

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision (the decision) dated November 1, 2021 which held that the appellant does not qualify as a Person with Persistent Multiple Barriers (PPMB), as a health professional has not confirmed that the appellant has a health condition that is likely to continue for at least 2 more years as required under section 2(2)(b)(i) of the Employment and Assistance Regulation (EAR).

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 2

Part E – Summary of Facts

The evidence before the minister at reconsideration included the information below.

The appellant is a recipient of income assistance.

On October 5, 2021 the ministry received the application form for PPMB status completed by a medical practitioner who identifies the following health condition:

- Bilateral inguinal hernia (date of onset: 2020/01/07)

The medical practitioner reported that the condition has existed for one year and eight months and is not expected to continue for 2 years or more. The medical practitioner writes: "Patient had a Rt inguinal hernia repair about 20 years ago, now reoccurring."

In describing the nature of any physical or mental restrictions that result from the health conditions, the medical practitioner writes:

The patient's work is physical in nature. Due to the discomfort caused by this condition, the appellant has been unable to continue the present work. The COVID situation is making it difficult for the patient to have surgery and the appellant had to be referred to different specialists/facilities in order to have the condition treated. Patient cannot lift heavy objects or walk/stand for long periods of time.

The following documents were included with the application for PPMB:

- Diagnostic Imaging Study – Abdominal Wall, dated April 20, 2021
- Outpatient consultation, dated August 27, 2021

On October 6, 2021 the ministry denied the application for PPMB. The reasons for denial were as follows:

- The appellant's health condition has not continued for at least one year or is not likely to continue for at least 2 more years as required under the Employment and Assistance Regulation section 2(2)(b)(i)(A). As such, this criterion has not been satisfied.

On November 9, 2021 the ministry received the signed request for reconsideration in which the appellant writes:

I am asking the ministry to reconsider their decision to approve my application as I have been struggling with my health issues for over 2 years and they are expected to persist for the rest of my life, and inhibit my ability to work or look for a job.

I believe the doctor who filled out the original paperwork accidentally checked off the wrong box, and he is no longer working in the medical field. I have documentation from my current doctor which explains this.

The appellant included a letter from a second medical practitioner who confirms that the appellant had the initial surgery for a hernia 20 years ago and presented to the clinic in January 2020 with ongoing symptoms. The second medical practitioner writes: "I am unsure from the notes when the exact start date of symptoms was, but it began late 2019 as best I can

ascertain.” The opening paragraph states that the appellant’s symptoms have been going on for around 2 years.

The August 2021 outpatient consultation states that the appellant has agreed to a surgical repair and that the consultant would follow up in several weeks to see if they can proceed to book the surgery. The report requested information from the family doctor as this full information is required before surgery.

Additional information

The appellant’s notice of appeal (NOA) contained a statement that the application had been denied as the ministry said the medical condition would not last for over 2 years and that he the appellant and the medical practitioner disagree.

The appellant also submitted a letter prior to the hearing from the second medical practitioner dated 13 December 2021.

This letter provides a confirmation that the appellant’s symptoms have been going on for around two years, that the appellant attended the clinic in January 2020 and the practitioner can state with confidence that the symptoms have been going on for more than two years. The medical practitioner recounts that the first medical practitioner checked the less than two years box and that the symptoms began in late 2019 as far as the practitioner can ascertain.

The letter concludes with a confirmation that in the medical practitioner’s opinion the functional impairment is likely to last for more than two years.

Oral submissions

The hearing was held by telephone.

Ministry

With the permission of the appellant, the ministry provided oral testimony first.

The ministry stated that the test on appeal of the reconsideration decision is one of reasonableness and provided a verbal summary of the reconsideration decision. The ministry laid out the requirements that need to be met for the granting of PPMB status and recounted the review conducted by ministry staff, that included a finding that a health professional had not confirmed that the appellant has a health condition that is likely to continue for at least 2 more years. The ministry stated that based on that finding at the time the reconsideration decision itself was reasonable.

The ministry representative accepted the 13 December 2021 letter submitted by the appellant as additional evidence as having addressed the ministry’s concerns and stated that had the ministry known the information contained in the new evidence at the time of the reconsideration decision, the ministry may have decided the information supports approval of PMMB status.

Appellant

The appellant provided a summary of the many medical visits conducted over the last two years since the symptoms began and of the appellant's medical history going back over 20 years. The appellant stated that the doctor who completed the PPMB application form incorrectly checked one of the boxes and is now no longer in practice. To have this error rectified, the appellant visited a senior partner in the medical practice, one who has been there for many years and knows the appellant's medical history, to provide a clarification.

The first letter from the doctor, provided in November, did not correctly address the time considerations required by the ministry and a new letter dated December 2021 has been submitted to the panel. This letter addresses the ministry concerns.

In questioning from the panel, the appellant clarified having a medical consultation in another province as no services were available in the appellant's hometown due to the Covid pandemic closures.

The appellant advised that no surgery is currently planned and there is no indication of post surgical recovery timelines.

Admissibility of new information

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

The ministry did not raise any objections to the panel admitting the appellant's document submittal or oral testimony into evidence.

The appellant did not raise any objections to the panel admitting the ministry testimony.

The panel finds that this information is relevant because it relates to the testimony provided in the request for reconsideration and argument on the part of the appellant with regards to the medical practitioner's prognosis of duration of the medical impairment.

The panel admits the new information under section 22(4) of the Employment and Assistance Act ("EAA") as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision which held that the appellant does not qualify as a Person with Persistent Multiple Barriers.

In particular, was the ministry's decision that a health professional had not confirmed that the appellant has a health condition that is likely to continue for at least 2 more years reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that health issues have been present for over 2 years and they are expected to persist for the rest of the appellant's life. Further, that the current letter from a medical practitioner confirms the first medical practitioner incorrectly ticked the wrong box on the application for PPMB status.

Ministry Position

The ministry argues at reconsideration that a health professional has not confirmed that the appellant has a health condition that is likely to continue for at least 2 more years. The ministry argues that although the information provided by the second medical practitioner confirms the appellant's medical condition has continued for more than two years, it does not confirm that the medical condition will continue for two years and therefore does not meet the legislated requirement.

At hearing the ministry accepted the 13 December 2021 letter submitted by the appellant as additional evidence as having addressed the ministry's concerns.

Panel Finding

The appropriate legislation is found within section 2 of the EAR, which in part states that a person qualifies as a person who has persistent multiple barriers to employment if the person has a health condition that is confirmed by a health professional and that in the opinion of the health professional has continued for at least one year and is likely to continue for at least 2 more years.

Therefore, the legislation requires the health condition to be likely expected to exceed a total of three years. Both medical practitioners state that the appellant's medical condition has continued for at least one year, and indeed the letter submitted at appeal states that the symptoms have been occurring now for more than two years.

The panel finds that the medical impairment has been ongoing for at least 1 year.

The panel finds the November 2021 letter by the second medical practitioner is focused upon the time since the symptoms and diagnosis occurred. While it confirms the appellant's medical condition has continued for more than two years, it does not confirm that the medical condition will continue for two more years.

That the appellant is to undertake surgical repair is evident from the 27 August 2021 report from the surgeon, however the report contains no information on the time expectation of recovery or of any anticipated future impairment.

The 13 December 2021 letter from the medical practitioner restates information in the 8 November 2021 letter, with the addition of two sentences. One sentence provides clearer confirmation of the length of time the appellant has been suffering from the medical impairment, that is from late 2019 until December 2021. The second sentence is a stand-alone paragraph that states that in the medical practitioner's opinion the functional impairment is likely to last for more than two years.

The 13 December 2021 letter does not specify the date from which this time applies, i.e. from the date of consultation or application for PPMB.

Therefore, the panel finds that that the applicable date is 13 December 2021 and that in the opinion of the medical practitioner the medical impairment is likely to last for more than two years from that date.

At the hearing, the ministry stated that had it known the information contained in the 13 December 2021 letter at the time of the reconsideration decision, the ministry may have decided this information supports approval of PMMB status.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence at that time; however, the panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

Based on the opinion of the medical practitioner contained in the 13 December 2021 letter discussed above, the panel finds the ministry's decision that a health professional has not confirmed that the appellant has a health condition that is likely to continue for at least 2 more years is not reasonably supported by the evidence.

Conclusion

The panel finds the ministry's decision that the appellant does not qualify as a Person with Persistent Multiple Barriers, because a health professional has not confirmed that the appellant has a health condition that is likely to continue for at least 2 more years is not reasonably supported by the evidence nor a reasonable interpretation of the legislation in the circumstances of the appellant.

The appellant is successful upon appeal and the panel rescinds the reconsideration decision.

Appendix A

Employment and Assistance Regulation

Persons who have persistent multiple barriers to employment

2 (1) In this section, "health professional" means a person who is

- (a) authorized under an enactment to practise the profession of
- (ii) medical practitioner,

(2) A person qualifies as a person who has persistent multiple barriers to employment if the person

- (a) is a recipient of income assistance or hardship assistance,
- (b) has a health condition that is confirmed by a health professional and that,
 - (i) in the opinion of the health professional,

- (A) has continued for at least one year and is likely to continue for at least 2 more years,

APPEAL NUMBER 2021-0237

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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2021/12/17

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2021/12/17

Print Name

Angie Blake

Signature of Member

Date (Year/Month/Day)

2021/12/17