

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated June 29, 2022, in which the ministry found the appellant ineligible for designation as a Person with Persistent Multiple Barriers to Employment (“PPMB”) under the Employment and Assistance Regulation (“EAR”). The ministry determined that the appellant was a recipient of income assistance with a health condition and additional barriers to employment that were seriously impeding his ability to search for, accept and maintain employment. However, the ministry was not satisfied that the appellant’s health condition had lasted at least one year, or that it was likely to continue for at least 2 more years as required by the legislation.

Part D – Relevant Legislation

EAR, section 2

Part E – Summary of FactsEvidence Before the Ministry at Reconsideration:

The appellant has been a recipient of income assistance since December 2021.

In support of his application for PPMB designation the appellant submitted medical reports, as well as the application completed by his family doctor and his own written statement.

Medical Reports:

1. Letter from a physical medicine and rehabilitation specialist dated March 21, 2022, stating that the appellant “presents with symptoms of the right shoulder that first developed a few years ago when he jarred it at work carrying something heavy. He notes progressive symptoms, and notes the pain was quite bad in October of 2021. At that time, he describes again not being able to move the shoulder, and this time for about 3 days.” The appellant was assaulted about 3 months ago, that jarred his shoulder further. The appellant reports pain, limited range of motion, and weakness in the shoulder. On examination, the specialist notes full range of motion in the right shoulder and an intact rotator cuff. Sonographic assessment revealed “moderate to severe supraspinatus calcific tendinopathy with one large linear calcification with significant posterior acoustic shadowing.” Under ‘Impression and Plan’, the doctor states: “[The appellant] presents with right shoulder symptoms secondary to moderate to severe supraspinatus calcific tendinopathy.”
2. Referral note from the physical medicine and rehabilitation specialist dated March 21, 2022, stating “right severe supraspinatus calcific tendinopathy.” The doctor requests an exercise program and “trial 4 sessions of shockwave” for the appellant.
3. Referral note from the appellant’s general practitioner dated April 1, 2022, stating that the appellant needs physiotherapy for his right shoulder “due to tendinopathy.”
4. Application for PPMB designation, dated May 31, 2022, and completed by the general practitioner: Under “Health Condition(s)” the doctor notes “right shoulder frozen” and states that the condition has existed for several months. Under “Expected continuation of health condition(s)” the doctor ticked “less than 2 years” and indicated that the health condition was not episodic. In answer to the question “How frequently have the episodes occurred in the past year?” the doctor indicated “continuous.” In the section of the application titled “Restrictions” the appellant listed his work restrictions, stating that he is “currently unable to work due to my right arm being incapacitated. I cannot use my right arm to lift, climb, push, hold, or carry items.” He stated that “if I try to lift, or twist my arm it seizes, locks up, paralyzes, goes numb, begins to tingle, and loses all strength.”
5. Medical Imaging Report dated October 26, 2021: the radiologist confirms findings compared to a previous x-ray of the right shoulder on April 24, 2013, and notes

“amorphous calcification” in the soft tissues. Under “Interpretation” they note “calcific tendinopathy of the rotator cuff.”

6. Handwritten note from the general practitioner dated June 14, 2022, stating: “This man suffers from severe disabling tendinopathy R shoulder. Only if he gets physiotherapy and shock wave therapy will he get benefit from surgery – fenestration procedure. If he does not get physio and shock wave, his R shoulder injury will not be better enough to work in under 2 years.”

Appellant’s Statement in Request for Reconsideration:

- His right shoulder injury occurred at work on April 22, 2013, when he unexpectedly had to catch a heavy object. His right shoulder “exploded” and his right arm was “instantly paralyzed.”
- He has lived with the repercussions of the injury since then, and on October 21, 2021, his right shoulder “basically exploded” and was “instantly paralyzed.”
- His injury might be fixable in less than 2 years if he received the treatments his doctors recommend.
- The physical medicine and rehabilitation specialist has told him that the bone growth in his right shoulder will have to be removed for him to regain movement, but the surgery is very painful, and recovery could be more than 1 year.
- The family doctor has told him that if he does not receive the recommended treatments, the injury could last the rest of his life.
- The appellant does not have enough money to pay for the treatments, because the income assistance he receives from the ministry is only enough to pay his rent.

Additional Evidence:

Written Submissions:

In an email dated July 5, 2022, the appellant repeats that he cannot afford the physiotherapy treatments “even with the present MSP deductions.” He explains that the total cost is \$55 per treatment for 4 physiotherapy treatments and \$60 per treatment for 4 shock wave therapy treatments, for a total of \$460, after deducting the MSP contribution.

The appellant also provided printed material, less than 3 days before the hearing, which included detailed information from the Mayo clinic website and other sources about shoulder tendinopathy, diagnostic imaging techniques, and the advantages of shock wave treatments:

1. The Mayo clinic states:
 - shock wave treatments have been beneficial for tendinopathy of the rotator cuff, among other areas;
 - patients require a series of treatments;
 - recovery is minimal compared to surgical intervention.

Evidence at the Hearing:

At the hearing, the appellant stated:

- The purpose of his application for PPMB designation was to have the full cost of his physiotherapy and shock wave treatments paid by the ministry;
- The family doctor has recommended a trial of 4 shock wave and physiotherapy treatments because there is no guarantee that they will be successful, or that the appellant will only need 4 treatments. The appellant has not had any treatments yet, because he cannot afford to pay for them. He has tried every physiotherapist in the location where he lives, and none will give treatments for the amount that MSP pays.
- If he needs surgery, it will be very painful and there will be a 1-year recovery period. The examination results in the report from the physical medicine and rehabilitation specialist about the “full range of motion” in his right shoulder do not mean that his arm is ok – the doctor was moving the appellant’s arm to get the full range of motion during the examination, and it was “incredibly painful.”
- He was injured 8 years ago, and his activities have been restricted ever since, although he was able to work until last year. The symptoms of the tendinopathy became much more severe on October 21, 2021, but he has had difficulties with his right shoulder continuously since 2013.

Additional Evidence:

The ministry had no objection to the additional evidence provided by the appellant in the written submissions and at the hearing. The oral evidence, the additional evidence in the July 5, 2022 email and the printed material provided additional information about the appellant’s health condition and the nature and cost of recommended treatments. Therefore, the panel determined that the additional evidence was admissible under Employment and Assistance Act section 22(4) as it was 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 whether the ministry's reconsideration decision, in which the ministry found the appellant to be ineligible for PPMB designation under EAR section 2, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances. The ministry determined that the appellant was a recipient of income assistance with a health condition and additional barriers to employment that are seriously impeding his ability to search for, accept and maintain employment. However, the ministry was not satisfied that the appellant's health condition had lasted at least one year, or that it was likely to continue for at least 2 more years as required by the legislation.

The full text of the legislation is provided in the Schedule after these reasons.

Appellant's Position:

The appellant argues that he needs PPMB designation so that the ministry will pay for the physiotherapy and shock wave treatments that his doctors have recommended. The appellant says that he cannot afford \$460 for the initial trial of 4 treatments which could end up costing even more if he needs further treatments.

The appellant says that the ministry has misunderstood the medical reports that his doctors provided. He maintains that the medical reports confirm that the right shoulder injury and resulting tendinitis have been continuous since 2013, although the symptoms became much more severe again in October 2021. The 4 physiotherapy and 4 shock wave treatments are a trial, and if he sees some improvement, he might need to continue with those treatments. If the treatments are not successful, he would need surgery, which would involve a wait time for the operation, and a further year recovery, with no guaranteed outcome. Meanwhile, he cannot afford even the initial treatments, and as matters stand, his condition will not improve.

Therefore, the appellant argues that he meets the legislated requirement for a health condition that impedes his ability to search for accept and maintain employment to have lasted more than one year and is likely to continue for at least 2 more years.

Ministry's Position:

In its reconsideration decision, the ministry maintains that the appellant does not meet the PPMB criteria because his doctor has not confirmed that his medical condition has continued for at least one year and is likely to continue for at least 2 more years. The ministry says that "the severity of current medical condition started October 2021 which has not lasted at least 1 year as required." The ministry says that the doctor indicates that the duration of the condition depends on receiving the recommended therapies, and therefore it has not been confirmed that the current medical condition is expected to last at least another 2 years or more.

The ministry argues that the appellant might be able to get the physiotherapy treatment he needs with the 10 physiotherapy treatments under his MSP coverage as a recipient of income assistance. In that case, his medical condition would not continue for 2 years or more. The

ministry says it cannot determine that the appellant will not be able to get the treatment he needs within the next 2 years.

Panel Decision and Reasons:

The panel notes that the appellant has applied for PPMB designation to have the full cost of his physiotherapy treatments covered by the ministry. The ministry representative has explained that the PPMB designation gives recipients access to 12 physiotherapy treatments in addition to the 10 treatments for which the appellant already qualifies as a recipient of income assistance, but only at the MSP rate of \$23 per treatment. Therefore, it appears that this appeal cannot give the appellant the outcome he seeks.

Nevertheless, the appeal relates to the reconsideration decision about PPMB designation, and the panel's role is to decide if that decision was reasonably supported by the evidence or is a reasonable application of the legislation in the appellant's circumstances.

The ministry is satisfied that the appellant has a health condition that is a barrier that seriously impedes his ability to search for, accept or continue in employment. However, the ministry found that the appellant's medical condition started in October 2021, when the severity of the symptoms increased. The ministry says that, therefore, the medical condition has not lasted at least 1 year.

The panel finds that the ministry was not reasonable in determining that the appellant's health condition started in October 2021. While the general practitioner stated in the application that the "frozen right shoulder" had lasted only a few months, the rest of the medical evidence, and in particular the March 21, 2022 report of the specialist and the medical imaging report from October 26, 2021, clearly indicate that the right shoulder tendinitis began with the injury in 2013 and has been symptomatic ever since. The severity of the symptoms may have increased in October 2021, but the health condition – moderate to severe supraspinatus calcific tendinopathy – began with the injury in 2013.

The panel finds, further, that the ministry was not reasonable in determining that the appellant's health condition would not continue for at least 2 more years. Again, while the general practitioner indicated in the application for PPMB designation that the health condition would continue for less than 2 years, this prediction is based, optimistically, on the appellant receiving the recommended treatments promptly and having a good outcome. The general practitioner explains, in the letter of June 14, 2022, that without the recommended treatments, the appellant would not have a positive outcome from subsequent surgery and would not see improvement within 2 years. The medical documents confirm that the proposed physiotherapy treatments are a trial, after which the doctors will re-assess the appellant's condition. The outcome may be that he needs additional treatments, or surgery. Surgery will involve a wait time and a 1-year recovery period.

In determining that the appellant's health condition is not likely to continue for at least 2 more years, the ministry states that the appellant can have 10 physiotherapy treatments paid by MSP, which, the ministry says, "makes it difficult to establish that you cannot receive the treatment you require through MSP..." The evidence indicates that, in fact, the appellant cannot receive

the treatment he needs through his current MSP coverage. The appellant says that he has tried every practitioner in the city where he lives, and no one will do the treatments for the MSP rate. He does not have the resources to pay the additional \$460 needed for the initial trial of treatments. It is reasonable to conclude that, unless there is an unforeseen change in the appellant's financial circumstances, he is not going to have the treatment. In that event, the medical evidence is clear and consistent that his condition will continue indefinitely.

Conclusion:

The panel rescinds the ministry reconsideration decision that found that the appellant was not eligible for PPMB designation under EAR section 2. The panel finds that the ministry's determination that the appellant's medical practitioner had not confirmed that the appellant's health condition had not lasted at least one year and was not likely to continue for at least 2 years, was not reasonably supported by the evidence.

The appellant is successful in the appeal.

Schedule

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

(i) chiropractor,

(ii) medical practitioner,

(iii) nurse practitioner,

(iv) occupational therapist,

(v) physical therapist,

(vi) registered nurse or registered psychiatric nurse,

(vii) registered psychologist, or

(viii) registered social worker,

(b) a registered clinical counsellor in good standing with the BC Association of Clinical Counsellors, or

(c) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the [Independent School Act](#), or

(ii) a board or a francophone education authority, as those terms are defined in section 1 (1) of the [School Act](#),

if qualifications in psychology are a condition of such employment.

(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, 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) faces one or more additional barriers described in subsection (3).

(3) For the purposes of subsection (2) (c), an additional barrier is any of the following:

(a) any of the following circumstances if, in the opinion of the minister, the circumstance seriously impedes the person's ability to search for, accept or continue in employment:

(i) currently experiencing homelessness or having experienced homelessness in the past 12 months;

(ii) currently experiencing domestic violence or having experienced domestic violence in the past 6 months;

(iii) needing English language skills training;

(iv) not having basic skills for employment;

(v) having a criminal record;

(vi) having an education below grade 12;

(vii) having accessed emergency health, mental health or addiction services multiple times in the past 12 months;

(viii) being a Convention refugee as determined under the [*Immigration and Refugee Protection Act*](#) (Canada) or the *Immigration Act* (Canada), or having been such a refugee in the past 24 months, or being in the process of having a claim for refugee protection, or application for protection, determined or decided under the [*Immigration and Refugee Protection Act*](#) (Canada);

(ix) being a person who was a child in care or received similar care under an enactment of another Canadian jurisdiction;

(b) a circumstance that the minister considers to be a circumstance that seriously impedes the person's ability to search for, accept or continue in employment.

(4) If a person qualified as a person who has persistent multiple barriers to employment on June 30, 2019, the person qualifies, subject to section 34, as a person who has persistent multiple barriers to employment.

APPEAL NUMBER 2022-0145

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)

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

Part H – Signatures

Print Name
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2022/08/02

Print Name
David Handelman

Signature of Member

Date (Year/Month/Day)
2022/08/02

Print Name
Margaret Koren

Signature of Member

Date (Year/Month/Day)
2022/08/02