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PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated February 28, 2019 in which the ministry found that the appellant was not eligible for the *Persons who have persistent multiple barriers to employment* qualification (“PPMB”) under section 2 of the Employment and Assistance Regulation (“EAR”). The ministry assessed the application under subsections 2(2) and 2(4) of the EAR and was not satisfied that the appellant’s medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation - EAR – section 2 and Schedule E

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. The reconsideration decision which states:

- On January 29, 2019, the ministry denied the appellant's request for PMMB. On February 25, 2019, the appellant submitted a Request for Reconsideration ("RFR") and on February 27, 2019, the ministry completed the review of the RFR.
- The appellant's score on the Employability Screen is 10.

2. A copy of an Employability Screen (Schedule E). The response scores and calculation of the total score are not completed on the form.

3. A copy of the ministry's *Decision to be Reconsidered*, stating that the appellant's score on the Employability Screen is less than 15.

4. An RFR signed by the appellant on February 25, 2019, with a submission in which the appellant provides her argument and states that she has participated in job search activities through Work BC but has not received any feedback from employers. The appellant indicates that she has impairments in the areas of communication and social functioning and has been suffering from physical and mental abuse from a young age. The appellant describes the impacts of family violence on her life and states that she has arthritis and physical injuries as well as a mental disorder. The appellant states that she has been taking medications and consulting her psychiatrist frequently.

5. A PPMB Medical Report dated December 17, 2018, completed by a psychiatrist who has been the appellant's medical practitioner for 6 months or less and has examined the appellant's previous medical records. The report contains the following information:

- The appellant's primary medical condition is depression, date of onset in 2017. Her secondary condition is PTSD, date of onset in 2016.
- Treatment and outcome: the appellant is taking two prescription medications.
- The appellant's condition has existed for more than a year and its expected duration is 2 years or more.
- The appellant's conditions are episodic in nature (comment: "persistent depression/ fluctuations"). When asked how frequently the episodes are likely to recur, the psychiatrist writes, "unpredictable."
- In section 3 of the form, *Restrictions*, the psychiatrist describes the nature of any restrictions specific to the above medical condition as "dysphoric/ poor tolerance of social environment, prone to mood lability."
- No additional documents in support of the severity and restrictions of the medical condition were submitted (as indicated in Section 4 of the report).

6. A letter from the ministry dated January 29, 2019, advising the appellant that the PPMB application was not approved. An attached Decision Summary indicates it is a new application. Under *Case Review*, the ministry indicates the appellant has been on income assistance for at least 12 of the previous 15 months. Under *Summary*, the ministry indicates the appellant's score on the Employability Screen is less than 15.

Additional information

1. On March 6, 2019, the Tribunal received the appellant's Notice of Appeal in which she provides her argument and states that her score on the Employability Screen is "over 15."
2. On March 11, 2019, The Tribunal received a submission from the appellant: a letter from her psychiatrist dated March 11, 2019, stating that the appellant has been assessed at a mental health clinic and presents with symptoms consistent with a depressive disorder. The psychiatrist writes that the appellant "is at this point not employable and is appropriate for disability benefits." The letter also states that the appellant has begun treatment, with the hope that she can resume optimal functioning.

Admissibility

The ministry did not object to the additional submissions and the panel finds that the information they contain is in support of the ministry record. In the RFR, the appellant disputes the ministry's calculation of the Employability Screen score. As well, the letter from the psychiatrist corroborates the information in the PPMB medical report that indicates the appellant is being treated for depression. The letter also provides an update on the appellant's restrictions to employment which were originally set out in section C-3 of the PPMB medical report. The panel admits the Notice of Appeal and letter from the psychiatrist under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

Procedural matter

The appellant did not attend the hearing. Upon confirming that she was notified of the date and time and the teleconference instructions, the panel considered the appeal in a party's absence as it is authorized to do under section 86(b) of the Employment and Assistance Regulation. The ministry provided argument at the hearing and did not submit any new evidence.

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PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's reconsideration decision which found that the appellant was not eligible for the PPMB qualification under section 2 of the EAR was reasonably supported by the evidence, or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The Ministry based its reconsideration decision on the following legislation:

EAR:

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 one 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.

Schedule E

Employability Screen

Number	Criteria	Category of Response	Score
1	What is the person's age?	(a) under 19 (b) 19 to 24 inclusive (c) 25 to 49 inclusive (d) 50 to 65 inclusive	0 1 0 0
2	Apart from the current application, how many times has the person been on Income or Social Assistance anywhere in Canada in the last 3 years?	(a) never (b) 1 to 3 times (c) more than 3 times	0 1 3
3	What is the total amount of time the person has spent on Income or Social Assistance in the last 3 years?	(a) less than 2 months (b) 2 to 12 months (c) more than 12 months	0 3 7
4	What is the highest level of education the person has	(a) post-secondary program —	1

	completed?	degree or diploma (b) some post-secondary (c) high school/GED (d) grade 10 to grade 12 (e) less than grade 10 (f) trade certificate	0 0 1 3 0
5	What is the total amount of time the person has spent in paid employment over the last 3 years?	(a) more than 12 months (b) from 3 to 12 months (c) under 3 months (d) none or very limited work experience (e) volunteer work only	0 1 2 4 3
6	What is the person's English speaking ability or literacy level?	(a) good working knowledge of English (b) English as a second language (ESL) or in need of English skills training	0 3
TOTAL			
		Office use only: Score only most applicable response	

Analysis

To be eligible for PPMB, the requirement in subsection 2(2) of the EAR must be met. The ministry notes that the appellant has been a recipient of income assistance for at least 12 of the immediately preceding 15 calendar months. The ministry was therefore satisfied that the requirement in subsection 2(2) was met.

In addition to the requirement for length of time on assistance, the applicant must meet the criteria set out in subsection 2(3) or 2(4) of the EAR depending on the score on the Employability Screen as calculated by the ministry. The Employability Screen is a tool prescribed by the legislation that guides the ministry's assessment of PPMB eligibility. The questions and scoring instructions for the Employability Screen are set out in Schedule E of the EAR. Where the minister determines that the applicant's score on the Screen is at least 15, the requirements in subsection 2(3) apply. Where the applicant's score is less than 15, the requirements in subsection 2(4) apply instead.

For applicants with a score of less than 15 on the Screen, the ministry is required to apply the more stringent test under subsection 2(4)(b) of the Regulation in which the minister must be of the opinion that the applicant's confirmed medical condition is a barrier that *precludes* searching for, accepting, or continuing in employment. By contrast, subsection 2(3)(b) sets out a less stringent test in which the ministry's determination of PPMB eligibility is based on the minister being satisfied that the medical condition is a barrier that *seriously impedes* the person's ability to search for, accept or continue in employment. An additional requirement under subsection 2(3)(c) is that the person must have taken

reasonable steps to overcome their barriers to employment.

Ministry's arguments

The ministry first considers whether the appellant is eligible for the PPMB qualification under subsection 2(3) of the EAR. Based on an Employability Screen score of less than 15, the ministry concludes that the appellant does not have barriers that seriously impede her ability to search for, accept, or continue in employment pursuant to subsection 2(3)

The ministry then considers the application under subsection 2(4) of the EAR. The ministry states that the PPMB application must be assessed under subsection 2(4) based on a score of 10 on the Employability Screen. The ministry accepts that the appellant meets the criteria in subsection 2(4)(a) as the psychiatrist has confirmed that the appellant has an impairment that has continued for at least 1 year and is likely to continue for at least 2 more years. The ministry argues that it does not have sufficient verification of how the appellant's medical condition is a barrier that precludes her from searching for, accepting, or continuing in employment pursuant to subsection 2(4)(b).

The ministry argues that the appellant's medical condition is not a barrier that precludes employment because neither the psychiatrist nor the appellant provide details about the episodic nature of the condition. The ministry notes that the psychiatrist reports that the appellant's condition is episodic. The ministry therefore expects there to be information on the frequency of past episodes or the likely frequency of future episodes.

Appellant's arguments

In the RFR, the appellant disputes the ministry's calculation of her score on the Employability Screen, wondering what evidence the ministry's score of less than 15 is based on? The appellant submits that the ministry evaluated her employability score without interviewing or communicating with her in person or conducting a thorough investigation of her circumstances.

The appellant argues that the psychiatrist has provided a straightforward diagnosis and analysis of her medical condition and adequately describes her restrictions. The appellant indicates that she is frustrated and confused about her future as she has put a lot of effort into job search activities to no avail. The appellant reports that her experience with family violence has left her feeling sorrowful and gloomy about life, with few life skills, significant social difficulties, and physical limitations as well as a mental disorder.

On appeal, the appellant states that her score on the Employability Screen is more than 15. The appellant submits that she is unable to work due to her health issues. The appellant argues that her restrictions are confirmed by her medical practitioner's assessment.

Panel's decision

The panel finds that the ministry's decision to assess the PPMB application under subsection 2(4) of the EAR was an unreasonable application of the legislation in the circumstances of the appellant. The applicant's score on the Employability Screen is fundamental to the ministry's assessment of PPMB eligibility but the ministry does not explain how it calculated a score of 10 on the appellant's Employability Screen.

In the RFR, the appellant voices her disagreement with the ministry's calculation of the score, and in the

reconsideration decision, the ministry acknowledges that the appellant has concerns with the ministry's process in determining barriers to employment. The ministry still does not explain how it arrived at a score of 10 but notes that the Employability Screen has been included in Appendix A of the reconsideration decision for the appellant's reference. However, the copy in the record is blank with none of the scoring questions completed. In response to questions at the hearing, the ministry stated that it has no additional information to explain the calculation of the score.

The appellant's score on the Employability Screen cannot be ascertained with any certainty based on the information provided. The ministry states that the score is 10 but the appellant maintains that her score is greater than 15. Neither party provides the appellant's responses to the questions on the Screen such as the appellant's highest level of education or the total amount of time she has been on assistance in the last 3 years.

The ministry ultimately assesses PPMB eligibility under subsection 2(4)(b) for this application, with the opinion that the appellant's medical condition does not meet the "precludes" criteria because there is insufficient information on the episodic nature of the condition. The panel finds that the ministry unreasonably concluded that the appellant's confirmed medical condition is not a barrier that precludes her from searching for, accepting or continuing in employment.

The evidence in the PPMB medical report is that the appellant has "persistent" depression that fluctuates unpredictably. The reported barriers to employment include dysphoria, poor tolerance of social environments, and mood lability. The appellant explains these barriers in detail in the RFR and the evidence from the psychiatrist (admitted on appeal) is that the appellant currently presents with symptoms of a depressive disorder and is not employable at this time.

Conclusion

The panel finds that the ministry's reconsideration decision that found the appellant ineligible for the PPMB qualification is an unreasonable application of the legislation because the ministry does not explain how it calculated the appellant's score on the Employability Screen. Without an explanation of how the score was arrived at, the panel finds that the ministry unreasonably determined that the appellant's barriers to employment must be assessed under subsection 2(4) of the EAR. Considering the information on medical barriers to employment provided for the reconsideration, as well as the updated information from the psychiatrist on appeal, the panel finds that the ministry unreasonably determined that the criteria in subsection 2(4)(b) were not met. The panel rescinds the reconsideration decision and the appellant is successful in her appeal.

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)

and

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

PART H – SIGNATURES

PRINT NAME

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-03-26

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-03-26