

**Part C – Decision Under Appeal**

The decision under appeal is the decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) reconsideration decision, dated July 5, 2022 (the “**Reconsideration Decision**”), in which the Ministry found the Appellant ineligible for a designation as a Person with Persistent Multiple Barriers to Employment (“**PPMB**”) under the *Employment and Assistance Regulation* (the “**Regulation**”) because the Appellant had not satisfied the Ministry that he met the requirements set out under sections 2(2)(c) and 2(3) of the *Regulation*.

**Part D – Relevant Legislation**

*Employment and Assistance Regulation* (the “**Regulation**”), section 2

**Part E – Summary of Facts**

The Appellant is a recipient of income assistance.

In support of his application for a PPMB designation, the Appellant originally submitted medical reports and an Application for PPMB (the “**Application**”) completed by him and his podiatrist (the “**Podiatrist**”), dated April 11, 2022. Pursuant to:

- section 1 of the Application: the Podiatrist identified that the Appellant suffered from the following health conditions: (i) Diabetes Mellitus and (ii) Peripheral Neuropathy. The Podiatrist confirmed that the Appellant’s health conditions have existed since July 1, 2021, were not episodic in nature, and are expected to continue for 2 years or more.
- section 2 of the Application: the Appellant selected “other” with regards to the barriers to employment which seriously impede his ability to search for, accept, or continue in employment. The Appellant attached a letter dated April 11, 2022 (the “**Personal Statement**”) relating to:
  - historical information related to his income assistance;
  - his difficulty finding a family doctor;
  - his 2021 diabetes diagnoses and left foot infection;
  - the change in his activity levels arising from his diagnosis and resulting wound; and
  - consultations with multiple medical professionals since July 2021.

The following documentation was also attached to the Application:

- A letter dated March 8, 2022 from a registered nurse (the “**Nurse**”) who saw the Appellant at an ambulatory clinic for diabetic wound care that was daily from July 28, 2021 to October 2, 2021, and twice weekly at the time of the letter.
- A letter dated April 6, 2022 from the Appellant’s endocrinologist (the “**Endocrinologist**”) regarding the Appellant’s diabetes and foot/ankle injury.
- A letter dated April 12, 2022 from an outreach worker at an Outreach Program (the “**Outreach Worker**”) confirming the provision of support to the Appellant due to issues related to income, housing, health, and identification.
- An image report dated July 20, 2021 regarding the Appellant’s right toe and left ankle.
- An outpatient clinic note dated August 3, 2021 regarding the Appellant’s foot wound and care (the “**Note**”).
- A letter dated August 5, 2021 from a registered dietitian (the “**Dietician**”) advocating for a diabetic diet allowance.
- Four (4) pictures of the Appellant’s foot wound (the “**Pictures**”).

On May 26, 2022, the Ministry denied the Application. The Ministry found the Appellant did not meet the requirements of sections 2(2)(b)(i)(A), 2(2)(c) and 2(3)(a) of the *Regulation*.

On June 17, 2022, the Appellant submitted his request for reconsideration of the Application (the “**Request**”). Attached to the Request were:

- A letter dated June 13, 2022 from the Appellant’s family doctor (the “**Family Practitioner**”) confirming the significance of the Appellant’s diabetes-related infection and need for ongoing wound care. The Family Practitioner confirmed that the Appellant’s diabetes had most likely been present since long before 2021. The Family Practitioner also noted that the Appellant was suffering from depression and anxiety which significantly impacted his motivation, volition, mental clarity, and executive functioning. The Family Practitioner reiterated that the Appellant’s conditions, which would continue for at least two (2) years, would severely restrict his ability to search for, accept, or continue work.
- A letter dated June 16, 2022 from the Appellant’s disability advocate reiterating the information found in the Family Practitioner’s June 13<sup>th</sup> letter.

On July 5, 2022, the Ministry issued the Reconsideration Decision and determined that the Appellant met the requirements of:

- section 2(2)(a) of the *Regulation*, as he is the recipient of income assistance;
- section 2(2)(b)(i) of the *Regulation*, as the Appellant’s health professional(s) had confirmed that the Appellant had a health condition that has continued for at least one year and is likely to continue for at least 2 more years; and
- section 2(2)(b)(ii) of the *Regulation*, as, in the opinion of the Ministry, the Appellant’s health condition(s) were/are a barrier that seriously impede his ability to search for, accept, or continue in employment.

Despite the above findings, the Ministry maintained that it was unable to confirm if the Appellant experienced any of the additional barriers to employment as required by sections 2(2)(c) and 2(3) of the *Regulation*. As a result, the Request was unsuccessful.

On July 20, 2022, the Appellant filed a Notice of Appeal (the “**Appeal**”). In his reasons for the Appeal, the Appellant wrote, “*The Ministry did not consider the information/details provided by doctors and advocate.*”

On July 27, 2022, the Appellant’s advocate (the “**Advocate**”) submitted a 21-page evidentiary package in support of the Appeal consisting of:

- the Application;
- the Personal Statement;
- the Nurse’s March 8, 2022 letter;
- the Endocrinologist’s April 6, 2022 letter;

- the Outreach Worker’s April 12, 2022 letter;
- the Note;
- the Dietician’s August 5, 2022 letter; and
- the Pictures.

On August 26, 2022, the Advocate submitted additional information in support of the Appeal (the “**Additional Evidence**”) in the form of:

- written submissions;
- a further letter from the Outreach Worker, dated August 22, 2022; and
- a further letter from the Family Practitioner, dated August 25, 2022.

Pursuant to the Outreach Worker’s further letter, she writes, “... [the Appellant] has accessed ...outreach services from January 2021 until present. During this time, he disclosed and I witnessed him experiencing anxiety, depression, issues with concentration as well as issues with comprehension. I provided [the Appellant] with information on various counselling and psychiatric resources in February 2021... [The Appellant’s] mental health issues have been a significant barrier to him accessing support services. I believe they would also be a barrier to his ability to search for, accept and maintain employment. These issues were present prior to his diagnosis of diabetes and the development of his physical health issues...”

Pursuant to the Family Practitioner’s further letter, she writes, “... [The Appellant’s] depression and anxiety significantly impact his motivation, volition, mental clarity, and executive functioning. These mental health symptoms seriously impede his ability to search for, accept or continue in employment... While [the Appellant’s] physical health is one factor, it is not the sole cause of his depression and anxiety. He reports that his depression and anxiety symptoms proceeded his diabetes diagnosis... The insomnia, exhaustion, fatigue overwhelm and difficulty managing and tolerating distress associated with his depression and anxiety are significant, persistent and pervasive barriers to employment. These symptoms are not caused by diabetes, but rather by anxiety and depression. [The Appellant] has received mental health care and referral from me on more than one occasion in the past year...”

Pursuant to the Advocate’s written submissions, she argues that the Appellant ought to qualify for a PPMB designation as he has met the requirements of section of 2(2)(c) of the *Regulation* by way of sections 2(3)(a)(vii) or 2(3)(b) of the *Regulation*. In support of her arguments regarding section 2(3)(a)(vii), the Advocate relies on the Nurse’s March 8, 2022 letter wherein she notes that, “... The client presented to SPH ED July 16<sup>th</sup> after noting a significant wound to D1 on his left foot. Over the course of this client’s hospital admission he was diagnosed with DM2, and eventually referred to our clinic for outpatient wound care...” In support of her arguments regarding sections 2(3)(b), the Advocate argues that the Appellant’s mental health conditions ought to be viewed as a separate “circumstance” that should qualify as an additional barrier to employment.

The Appeal was conducted by telephone.

During the hearing of the Appeal, the Appellant, who was joined by the Advocate and a second advocate, relied on the documents forming the Application, the Request and the Additional Evidence.

Before the Appellant could make oral submissions, the Ministry confirmed that, upon review of the Additional Evidence, it would have approved the Appellant's PPMB application. Upon questioning, the Ministry confirmed that if the Reconsideration Decision were rescinded, it would be forwarded to a Reconsideration Officer who would approve the Appellant's PPMB designation. As a result, the Appellant and the Advocate relied on the record thereby providing limited oral submissions.

The Ministry had no objection to the Additional Evidence provided by the Appellant; again, the Ministry stated that it would "likely" approve the Appellant's PPMB application because of it. The Panel determined that the Additional Evidence was admissible under section 22(4) of the *Employment and Assistance Act* 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 decision under Appeal is the Ministry's Reconsideration Decision, dated July 5, 2022, in which the Ministry found the Appellant ineligible for a PPMB designation as provided for by section 2 of the *Regulation* because the Appellant had not satisfied the Ministry that he met the requirements set out under sections 2(2)(c) and 2(3) of the *Regulation*.

**Appellant's Position**

The Appellant argues that he ought to qualify for a PPMB designation as he has met the requirements of section 2(2)(c) of the *Regulation* by way of sections 2(3)(a)(vii) or 2(3)(b) of the *Regulation*.

**Ministry's Position**

In the Reconsideration Decision, the Ministry maintains that the Appellant does not meet the PPMB criteria because, in the Minister's opinion, he does not possess an additional barrier that seriously impedes his ability to search for, accept or continue in employment. However, upon review of the Additional Evidence, the Ministry now states that the Appellant has evidenced an additional barrier in a manner that conforms with both sections 2(3)(a)(vii) or 2(3)(b) of the *Regulation*. Put differently, in the Ministry's view and based on the Additional Evidence, section 2(2)(c) has now been satisfied.

**Panel Decision**

The eligibility criteria for a PPMB designation are clearly set out in section 2 of the *Regulation*. In short, a PPMB designation will be provided to an applicant if:

- a. they are a recipient of income assistance or hardship assistance;
- b. they have a health condition confirmed by a health professional that has continued for at least one year and is likely to continue for at least 2 more years;
- c. in the opinion of the Minister, the health condition is a barrier that seriously impedes a person's ability to search for, accept, or continue in employment; and
- d. they face one or more additional barriers listed in sections 2(3)(a) or (b) of the *Regulation* which seriously impeded the applicant's ability to look for, accept, or continue in employment.

The Ministry acknowledges that the Appellant meets the following criteria:

1. he is the recipient of income assistance;
2. his health professional(s) have confirmed that he has a health condition that has continued for at least one year and is likely to continue for at least 2 more years; and
3. his health condition(s) were/are a barrier that seriously impede his ability to search for, accept, or continue in employment.

As a result, the only question before this Panel is whether the Ministry reasonably determined in the Reconsideration Decision that the Appellant was not eligible for a PPMB designation because

the Appellant had not satisfied it that he met the requirements set out under section 2(2)(c) and 2(3) of the *Regulation*.

While the Ministry advised that, upon review of the Additional Evidence, in its view, the Applicant has satisfied the criteria set out under section 2(2)(c) of the *Regulation*, it is the Panel's role to decide if that Reconsideration Decision (i) was reasonably supported by the evidence or (ii) is a reasonable application of the legislation in the Appellant's circumstances based on all of the admissible evidence.

The Panel finds that the Ministry was not reasonable in determining that the Appellant did not face one or more additional barriers that seriously impede his ability to search for, accept or continue in employment.

As required by section 2(3)(a)(vii) of the *Regulation*, the evidence suggests that the Appellant did access emergency health, mental health or addiction services multiple times in the 12 months prior the submission of the Application. Indeed, a review of the Outreach Worker's further letter, dated August 22, 2022, indicates that the Appellant sought emergency care on July 16, 2021. Further, the Family Practitioner's further letter, dated August 25, 2022, indicates that the Appellant accessed mental health services from the Family Practitioner on more than one occasion. As a result, the Panel finds that the Appellant accessed emergency health and mental health services multiple times in the 12 months prior to the submission of the Application thereby satisfying section 2(3)(a)(vii) of the *Regulation*.

As it relates to section 2(3)(b) of the *Regulation*, the Panel notes that the term "circumstance" is undefined; therefore, a circumstance could include an additional medical condition that impedes an individual's ability to search for, accept or continue in employment. In the case of the Appellant, the Panel finds that the evidence provided by the Family Practitioner clearly suggests that the Appellant suffers from mental health conditions, namely depression and anxiety, that causes him to suffer from insomnia, exhaustion, and fatigue which impact his motivation, volition, mental clarity, and executive functioning such that he is overwhelmed and has difficulty managing and tolerating distress. In other words, the Panel finds that the Appellant has a circumstance which seriously impedes his ability to search for, accept or continue in employment.

As a result of the foregoing, the Panel finds that the Applicant has satisfied the criteria set out under section 2(2)(c) and 2(3) of the *Regulation*.

### **Conclusion**

The Panel rescinds the Ministry's Reconsideration Decision that found that the Appellant was not eligible for PPMB designation under section 2 of the *Regulation*. The Panel finds that the Ministry's determination that the Appellant had not met the requirements set out under sections 2(2)(c) and 2(3) of the *Regulation* was not reasonably supported by the evidence.

The Appellant is successful in the Appeal.

**Legislation**

***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 2022-0162

**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  
Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)  
2022/08/29

Print Name  
Simon Clews

Signature of Member

Date (Year/Month/Day)  
2022/08/29

Print Name  
Connie Simonsen

Signature of Member

Date (Year/Month/Day)  
2022/08/29