conditions and any resulting functional impairments* are “difficulty walking - due to spinal cord lesion (see MRI). Easy fatigue – cardiac issues, seeing specialist (see consult).” [Panel note: no documents were attached].
- When asked if the appellant is *precluded from searching for, accepting, or continuing in any type of employment as a result of his disabilities*, Dr. P. wrote, “yes” [Comment: “unable to mobilize easily, easily fatigued”].

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

- A letter dated March 14, 2018 in which the Ministry advised the appellant that he does not qualify for the PPMB category [on reconsideration].
- A PPMB Medical Report dated February 1, 2018, completed by a physician (“Dr. H.”) who has been the appellant’s medical practitioner for 6 months or less, containing the following information:
 - The appellant’s primary medical condition is “Spinal stenosis/ leg weakness”, date of onset 2013.
 - *Treatment and Outcome*: Dr. H. wrote, “about to see surgeon in April 2018 - for assessment for surgery.”
 - The expected duration of the medical condition is *2 years or more* and the condition is not episodic in nature.
 - In section 3 of the form, *Restrictions*, Dr. H. described *the nature of any restrictions specific to the above medical condition* as “weakness of leg and chronic leg pain, limping, and need cane to walk.”
 - No additional documents in support of *the severity and restrictions of the medical condition* were submitted [as indicated in Section 4 of the form].
- An Employability Screen indicating a total score of 11. The appellant scored points for being on social assistance for more than 12 months in the last 3 years and having no or very limited work experience. No points were awarded for age, receipt of social assistance anywhere in Canada, education (the appellant has a trade certificate) and good working knowledge of English.
- A letter dated February 6, 2018 in which the ministry advised the appellant that his PPMB application was not approved. An attached Decision Summary indicates it was a new application and sets out the ministry’s argument.
- 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.
 - On February 1, 2018, the appellant submitted an application for PPMB and on February 6, 2018 the Ministry denied the request. On February 22, 2018 the appellant requested reconsideration and on March 6, 2018 he submitted his signed RFR.

Additional information

On March 21, 2018, the Tribunal received the appellant’s Notice of Appeal which the panel considers to be argument.

The appellant attended the hearing with his advocate who provided 4 additional documents [summarized below]. The advocate explained that the additional medical reports had been omitted from the PPMB application as an oversight.

1. A submission from the advocate dated April 10, 2018 which the panel considers to be argument.
2. A letter from the appellant's pastor dated April 7, 2018, stating that the appellant has mobility problems and walks with a cane.
3. A Radiological Consultation Report dated January 10, 2018, prepared for a cardiologist and copied to Dr. P. The report describes various clinical impressions from an MRI of the appellant's spine. It indicates *lower lumbar spine degenerative disc disease resulting in mild central canal stenosis at L5-S1 level and variable degree of neural foraminal narrowing at L4-5 and L5.*
4. A letter to Dr. P. from a cardiologist dated November 14, 2017, describing the appellant's symptoms of dizziness, fatigue, shortness of breath, and "PVC's" and indicating the appellant "can't do much in the way of physical activity" and is unable to walk properly [without the use of a cane] due to these symptoms as well as his "worsening right leg problem." The cardiologist reported the findings from various medical tests including x-rays of the appellant's spine. The cardiologist recommended further investigations and specialist referrals and expressed concern over the appellant's "right leg lesion" noting that "he can't walk very well at all...and he can't even flex his ankle because he has a bit of a foot drop."

Admissibility

The ministry did not object to the additional documents that were submitted on appeal. The panel finds that the letters from the appellant's pastor and cardiologist, and the Radiological Consultation Report provide further detail on the appellant's medical conditions and/ or his mobility restrictions. These conditions and restrictions were described in the PPMB Medical Report and RFR submission which were before the minister at reconsideration. The information is therefore admissible under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

Both parties presented their arguments at the hearing and 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	1 0 0 1 3 0

		(f) trade certificate	
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 their score on the Employability Screen. 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 appellant's Employability Screen indicates a score of 11. The appellant did not dispute the calculation of his Screen score.

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 score of 11, the panel finds that the Ministry's decision to assess the application under subsection 2(4) of the EAR was a reasonable application of the legislation.

Subsection 2(4)

Based on the appellant's diagnosis of Spinal stenosis and leg weakness, 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) as Dr. H. indicated that the appellant's conditions have existed for 4 years and are likely to continue for 2 years or more.

However, the Ministry found that the criteria in subsection 2(4)(b) were not met. The Ministry accepted that Dr. H.'s information established "restrictions to employment based on ambulation" but argued that the information on restrictions does not establish that the appellant is precluded from searching for, accepting, or continuing in "all types of employment such as stationary or sedentary work". The Ministry notes its Decision Summary which stated that the PPMB Medical Report "does not provide sufficient

details on how diagnosed conditions cause the inability to work.” The Ministry determined that the appellant’s medical conditions and restrictions were not shown to “prevent the applicant from participating in all types of employment: “part-time, non-physical” or “employment-related activities: job programs, retraining.”

Regarding the reconsideration questionnaire completed by Dr. P., the Ministry similarly accepted that the information therein establishes restrictions to employment requiring ambulation and physical exertion but does “not establish that you are precluded from searching for, accepting, or continuing in stationary or sedentary employment.” The Ministry acknowledged that Dr. P. answered “yes”, the appellant is precluded from searching for, accepting, or continuing in “any type of employment” but argued that the restrictions described were of a physical nature (difficulties with walking, mobilization, and fatigue) and “not indicative of restrictions precluding you from all types of employment.”

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.

The appellant argued that the Ministry’s decision was unreasonable considering the impact of his conditions on his capacity to work; in particular, he is “precluded from continuing in employment due to his serious physical impairments.” The appellant reported that he cannot “do stairs or run”; is short of breath and has “no energy to even do housework”. The appellant indicated that he is being assessed for surgery and hopes to get back on his feet again.

The advocate argued that Dr. P.’s “yes” response on the reconsideration questionnaire should be accepted as evidence of restrictions for all types of employment given a lack of space on the PPMB medical form [for physician’s comments] and lack of information about the legislative requirements and degree of detail required. The advocate argued that with the modest benefits conferred by the PPMB category [“about \$50 more per month in assistance”], it is unreasonable for the Ministry to impose an onerous standard on the evidence. The Ministry noted that questions 3 and 4 on the form ask the physician to attach extra pages if required as well as copies of documentation in support of the applicant’s restrictions. The Ministry noted that no other documentation was provided at the time of the application.

Panel’s decision

Subsection 2(4)(b) of the EAR requires the minister to have the opinion that the applicant’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 before it. 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 on the ministry’s interpretation of “employment” in subsection 2(4)(b).

The evidence of Dr. H. and Dr. P describes physical restrictions and limitations stemming from the appellant’s leg weakness and pain, limping, use of a cane, and fatigue due to possible cardiac issues and the inability to mobilize easily. In forming the opinion that the appellant is not precluded from all types of employment, the panel finds that the Ministry was reasonable in treating the information from Dr. H. and Dr. P. as evidence of restrictions for certain types of work; i.e., work that involves mobility or physical labour. As noted by the Ministry, neither Dr. H. nor Dr. P. commented on the appellant’s capacity to do any type of sedentary work or employment-related program.

While additional medical reports [which the panel admitted] were submitted at the hearing, they do not address the appellant's capacity to do sedentary work. The Radiological Consultation Report does not comment on whether the appellant is precluded from employment. The letter from the cardiologist is consistent with the evidence of Dr. H. and Dr. P. in that it describes the appellant's physical and mobility limitations and does not comment on the appellant's capacity for sedentary work or link his symptom of fatigue to any sedentary or stationary activities.

While the legislation does not specifically state that the applicant must be precluded from "all types of employment", the panel finds that the Ministry's policy [which breaks down employment into different types of work such as physical work, sedentary work, supported work, etc.] does not run contrary to the legislation. Logically, various types of work may be subsumed under "employment" in subsection 2(4)(b) and the panel finds that the Ministry has therefore exercised its discretion in a reasonable manner by requiring sufficiently detailed evidence of restrictions for all types of employment.

Given insufficient information from medical practitioners on restrictions for sedentary or stationary work, the panel finds that the Ministry reasonably determined the appellant is not precluded from searching for, accepting or continuing in employment under subsection 2(4)(b) of the EAR.

Conclusion

The panel finds that the Ministry's reconsideration decision that found the appellant ineligible for PPMB was a reasonable application of the legislation. The panel confirms the decision and the appellant is not successful in his appeal.