

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 October 29, 2018, which held that the appellant did not meet the legislated requirements set out under section 2 of the Employment and Assistance Regulation (EAR) for qualification as a Person with Persistent Multiple Barriers (PPMB).

The ministry determined that, based on the appellant's Employability Screen score of 12, his application should be considered under subsections (2) and (4). The ministry accepted that the requirement of subsection (2) respecting the time the appellant has been a recipient of income assistance was met, as was the requirement of subsection (4)(a) that a medical practitioner had confirmed that the appellant has a medical condition, other than addiction, that has either continued for at least 1 year and is likely to continue for at least 2 more years.

However, the ministry determined that the requirement of subsection (4)(b) was not met, as the ministry was not of the opinion that the medical condition is a barrier that precludes the appellant from searching for, accepting or continuing in employment.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), section 2

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

The appellant submitted a Medical Report – Persons with Persistent Multiple Barriers (“the Medical Report”) dated September 17, 2018, completed by a medical practitioner who indicates that he or she has examined previous medical records and has been the appellant’s medical practitioner for over 6 months. The Medical Report includes the following information.

- Primary medical condition is “osteoarthritis” (date of onset 2006).
- No secondary medical condition is identified.
- Treatment is described as “exercises, yoga, occasional NSAID.”
- Outcome is described as “low chance of improvement.”
- Expected duration of medical condition is 2 years or more. The medical condition is not episodic in nature.
- Where asked to describe the nature of any restrictions specific to the above medical condition(s) (“for example, restricted motion in arms or legs”) and to attach additional pages if required, the medical practitioner responds “persistent pain in multiple joints.”

Following denial of his request for PPMB qualification, the appellant submitted his Request for Reconsideration to which he attached a letter dated October 3, 2018. In the letter, the appellant writes that arthritis in his right shoulder makes it difficult to do extensive keyboarding or any activity that requires continuous holding or gripping of objects. Additionally, he is left-handed and has arthritis in his left wrist. As a result, activities which require continuous repetitive movement cause wrist-ache and, on occasion, sharp pains. His current work-related knowledge and skill levels are low, preventing him from obtaining any employment requiring previous training or experience. Most unskilled occupations require regular walking, standing, the carrying and moving of objects etc., and although he can do these activities intermittently, doing them continuously for hours, day after day, is not possible. Though unsure if his Medical Report identifies fallen arches and a stress fracture in his foot, the appellant writes that this condition prevents him from participating in any employment activities that require a lot of walking or continuous standing.

Also before the ministry at reconsideration was a copy of the appellant’s Employability Screen. The total score is not included on the document but the scored responses to the questions used to determine the Employability Screen score are included and add up to a total of 12.

Information provided on appeal and admissibility

In his Notice of Appeal (NOA) dated November 11, 2018, the appellant writes “I am unable to do continuous activity of any kind. Most jobs require repetitive movement of some kind.” The appellant indicates that he will send a doctor’s report on his restrictions, but no additional documentation was provided.

Finding that the evidence in the NOA reiterated information in the appellant’s request for reconsideration letter, the panel admitted the evidence in the NOA under section 22(4) of the *Employment and Assistance Act* (EAA) as being written testimony in support of the information and records before the minister when the decision being appealed was made.

No further appeal submissions were provided by the appellant. On appeal, the ministry indicated that its submission is the reconsideration summary.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision that the appellant did not meet the requirements to qualify as a PPMB was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable to conclude that the appellant's medical condition is not a barrier that precludes the appellant from searching for, accepting or continuing in employment as required by section 2(4)(b) of the EAR?

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.

Positions of the Parties

The appellant's position is that the medical conditions of arthritis, fallen arches and a stress fracture in his foot leave him unable to manage activities that require continuous holding or gripping, including keyboarding, as well as unskilled occupations that require continuous regular walking, standing, carrying and moving objects, because he can only manage these activities intermittently. Additionally, his employability is limited by his low current work-related knowledge and skill levels.

The ministry's position is that the information provided does not demonstrate that the appellant's medical condition presents a barrier that precludes him from searching for, accepting or continuing in employment. The ministry notes that, although the medical practitioner reports that osteoarthritis causes persistent joint pain, there is no description of the nature of resulting restrictions, information which the ministry finds helpful in assessing why a client is unable to work and what type of work can or cannot be done. The ministry acknowledges the appellant's own description of his medical condition and impacts to employment, and that it has some discretion in determining whether a medical condition is a barrier that precludes the ability to search for, accept or continue in employment, but states that it relies on information provided by medical practitioners in making such a determination.

The panel notes that as background information, the ministry has included its policy respecting the meaning of "precludes." The policy relates to determining whether the "nature of an applicant's employment is so minimal or insignificant as to effectively preclude" the recipient from employment. As there is no evidence of the appellant

having current employment of any nature, the policy is not addressed in the reconsideration decision and will not be considered by the panel.

Panel Decision

To qualify as a PPMB section 2(1) of the EAR requires that an applicant must meet the requirements of subsection (2) and the requirements of subsection (3) or subsection (4). The ministry determined that the requirements of subsection (2) have been met and that the requirements of subsection (4) apply in the appellant's circumstances. The panel finds that the appellant's Employability Screen score of 12 is not in dispute and that based on this score, the ministry appropriately considered the appellant's PPMB application under subsection (4), rather than section 2(3) which relates to applicants with an Employability Screen of at least 15. The ministry determined that the requirements of subsection 4(a) were met but that the requirements of subsection 4(b) were not met.

Subsection 4(b) requires that the minister be of the opinion that an applicant's medical condition, other than addiction, be a barrier that precludes the person from searching for, accepting or continuing in employment. Noting that subsection 4(a) requires a medical condition be confirmed by a medical practitioner and a medical practitioner's opinion respecting the duration of a medical condition, the panel considers the ministry reasonable to place significant weight on the information provided by the medical practitioner when exercising its decision-making discretion under the legislation, though an applicant's own information can supplement or clarify the medical practitioner's information.

In this case, when asked to describe the nature of any restrictions arising from the only diagnosed medical condition, osteoarthritis, the medical practitioner responded "persistent pain in multiple joints." While this information describes the symptoms of the appellant's osteoarthritis, it does not describe any resulting restrictions to the appellant's functioning. Additional information from the medical practitioner is that there is a low chance of improvement and that the treatment is exercise, yoga and occasional use of NSAID medications. While this information confirms the ongoing nature of the appellant's osteoarthritis, it does not explain or describe the appellant's ability to function. In the absence of information from a medical practitioner as to restrictions or limitations on functioning in order to assess the impact on the appellant's ability to engage in the legislated employment activities, the panel concludes that the ministry is reasonable in finding that the appellant's medical condition does not preclude him from searching for, accepting or continuing in employment.

Conclusion

The panel concludes that the ministry's reconsideration decision, which determined that the appellant has not met the legislated requirement set out under section 2(4)(b) of the EAR for qualification as a PPMB, was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful on appeal.

PART G -- ORDER	
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	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H -- SIGNATURES	
PRINT NAME Jane Nielsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/12/19

PRINT NAME Neena Keram	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/19
PRINT NAME Glenn Prior	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/19