

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated July 22, 2019. Which held that the appellant was not eligible for Persons with Persistent Multiple Barriers (PPMB) designation.

PART D – RELEVANT LEGISLATION

Section 2 Employment and Assistance Regulation (EAR)
Section 2 (1) Employment and Assistance Regulation (EAR)
Section 2 (3) Employment and Assistance Regulation (EAR)
Section 2 (4) Employment and Assistance Regulation (EAR)

PART E – SUMMARY OF FACTS

The ministry did not attend the hearing. After confirming that the Ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulations.

The evidence before the Ministry at reconsideration was:

- The Appellant was sole recipient of income assistance since May 2018.
- The Appellants application for PPMB designation
- Denial letter and denial summary dated May 23, 2019
- The Appellants request for reconsideration
- Employability Screening Form
- Client Employability Profile containing handwritten comments.
- Medical Report – Persons with Persistent Multiple Barriers form completed on May 16, 2019 completed by the appellant's doctor (Dr. 1)
- Letter dated June 17, 2019 to Dr. 1 from Life Skills worker.
- Letter dated June 26, 2019 from Dr. 1
- Fax communication dated June 27, 2019, requesting an extension for the reconsideration application.

At the hearing the Appellant provided the following additional documentation evidence:

1. Letter dated July 30, 2019, from ,a representative of the Intensive Case Management Team (ICMT Rep.), which states that the Appellant is "awaiting surgery for a right shoulder rotator cuff tear and rupture to his biceps tendon as well as bilateral cataracts". That the Appellant also has a diagnosis of a depressive disorder which is currently in remission. That surgery for these conditions is still several months away. That after surgery for his rotator cuff and biceps tendon the Appellant will require ongoing rehabilitation.

Admissibility: The Panel accepts this letter as a document supporting the information before the Reconsideration Officer.

2. Letter dated June 26, 2019 from Dr. 1. That the Appellant "is awaiting surgical intervention for a right shoulder rotator cuff tear and rupture of his biceps tendon. He has been placed on a waiting list for surgery." That he will have functional limitations following surgery that will affect his ability to work in his previous capacity. It will likely be more than 2 years before his new functional capacity is determined.

Admissibility : The Panel accepts this letter as a document supporting the information before the Reconsideration Officer.

3. A Psychiatric Report from Dr. 2, prepared on May 14, 2019 concerning the Appellant and which was attached to the July 30, 2019 letter by ICMT Rep.. This report contains the Appellant's -- History of Presenting Illness ; Past Psychiatric History; Medical Problems; Drug and Alcohol History; Social History; Mental Status Examination; Diagnoses; and Recommendations and Plan. This document provides indepth information as to the Appellant 's Mental Health since October 2018, but does mention that the Appellant has impaired vision due to cataracts and is being seen by an orthopedic surgeon, without giving any detail as to the severity of each condition nor other medical information about these conditions.

Admissibility : The Panel does not accept this document as in support of the information because a new medical condition was raised which was not before the Reconsideration Officer or information that was presented at the time of the Appellant application for PPMB. Therefore the Panel finds that this is new information and is not admissible.

At the hearing the Appellant stated that:

- He is unable to search for, accept or continue to be employed in his past profession due to his sight and shoulder/ rotator cuff medical problems.
- The Appellant stated that he has been placed on the surgery wait list for his right shoulder and injury to his tendon. That no date has yet been given to him for this surgery.
- The injury to his shoulder and tendon has severely limited his ability to use his right shoulder and arm, causing him to be unable to lift objects. Without the ability to lift objects, his employability is very limited and would not be able to return to his old profession, which required the ability to lift heavy objects on a regular basis.
- The Appellant stated that he understands that recovery after this shoulder is repaired may take time, he has been advised by his physician that it could be up to 2 years.
- He states that he has been diagnosed with Grade 2 Nuclear cataracts in each eye. That he is unable to see presently with his eyes being in such a condition. That when he looks, he only see's things as fuzzy/blurry and sometime experiences double vision. That he is unable to going shopping or outside of his home environment without assistance.
- That with his current eyesight condition he is unable to search for work or be employed.
- The Appellant states that he has been given bifocal glasses but tends not use them since they cause dizziness and nausea instead when he tries to read, he must place his face very close to the item to see the words.
- The Appellant stated that his cataracts appeared about 2 years ago but recently since October 2018 have become progressively worse due to the ongoing growth of the cataracts.
- Just prior to the hearing the Appellant had been informed that his cataract surgery was scheduled for October and November, 2019 -- each eye separately to be surgically repaired. That due to his age his work options are limited without retraining and then there could still be barriers to employment.

The Ministry did not attend hearing and the Panel relied on the reconsideration decision.

The Reconsideration Decision states:

- That the Appellant meets the eligibility requirements under Sect 2(2) of the EAR, as a person who has been in receipt of income assistance for more than 12 of the preceding 15 months.
- That the Appellant under Sec. 2 (3) of EAR, does not meet the requirement that his employability screen score to be at least 15. That the employability screen score was 13, therefore you do not meet this requirement and your application needs to be assessed under subsection (4).
- Under Sec. 2 (4) of EAR ,you must have a medical condition, confirmed by a medical practitioner, which has continued for at least 1 year and is expected to continue for at least another 2 years and in the opinion of the ministry, precludes you from searching for, accepting or continuing in employment. Dr. 1. wrote that your condition has existed for longer than 1 year and is expected to last an undetermined period of time. This surgery is expected to likely to occur within 12 months. This refers to his primary medical condition of right shoulder and rotator cuff tear, of your submitted Medical Report -- Persons with Persistent Multiple Barriers dated May 16, 2019, as completed by Dr. .
- The Ministry accepts that your medical condition is expected to continue for at least another 2 years. Therefore meets the criteria of Sec. 2 (4)(a)(i).
- That the Appellant has bilateral cataracts which require surgical repair, as confirmed by your doctor's report dated June 2019. Therefore your condition has not existed in its current state for more than 1 year with a surgery date that may occur in the fall of 2019. Which indicates the condition is not expected to continue for more than 2 years. That the Appellant states in his application that he expects to have cataract surgery in the fall of 2019. Therefore Section 2(4)(a) has not been met.
- The doctor indicated that you have restricted motion in your right arm with limited strength and function. The Minister accepts that your medical condition limits your ability to continue in your traditional line of employment. That your ability to search for, accepting or continuing all employment, such as non-physical or sedentary work or participating in employment related programs has not been effected by your arm and shoulder medical condition. Therefore Sect. 2 (4)(b) EAR has not been met.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellants application to be designated as a Person with Persistent Multiple Barriers (PPMB) is reasonably support by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation:

Employment and Assistance Regulations**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.

[en. B.C. Reg. 368/2002.]

Panels Reasons

The Panel reviewed the written submission and verbal testimony evidence that was presented at the hearing by the Appellant.

Documents reviewed by the Panel:

1. Medical Report - Persons with persistent Multiple Barriers, completed on May 16, 2019 by Dr. 1. that states the primary medical condition of the Appellant to be – Right Shoulder rotator cuff tear and a Secondary medical condition to be – Biceps tendon rupture, both of which have an onset day of over 2 years. That surgery will be required as treatment and awaiting surgical date (expected within 12 months).
2. Employability Screen, completed on an unknown date, but shows a fax date of May 21, 2019. That the score was 13 and not the required score of 15 criteria as stipulated under Sec. 2 (3) EAR.
3. Client Employability Profile, completed on an unknown date, but shows a fax date of May 21, 2019. Indicating that the majority of the factors have no employment limitations; 2 factors under severely Limits Employment. Included in this profile are written comments “has extreme difficulty with his vision.” “Surgery will be likely” “until vision is corrected and his should is rebuilt his employment activities will be limited to researching retraining opportunities...”.
4. Persons with Persistent Multiple Barriers, Decision Summary dated May 23, 2019. Which refers to the medical conditions of Right Shoulder rotator cuff tear and Biceps tendon rupture without mention of a Cataract medical condition.
5. The Appellant's Request for Reconsideration application, dated June 19, 2019. The Appellant writes, that he is “unable to search for, accept or continue in employment due to the addition of an ocular diagnosis: Nuclear Cataract, Grade 2+ bilaterally.” And is awaiting surgery possibly fall of 2019. That his eyesight is

blurry up to 6 feet with double vision or very limited sight. That he does have bifocal glasses which cause dizziness and nausea. The Appellant has been told that the glasses are only temporary due to the ongoing growth of the cataracts.

6. Letter dated 26 June 2019 from Dr. 1. Supporting the Appellant's application and confirming that the Appellant is waiting surgery for surgical intervention of the right shoulder rotator cuff tear and rupture of his biceps tendon. It will likely be more than 2 years before his new functional capacity is determined.
7. Letter dated June 17, 2019 from the Life Skills Worker to Dr. 1. Advising Dr. 1 that the Appellant has been denied PPMB designation on original application and before they received his need for cataract surgery with an indication that retraining to do something less arduous.
8. Reconsideration Decision, dated July 22, 2019.
9. Applicable Legislation under the Employment and Assistance Regulations, Section 2 , subsections 1 to 4. Persons who have persistent multiple barriers to employment.

Verbal Evidence by the Appellant:

1. That he has significant trouble with lifting objects because of his shoulder and bicep tendon damage.
2. That he unable to search, accept employment or return to his old profession due to his shoulder & tendon medical condition and because of his present eyesight problems.
3. That he is on a wait list for surgery, without a present date set. For without the surgery he is unemployable because he is unable to lift objects which most jobs require.
4. That his eyesight has since last October (2018) started 'getting really bad' and presently he is unable to see very well. Presently he is unable to read and needs assistance in reading and writing. That only recently he has been schedule for surgery in October and November, 2019 for cataract removal surgery.
5. That he is unable to return to his previous employment because of the possibility of re-injury of his shoulder after his surgery and must now look at retraining, but cannot do this until he has the cataract's removed.
6. That due to his age, work options are limited.

Findings of the Panel

The Panel finds the Appellant has:

- A medical conditions of bilateral cataracts and a shoulder /rotator cuff injuries. Which he is presently awaiting surgery to correct each of these medical conditions.
- That due to his eyesight conditions, he needs the assistance of another individual on a regular basis.
- That he is unable to read or do other activities that require the use of eyesight, at the present time therefore not able to search for employment.
- That his medical conditions limit his job choices.

The Panel finds that the Ministry's conclusions where reasonable;

- That the Appellant's shoulder/rotator cuff injury has continued for 1 year and is likely to continue for 1-year post surgery with functional limitation that will likely be more than 2 years before functional capacity is determined. This medical condition does not preclude the Appellant from searching for, accepting or continuing in employment suitable to his medical condition.
- That the Appellant's bilateral cataract medical condition has not existed in its current state for more than 1 year and will be corrected by surgery in the fall of 2019, therefore this condition is not expected to continue for more than 2 years.
- That you have medical conditions that affect your employability but does not preclude the Appellant from searching for, accepting or continuing all employment options.
- That the requirements of Section 2 (4)a) and Section 2 (4)b) have not been met.

The Panel finds that;

- (1) The Ministry conceded that the appellant met the requirements of Section 2(2) so this does not appear to be in issue.
- (2) The Panel accepts the Employability Screen score of 13 as fact, therefore does not meet the requirement under Section 2 (3)a).
- (3) The Panel reviewed Section 2 (4)a) and finds that in the opinion of a medical practitioner that :
 - The Appellant's medical condition of cataract's has not been an issue for a period of 1 year and will be corrected by surgery in 2019, therefore will not likely to continue for at least 2 more years.
 - The Appellant's medical condition of shoulder/rotator cuff injury has continued for at least 1 year and will be corrected by surgery within 12 months. With a recovery period which is undetermined to 1 year post surgery.
- (4) That the Appellant confirms that his cataract surgery has been scheduled for the fall of 2019 and that he is on a surgery wait list for his shoulder/rotator cuff, which he expects to have within 1 year.
- (5) The Panel accepts that at the time of Reconsideration the Appellant was restricted from searching for, accepting employment due to his eyesight medical condition.
- (6) The Panel finds that Section 2(4) requirements under the legislation have not been met.

Upon carefully reviewing all information, verbal and documentation, submitted at the hearing to the Appeal Panel.

The panel finds that the ministry's reconsideration decision of July 22, 2019 which held that the appellant's application for PPMD application was denied because the appellant did not meet the criteria required in the legislation under the Employment and Assistance Regulations – Persons who have persistent multiple barriers to employment, Section 2 (3) or Section 2(4) of the said Act, considering the information submitted at the time of reconsideration and the circumstances of the Appellant, which included his ability to search for, accept or continue in employment.

The panel confirms the ministry's decision. The appellant is unsuccessful in his appeal.

APPEAL NUMBER

PART G – ORDER

THE PANEL DECISION IS: (Check one) **UNANIMOUS** **BY MAJORITY**

THE PANEL **CONFIRMS THE MINISTRY DECISION** **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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:
Employment and Assistance Act
Section 24(1)(a) or Section 24(1)(b) and
Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME
Linda Smerychynski

DATE (YEAR/MONTH/DAY)
2019 August 29

PRINT NAME
Laurie Kent

SIGNATURE OF MEMBER
DATE (YEAR/MONTH/DAY)
2019 August 29

PRINT NAME
Wayne Reeves

SIGNATURE OF MEMBER
DATE (YEAR/MONTH/DAY)
2019 August 29