

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 15, 2012 which held that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB). The ministry was satisfied that the evidence establishes that the appellant has a medical condition, other than an addiction, that is confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry was not satisfied that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 2

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Medical Report- Persons with Persistent Multiple Barriers (PPMB) dated May 17, 2012, which states, in part, that: the appellant's primary medical condition is degenerative arthritis with date of onset of 1987 and the treatment is Naproxen as needed; the prognosis sets out that the expected duration of the medical condition is 2 years or more and that the medical condition is not episodic in nature. In the section of the Report regarding restrictions, the physician has noted "...lifting; prolonged sitting & standing; knee pain;"
- 2) Employability Screen indicating a total score of "7";
- 3) Letter dated August 24, 2012 from the ministry to the appellant denying his application for PPMB; and,
- 4) Request for Reconsideration- Reasons.

In his Request for Reconsideration, the appellant stated that he is asking the ministry to reconsider his ability to work on a daily basis. He is not able to stand for more than 2 minutes on a good day. The appellant stated that if he is sitting for more than an hour, it takes 15 to 20 minutes to be able to move freely. The appellant stated that he has been unemployed for over 5 years since he closed his automotive shop. He could not perform many of his necessary duties as an automotive mechanic. The appellant stated that he has had numerous Workers Compensation claims for his back. He has to take many breaks through the course of the day because he is always fatigued after doing household chores. He has a grade 11 education. The appellant stated that he feels he would not be of benefit to any company because of his health conditions.

At the hearing, the appellant stated that there were errors made with the Employability Screen since he only has a grade 11 education, not high school/GED, and he has not spent any time in paid employment over the last 3 years, not "more than 12 months." With the changes in responses, the appellant's score would change to "12" instead of "7." The appellant stated that he has had many WCB claims in the past because of his back and his doctor's report confirms he has restrictions with lifting, with sitting and standing. The appellant stated that if he is standing more than 15 to 20 minutes, it feels like knives are jabbing in his back. The appellant stated that if he sits more than 15 minutes, it takes him longer than normal to get up, like 15 to 20 seconds. If he does household chores such as sweeping or laundry, he gets fatigued and needs to take a break for an hour. The appellant stated that walking takes him much longer than typical. With the cold weather, he also gets stiffer and more sore and it took him 15 minutes just to sit up in bed this morning and he had to sit for 10 minutes and slowly stand up. The appellant stated that it is very difficult for him to reach above his head.

The appellant stated that he buys slip-on shoes because he cannot bend to tie shoes. He even has difficulty driving, with shifting, because his truck is a manual transmission. His friend converted his truck to power steering to make it a bit easier. In response to a question, the appellant stated that he has not been in to see his doctor again because his office is in another community, and the appellant has been looking for a new doctor with an office that is closer to his residence. The appellant stated that he is taking medications which are pain killers and muscle relaxants and they help on good days but are not much help on his bad days, and he has more bad days than good. The appellant stated that he has always worked as an auto mechanic and he had to do a lot of twisting and bending as it was a physical job. The appellant stated that he attended an employment program through the ministry and they looked at possible jobs, like gardening and driving, but they are not possible because sometimes he could not even get out of his chair after a couple hour meeting.

The ministry's evidence includes that the appellant has been in receipt of income assistance since August 5, 2011 and has been on assistance for at least 12 of the past 15 months. The appellant's score on the employability screen is 7. At the hearing, the ministry acknowledged that with the new information from the appellant, his score would be "12". In the Medical Report-PPMB dated May 17, 2012, the physician reported that the appellant's primary medical condition is degenerative arthritis with onset of 1987, and the expected duration of this medical condition is 2 years or more. The treatment is Naproxen 500 mg b.i.d. (twice a day) p.r.n.(as needed). The physician indicates that the appellant is restricted with "...lifting/ prolonged sitting and standing/ knee pain." The ministry states that there are many jobs that will accommodate the appellant's limitations to sitting, lifting and standing for prolonged periods, including part-time work.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry reasonably concluded that the appellant did not meet all of the applicable statutory requirements of Section 2 of the Employment and Assistance Regulation (EAR) to qualify as a person with persistent multiple barriers to employment (PPMB); in particular, the ministry was not satisfied that the appellant's medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment, pursuant to Section 2(4)(b) of the EAR.

The criteria for being designated as a person with persistent multiple barriers to employment (PPMB) are set out in Section 2 of the EAR as follows:

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 1 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.

Under Section 2(2), the person must have been the recipient of one or more of a number of types of assistance for at least 12 of the immediately preceding 15 calendar months and also meet the requirements set out in subsection 2(3) or subsection 2(4). If the person has scored at least 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(3) applies. If the person has scored less than 15 on the employability screen as set out in Schedule E to the EAR, then Section 2(4) applies. Under Section 2(4) of the EAR, the person must have a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least one year and is likely to continue for at least 2 more years, or has occurred frequently in the past year, and is likely to continue for at least 2 more years and, in the opinion of the minister, is a barrier that precludes the person from searching for, accepting, or continuing in employment.

The ministry's position is that the appellant has been in receipt of income assistance for more than 12 of the preceding 15 months and, therefore, meets the requirements of Section 2(2) of the EAR. However, the ministry argues that the evidence has not established that the appellant has met all the remaining applicable criteria of Section 2. As the appellant scored 7, or 12 with the revised responses, on the employability screen, he must meet the requirements of Section 2(4) of the EAR. The ministry acknowledges that the appellant has a medical condition, other than an addiction, that has been confirmed by a medical practitioner and that, in the opinion of the medical practitioner, has continued for at least 1 year and is likely to continue for at least 2 more years. However, the ministry argues that the evidence does not establish that the medical condition is a barrier that precludes the appellant from searching for, accepting, or continuing in employment. The ministry points out that a medical condition is considered to preclude a recipient from searching for, accepting, or continuing in employment when as a result of the medical condition the recipient is unable to participate in any type of employment activities for any length of time, except in a supported or sheltered-type work environment. The ministry argues that the doctor described the appellant's restrictions as with "...lifting/ prolonged sitting and standing/ knee pain" and this does not demonstrate an inability to work in any capacity except for a supported or sheltered-type work environment. The ministry argues that there are many jobs that will accommodate the appellant's limitations to sitting, lifting and standing for prolonged periods.

The appellant's position is that Section 2 of the EAR states that a person must meet the requirements set out in sub-section (2) and subsection (3) or (4) and he meets the requirements set out in sub-section (2) and sub-section (4), and he is, therefore, eligible for benefits. The appellant argues that he is not able to stand for more than 15 to 20 minutes on a good day, and less than that one a bad day. The appellant argues that if he sits for more than an hour, it takes 15 to 20 minutes to be able to move freely. The appellant argues that he has always worked in a physical job, he has a grade 11 education and has been unemployed for over 5 years and he does not know of any jobs that he could with these restrictions.

The panel finds that the appellant's score on the employability screen had been determined by the ministry as "7" based on the available information, but the ministry acknowledged that with the new information from the appellant, his score would be "12". The panel finds that it is not disputed that the appellant's physician has provided a medical opinion, in the Medical Report dated May 17, 2012, that the appellant suffers from a medical condition other than an addiction, namely degenerative arthritis. It is also not disputed that the appellant's medical condition has, in the opinion of the medical practitioner, continued for at least 1 year and is likely to continue for at least 2 more years. Regarding the nature of restrictions specific to the medical condition, the physician stated that the appellant is restricted with "...lifting; prolonged sitting & standing; knee pain." The doctor has not specified how much weight the appellant can lift, and the appellant stated that sitting more than an hour causes stiffness and standing more than 15 to 20 minutes on a good day causes pain in his back that feels like "knives" jabbing in his back.

The ministry pointed out that a medical condition is considered to preclude a recipient from searching for, accepting, or continuing in employment when as a result of the medical condition the recipient is unable to participate in any type of employment activities for any length of time, except in a supported or sheltered-type work environment. The evidence demonstrates that the appellant experiences some restrictions as a result of

his medical condition, with lifting weights and with standing more than 15 to 20 minutes at a time on a good day or sitting more than 1 hour. However, the panel finds that the ministry reasonably concluded that these restrictions, as clarified by the appellant, do not preclude, or prevent, the appellant from searching for employment, or from accepting any type of employment, perhaps on a part-time basis. Therefore, the panel finds that the ministry's conclusion that the evidence does not demonstrate that the appellant's medical condition is a barrier that precludes him from searching for, accepting or continuing in employment, pursuant to the requirement in Section 2(4)(b) of the EAR, was reasonable.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.