

### **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 26 June that held that the appellant was not eligible for qualification as a person with persistent multiple barriers to employment (PPMB). The ministry determined that the appellant’s employability screen score was 12 and therefore assessed his PPMB eligibility under sections 2(2) and 2(4) of the Employment and Assistance Regulation (EAR). The ministry found that the appellant met the requirements of sections 2(2) and 2(4)(a). However, the ministry was not satisfied that the information provided established that the appellant met the criterion set out in section 2(4)(b) of the EAR, that to qualify for PPMB a person must have a medical condition confirmed by a medical practitioner that in the opinion of the minister is a barrier that precludes the person from searching for, accepting or continuing in employment.

### **PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation (EAR), section 2.

## PART E – SUMMARY OF FACTS

The evidence before the ministry at reconsideration included the following:

1. The appellant's employability screen score is 12.
2. Medical Report – PPMB dated 28 March 2018, completed by a general practitioner (GP) who provides the following information:
  - Primary medical condition: carpal tunnel syndrome.
  - Secondary medical condition: Raynaud's disease of the extremities.
  - Treatment/outcome: Nil (no history of treatment, walk-in patient only).
  - How long has this condition existed? 6 years.
  - Prognosis: expected duration of medical condition – 2 years or more. Comment: "Repetitive use of hands in cold environments will trigger sx [symptoms]."
  - The medical condition is episodic, occurring daily and likely to recur daily.
  - Restrictions: the GP writes: "Pt. unable to work w/hands in cold environment."
3. From the ministry's files and also submitted by the appellant at reconsideration – previous medical reports completed by the same GP:
  - Medical Report – PPMB dated 04 October 2015. Primary medical condition – attention deficit disorder; secondary medical condition – depression disorder. Treatment: discontinuation of drugs. Outcome: stable. Duration – 2 years or more. Restrictions: none given.
  - Medical Report – PPMB dated in 06 October 2015. Primary medical condition – attention deficit disorder; secondary medical condition – depression and antisocial behaviour. Treatment – nil at present, "cannot stay on task." Duration – 2 years or more. Restrictions: "self esteem support needs to be in place. Raynaud's disease – means he cannot grip during cold spells."
  - Medical Report – PPMB dated 21 June 2013. Primary medical condition – attention deficit disorder; secondary medical condition – depression [unreadable]. Duration – 2 years or more. Restrictions: "unable to present as employable. [Unreadable]. He may have dyslexia. [Unreadable]."
  - Medical Report – Employability dated 28 March 2013. Primary medical condition – carpal tunnel syndrome; secondary medical condition – Raynaud's disease of the extremities. How frequently? Restriction in use of hands in cold environment daily.
4. Submitted by the appellant at reconsideration:
  - Operative Report completed by a surgeon and printed 10 August 2012 describing a hemorrhoidectomy on the appellant. The postoperative diagnosis is, "Mucosal prolapse with partial full-thickness prolapse."
  - A Certificate of Absence dated 17 April 2018 from the same surgeon stating the appellant requires time off work for medical reasons, with a note stating, "[The appellant] will be undergoing treatment with [the surgeon] for approximately 2 months. This will necessitate time off work for him to deal with his medical/surgical issues."

- An undated document titled “Medical Conditions and Physical Barriers” prepared by the appellant. The document states that in 2010 he was formally diagnosed with Raynaud's syndrome (lack of circulation, freezing and stiffness in hands and feet), that in 2012 he had hemorrhoidectomy surgery (of a complicated and extreme nature), and that he also has carpal tunnel syndrome. The document then lists several activities under “I MUST” and “I MUST NOT,” and a list of what he might experience under “I MUST EXPECT.”

5. The appellant’s Request for Reconsideration is dated 05 June 2018. Under Reasons, the appellant refers to the medical reports listed in paragraphs 2 to 4 above and goes to argument regarding how his medical conditions satisfy the PPMB criteria. (See Part F, Reasons for Panel Decision, below).

### **Notice of Appeal**

The appellant signed his Notice of Appeal on 07 July 2018. Under Reasons, he writes:

“I believe the ministry is not understanding the severity of my barriers. My physicians have identified on several documents that my barriers are severe in nature and affects daily living and the ability to work. I am scheduled for additional testing to determine future surgery.”

### **The Hearing**

At the hearing, the appellant reviewed his employment history, both in the Canadian Armed Forces and later in civilian life, describing how the work required high levels of skill, strenuous activity, and at times exposure to cold and challenging environments. He described how his life took a downturn about 10 years ago when he began to experience rectal leakage. He suffered much embarrassment and stress attempting to cope with this, while working at the same time. For more than 2 years, his condition was undiagnosed and went untreated by any doctors he saw, or was improperly and ineffectively treated by a chiropractor, until he was fortunate enough to see a surgeon who diagnosed a rectal prolapse, and arranged for and performed immediate surgery. While the hemorrhoidectomy was a medium-term solution, he began to experience the leakage again last year and went to the surgeon again. The surgeon performed 3 in-office, very painful banding procedures three weeks apart and this has provided relief for the time being. The appellant stated that he was aware that the staples implanted in the first surgery will eventually give way and he will have to have a colostomy at some point in the future.

The appellant explained that the trauma he experienced until he was able to get proper treatment for the rectal prolapse might have led to PTSD, although he has not been so diagnosed. In any event, he suffers from depression and anxiety resulting from this experience. He attributes having Raynaud's disease, a condition usually associated with women, to the stress during that period. He explained that Raynaud's disease is a condition where, when under stress, such as in a cold environment, the blood retreats from the extremities into the body. As he also suffers from carpal tunnel syndrome, the Raynaud's disease exacerbates that wrist condition, to the point where his has become virtually incapacitated in a cold environment. However, even in warmer or room temperatures, because of the severity of his carpal tunnel syndrome, he cannot use his hands for more than a couple of hours without them ceasing to be of any use. Being a man who made his living doing skilled work with his hands, this is a source of great frustration for him, increasing his feelings of depression.

The appellant described how, since moving to the community where he currently resides, he

has been able to find the support he needs to start having a “clear head” to begin to get his life back together again. In particular, he is grateful for being assigned the assistance of a support person from a provincial agency, funded by the ministry. That person was to be his advocate at the hearing, but they decided that would constitute a conflict of interest, due to the funding by the ministry. With that person’s support and guidance, he has been able to find a physician who has referred him for nerve tests. The results of these tests will determine whether he is a candidate for surgery for carpal tunnel syndrome. He has no idea what the wait time would be for such surgery, or what the recovery time might be. He hopes that if he is has the surgery, he will be able to return to work, even on a part-time basis.

The balance of the appellant's presentation went to argument regarding this denial of qualification for PPMB (see Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration.

### **Admissibility of additional information**

With the exception noted below, the panel finds that the information provided by the appellant in his Notice of Appeal and in his testimony at the hearing is in support of the information and records before the ministry at reconsideration, as it tends to corroborate the information the appellant provided the ministry in his Request for Reconsideration. The panel therefore admits this information as evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

The panel does not admit as evidence the information provided by the appellant in his Notice of Appeal and in his testimony at the hearing regarding future testing and possible surgery, because this information was not before the ministry at reconsideration.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in determining that the appellant did not qualify for PPMB because he did not meet the criterion set out in section 2(4)(b) of the EAR. More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant:

- the information provided did not establish that the appellant met the criterion set out in section 2(4)(b) of the EAR, that in the opinion of the minister the person has a medical condition confirmed by a medical practitioner that is a barrier that precludes the person from searching for, accepting or continuing in employment.

The relevant legislation is from the 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.

The ministry determined that the appellant's employability screen score was 12 and therefore, in accordance with the "either/or" provision of section 2(1), assessed his PPMB eligibility under sections 2(2) and 2(4). The ministry found that the appellant met the requirements of sections

2(2) and 2(4)(a), but not section 2(4)(b).

## Analysis

The position of the appellant, as set out in his Request for Reconsideration and in more detail in his testimony at the hearing, is that:

- He cannot understand why, after 6 or 7 years as PPMB, despite several attempts, he has been denied renewal this time when the basic information provided by the GP has not changed much while his conditions are getting worse.
- Even so, he feels that the GP has not met his professional responsibilities, despite his objections, in filling out the forms, not describing his restrictions fully or accurately and it is therefore unfair for the ministry to rely solely on these forms in making its decision.
- Noting that the GP has indicated that he is unable to work with his hands in a cold environment, the fact is that he also has extreme difficulty in all environments with his hands and feet on a daily basis, due to the Raynaud's syndrome and the resulting lack of circulation in the carpal tunnel being accentuated. The result is a painful, severe condition that he experiences on a daily basis – he would be a very undependable person for employment. This is borne out by the GP indicating that his condition is episodic – which he considers equivalent to severe – on a daily basis.
- While the surgeon has completed the banding procedures to address, for the time being, the rectal prolapse, it will still be necessary for him to be extremely cautious on how much time he is on his feet and how much he exerts his body on daily basis. Such restrictions are to be expected for anyone with this condition. Otherwise he will be forced to have a colostomy sooner rather than later.
- He has suffered from depression, anxiety, ADD, Raynaud's disease, carpal tunnel syndrome and full rectal prolapse for 7 years. The nature of all these conditions is that, even with treatment, they only get worse with time. He needs PPMB and the resulting relief from the requirement to look for work, because he requires the time and a “clear head” to apply for PWD designation, as well to search for and obtain the treatments that are essential for turning his life around.

In its reconsideration decision, the ministry stated that, while it found the explanations provided in the appellant's Request for Reconsideration to be helpful in gaining a better understanding of his medical conditions, the ministry found that the level of restriction indicated by him has not been confirmed by his physician. As this discrepancy makes it difficult to determine his overall level of restriction caused by his medical conditions, the ministry relied more heavily on the medical reports completed by the GP when assessing his eligibility for PPMB.

The ministry noted that the medical reports completed in 2013 and 2015 indicates significant restrictions caused by his ADD and depression disorder. In the medical report completed in 2017, the GP described these medical conditions as stable, noting that he is no longer on medication for treatment and did not indicate that he has any restrictions relating to these medical conditions. As a result of the improvements indicated by his physician, the ministry was not satisfied that ADD and depression disorder preclude him from searching for, accepting or maintaining employment at this time, as required under the legislation.

The ministry acknowledged the symptoms the appellant experiences as a result of the complications from the haemorrhoidectomy surgery would make employment more difficult. However in the Certificate of Absence provided with the Request for Reconsideration, the surgeon indicated that he was undergoing treatment in April 2018 that was expected to last

approximately two months only. As no information was provided by the surgeon to indicate what the expected recovery time might be, the ministry was unable to establish that this medical condition is expected to last for two years or more, as stipulated in the legislation.

The ministry recognized that the appellant faces certain challenges relating to employment – specifically work that requires the use of his hands in a cold environment. However, no information has been provided to suggest that he would be unable to do other types of work that are less physical and indoors.

Based on the information provided, the ministry found that there was insufficient evidence to support that the appellant is currently unable to do any type of work for any length of time or participate in any employment related activities as a result of his medical conditions. As a result, the ministry was not satisfied that because of his medical conditions he is precluded from searching for, accepting or continuing in any type of employment for any length of time.

### Panel decision

As noted above, in its reconsideration decision, the ministry stated that it found the explanations provided in the appellant's Request for Reconsideration to be helpful in gaining a better understanding of his medical conditions, but the level of restriction indicated by him has not been confirmed by his physician. Similarly, the panel considers the appellant's testimony at the hearing describes a higher degree of restriction resulting from his medical conditions than that reported by his physicians, to the extent that if a medical practitioner had confirmed this degree of restriction, the "precludes from employment" criterion in section 2(4)(b) might have been met.

However, the legislation is clear that the ministry, in making a determination on whether the medical condition is a barrier precluding employment, has very little discretion but to rely primarily on the opinion of a medical practitioner, in this case the GP and/or the surgeon, in identifying the "medical condition," with this term encompassing both the diagnoses provided by the medical practitioner(s) and the restrictions described. Accordingly, despite the appellant's objections that the GP did not complete the medical reports fully and accurately, the panel must base its determination of the reasonableness of the ministry's decision on the ministry's review in the reconsideration decision of the information provided by the GP and the surgeon.

The ministry noted that in the 2013 and 2015 medical reports the GP identified ADD and depression disorder as the primary and secondary medical conditions. The ministry further noted that in the 2017 medical report, the same conditions were identified, but that the conditions were stable, with drug therapy discontinued and no restrictions indicated. The panel notes that in the most recent report, dated 28 March 2018, the GP had replaced these primary and secondary medical conditions with those relating to the appellant's carpal tunnel syndrome and Raynaud's disease. The appellant at the hearing argued that "stable" meant that "continuing depression" was still present and that he was working on getting a "clear head." However, in the absence of any restrictions identified in the 2017 medical report, and considering that one set of diagnoses had been replaced by another in the March 2018 report, the panel finds that the ministry was reasonable in concluding that ADD and depression disorder are no longer factors in precluding the appellant's employability.

The ministry also referred to the Certificate of Absence prepared by the surgeon in April 2018, with the note that the appellant was undergoing treatment at that time that was expected to last approximately two months only. While the appellant argued that this treatment provided relief only for an indeterminate time and that he must avoid strenuous activity to avoid future

complications, such restrictions have not been confirmed by the surgeon, and since the surgeon did not indicate what the expected recovery time is, the panel finds that the ministry was reasonable in determining that the information provided by the surgeon did not establish that the restrictions due to the rectal prolapse are likely to continue for two years or more, as stipulated in section 2(4).

In terms of the carpal tunnel syndrome and Raynaud's disease identified as primary and secondary medical conditions in the March 2018 medical report, the GP reported, "Repetitive use of hands in cold environments will trigger symptoms." This begs the question of whether, and to what degree, there might be restrictions while working in warmer weather or indoors. At the hearing, the appellant pointed to the GP indicating that the reported conditions are episodic on a daily basis, thus providing evidence that he is incapacitated by these conditions daily, irrespective of the environment. However, the GP has not provided any information as to the nature of these episodes and how they are triggered, including whether they are related to temperature or environment, making it difficult for the ministry to assess the degree of such episodic restrictions and how they may affect employability. Without such information, the panel finds that the ministry was reasonable in concluding that it had not been demonstrated that the appellant would be unable to do other types of work that are less physical and indoors.

### **Conclusion**

Based on the foregoing analysis, the panel finds that the ministry's decision that found that the appellant does not meet the qualification criteria for PPMB is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant's appeal is thus not successful.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME <b>Richard Roberts</b>	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) <b>2018 August 20</b>

PRINT NAME <b>Robert Fenske</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2018 August 20</b>

PRINT NAME <b>Lynn Twardosky</b>	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) <b>2018 August 20</b>