

**Reasons for Decision:**

**Order # AP1516-0258**

The appellant appealed that eligibility under Section 5(1) (a) of The Manitoba Assistance Act was denied.

The appellant attended the hearing with an advocate who presented on the appellant's behalf.

The advocate first advised that the appellant has been granted disability benefits effective the date of the hearing. The Department enrolled the appellant for three months as further eligibility is dependent on the outcome of an appointment the appellant has with the Society for Manitobans with Disabilities (SMD). The advocate is seeking retroactive disability benefits to the time the appellant applied in March 2015 as well as extended benefits which duration should not be contingent upon the SMD assessment.

The advocate reported that the appellant is <reference removed> years of age and has a grade 12 education with a history of construction or labour related jobs. The appellant has been under various doctors' care since <date removed>. The appellant continues to suffer from pain related medical issues. In <reference removed> the appellant suffered a work injury where the appellant fell directly on the appellant's face and right shoulder onto a floor joist. The appellant tried the appellant's best to alter the appellant's work duties but it was estimated that the appellant would be unable to work fifty percent of the time. By <reference removed>, due to pain continuing to worsen and conditions deteriorating, the appellant was unable to maintain employment. The appellant applied for income assistance disability benefits on <reference removed>.

With the appellant's request was a disability assessment report completed by the appellant's physician.

The report lists the primary diagnosis as <reference removed>. The secondary diagnosis is listed as <reference removed>. In this same report the doctor checked that the appellant was not able to work for 7 to 12 months and further explained that the patient experiences constant pain which worsens when lifting, and carrying. Other medical information the Department had at the time was a letter from a <reference removed> doctor dated <date removed> to support a <reference removed> claim for the appellant. Another letter was completed by the same doctor on <date removed> advising of the appellant's constant multiple pains and stated that the appellant was not able to work in the foreseeable future until the appellant's pain is under control and for which the appellant was receiving regular injections which provide some relief. All medical information was sent to the medical panel which denied eligibility on the basis

that the appellant's conditions should not preclude sedentary employment or training.

The appellant's advocate sent a reconsideration letter to the Department on <date removed> The package of information included a self-assessment report where the appellant lists various conditions and chronic pain, and a list and description of all the medications the appellant is taking and the side effects they cause listed as: <reference removed>. The appellant's adverse side effects to these various medications include, headaches, nausea, dizziness, shortness of breath and vision changes. At the hearing the advocate distributed, with no objection from the Department, a list of medical appointments the appellant attends.

The advocate summarized by stating that the appellant's conditions have lasted several years and all the medical information has consistently provided very detailed reports showing the appellant's limitations and chronic pain. If and when the appellant's conditions are under control the appellant has stated that the appellant has attended employment programs as instructed by the Department but couldn't continue due to the appellant's conditions. The appellant would like to work again someday if and when the appellant's medical situations are under control.

The Department stated that all the medial information was reviewed by their medical panel which determined that the appellant was capable in a different line of work based on the Disability Assessment Report where the physician indicates that the appellant's pain worsens with lifting, carrying and back movements which makes the appellant's previous work unsuitable, however doesn't state that the appellant is unable to work in any capacity. Eligibility based upon the additional information received in <date removed> was again denied based on the appellant's physician indicating that employment is guarded.

The Manitoba Assistance Act states that in order to be eligible for disability benefits, you must be a person:

- (a) who, by reason of age or by reason of physical or mental ill health, or physical or mental incapacity or disorder that is likely to continue for more than 90 days
- (i) is unable to earn an income sufficient to meet the basic necessities of himself and his dependants, if any

After carefully considering the written and verbal information presented at the hearing the Board has determined that at the time the Department made the initial decision, there was not enough information to support that the appellant was not capable of supporting the appellant through sedentary employment. The original <date removed> report suggests that there are other types of work the appellant would be capable of.

The Board also considered that the physician and the appellant said the appellant

cannot return to the appellant's own job but didn't state the appellant couldn't do other types of employment. The Department's position, based on that information, was that the appellant is capable of other sedentary work.

However, the Board heard the appellant's and the advocate's presentation regarding the appellant's chronic pain and the medications the appellant is currently taking to get through the day including injections every month. Although in the new medical information received in <date removed>, the physician advised that the appellant's capacity to sustain employment at this stage is guarded, the physician provided a more narrative report of all the appellant's conditions including how the appellant continues to receive <reference removed> injections for the appellant's <reference removed> condition and that there is a likelihood of recurrence and further deterioration of the appellant's condition.

Despite the appellant's desire for retraining, the Board finds that the appellant's medical conditions, the medications the appellant is taking and the side effects to those medications as well as the numerous medical appointments including multiple injections monthly currently make the appellant unable to earn an income sufficient to meet the appellant's basic needs. Therefore, the Board orders that the appellant be enrolled under Section 5(1)(a) of The Manitoba Assistance Act effective <date removed> for a period of twelve months.

## **DISCLAIMER**

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