



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DS v Minister of Employment and Social Development*, 2020 SST 839

Tribunal File Number: GP-19-996

BETWEEN:

**D. S.**

Claimant

and

**Minister of Employment and Social Development**

Minister

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**DECISION**

**General Division – Income Security Section**

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Decision by: Adam Picotte

Date of decision: August 31, 2020

Hearing Method: Teleconference

Date of Hearing: August 27, 2020

Claimant represented by: Allison Schmidt

## **DECISION**

[1] The Claimant, D. S., is eligible for a Canada Pension Plan (CPP) disability pension. Payments are to start February 2017. This decision explains why I am allowing the appeal.

## **OVERVIEW**

[2] D. S. worked as an office clerk with X from 1985 to 2016. From all accounts, she enjoyed her work. In 2013, she went off work on a medical leave due to an invasive breast cancer diagnosis. When she returned, the employer had changed its operations to rely more on technology. She was unable to adjust because of complication with major depressive disorder and was accepted onto long-term disability benefits with the Company's insurance provider.

[3] The Claimant applied for a CPP disability pension on January 26, 2018. The Minister of Employment and Social Development Canada (the Minister) refused her application because the Claimant was receiving psychological treatment that may result in improvement. The Claimant appealed to the General Division of the Social Security Tribunal.

## **WHAT THE CLAIMANT MUST PROVE**

[4] For the Claimant to succeed, she must prove that she has a disability that was severe and prolonged by December 31, 2019. This date is based on her contributions to the CPP.<sup>1</sup>

[5] A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation. It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>2</sup>

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<sup>1</sup> The *CPP* calls this date the "Minimum Qualifying Period." See s. 44(2).

<sup>2</sup> The definition is found in s. 42(2)(a) of the *Canada Pension Plan*. The legal test is that the Claimant must prove they are disabled on a balance of probabilities. In other words, they must show it is more likely than not that they are disabled.

## THE REASONS FOR MY DECISION

[6] I find that the Claimant has a severe and prolonged disability as of October 2016. I reached this decision by considering the following issues.

### WAS THE CLAIMANT'S DISABILITY SEVERE?

#### ***The Claimant has functional limitations that affect her capacity to work***

[7] My decision about whether the Claimant's disability is severe is not based on her diagnosis. It is based on whether she has functional limitations that prevent her from working.<sup>3</sup> I have to look at her overall medical condition and think about how the Claimant's health issues might affect her ability to work.<sup>4</sup>

[8] The Claimant has to provide objective medical evidence of her disability as of December 31, 2019. If a person fails to prove that she suffered from a severe disability prior to this date, medical evidence dated after is irrelevant.<sup>5</sup>

[9] The Claimant argues that her major depressive disorder results in an inability to concentrate and remember tasks. She cannot multitask or engage with complex tasks. The Claimant also detailed she has difficulty communicating on the phone.

[10] The Claimant's speech is slow and fractured. She also suffers from fatigue and a difficulty explaining and processing information.

[11] It was because of these symptoms that she was terminated from her employment. She had to rely on the assistance of colleagues to do work for her. Her employer initially accommodated her by making her own schedule, take extra breaks, and choose which duties she could handle.

[12] However, in 2016, she had a new manager and she was performance managed to the point of termination.

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<sup>3</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

<sup>4</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

<sup>5</sup> *Canada (A.G.) v. Dean*, 2020 FC 206, citing *Warren v. Canada (A.G.)*, 2008 FCA 377; *Gilroy v. Canada (A.G.)*, 2008 FCA 116; and *Canada (A.G.) v. Hoffman*, 2015 FC 1348; and *Canada Pension Plan Regulations*

[13] As a result, of her mistakes and inability to do her job duties she was terminated from her employment.

[14] She then filed a grievance through her union. She was reinstated and applied for disability benefits and was accepted onto long-term disability.

[15] The Claimant continues to suffer from an inability to do activities of daily living. She remains challenged with focus and concentration.

[16] The Claimant told me that she continues to get tired very quickly. She continues to be unable to multitask or concentrate.

[17] The medical evidence supports the Claimant's argument.

[18] Dr. Douziech, psychiatrist detailed in a medical report from January 2018 that the Claimant had experienced major depressive disorder since 2016. This condition followed the onset of an invasive breast cancer.<sup>6</sup>

[19] Dr. Douziech detailed that the Claimant continued to struggle with low mood and prominent anhedonia. She had poor concentration and attention. The Claimant had feelings of worthlessness and helplessness with passive suicidal ideation.

[20] She was noted to be unable to attend to her activities of daily living, was socially isolated at home and sleeps for a significant period of the day due to a reduction in her psychomotor ability.<sup>7</sup>

[21] In an April 2019 Occupational Therapy Discharge Report Lisa Zoller, detailed that the Claimant continues to demonstrate signs of limitations/deficits with the following:

- a) Cognitive issues (e.g. slower mental processing, difficulty concentrating); and
- b) Fatigue and reduced motivation to participate in ADLs and IADLs<sup>8</sup>

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<sup>6</sup> GD2-285

<sup>7</sup> GD2-286

[22] Ms. Zoller further noted that the Claimant often requires additional time to follow instructions and will require instructions to be repeated in order to understand them, Her mental processing speed is observably slower on "off" days. She does not feel that these "off days" are related to anything in particular, however that she is much more fatigued and finds it more difficult to focus.<sup>9</sup>

[23] In 2017, the Claimant was described as having a reduced capacity for tending to her activities of daily living. She was minimally maintaining hygiene, unable to cook or clean at home and isolating.<sup>10</sup>

[24] In her rehabilitation consultation report, the Claimant was noted to have severe fatigue, a high perceived level of disability and moderate pain and depressive symptoms.<sup>11</sup>

[25] The medical evidence shows that the Claimant had functional limitations that affected her ability to work by December 31, 2019.

***The Claimant does not have work capacity***

[26] When I am deciding if the Claimant is able to work, I must consider more than just the Claimant's medical conditions and their effect on functionality. I must also consider her age, level of education, language proficiency, and past work and life experience. These factors help me decide if the Claimant can work in the real world.<sup>12</sup>

[27] I find the Claimant has no capacity to work.

[28] She is a 57 year old person with limited adaptable skills. Even towards her final days of employment she was having to rely upon others to assist her in completing work tasks. The medical evidence demonstrates that she cannot function in a workplace. She

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<sup>8</sup> GD2-213

<sup>9</sup> GD2-213

<sup>10</sup> GD2-37

<sup>11</sup> GD2-137

<sup>12</sup> The Federal Court of Appeal held that the severe part of the test for disability must be assessed in the real world context (*Villani v. Canada (Attorney General)*, 2001 FCA 248).

barely has the capacity to function in her day-to-day activities. She has difficulties managing her activities of daily living. She is constantly fatigued and has poor hygiene.

[29] The medical evidence clearly demonstrates significant limitations such that she cannot work in any capacity.

[30] I find the Claimant has no capacity to work in the real world.

### **WAS THE CLAIMANT'S DISABILITY PROLONGED?**

[31] The Claimant's disability is prolonged.

[32] The Claimant's condition began in 2016. It was present when she left work in 2016 and continues today. Dr. Douziech detailed that the Claimant's condition was guarded. She had only had a partial response despite multiple trials of medication and combining treatment with psychotherapy.<sup>13</sup>

[33] Dr. Douziech noted that the severity of her disease and the duration of illness episode with only a partial response were poor prognostic indicators.<sup>14</sup>

[34] The purpose of the CPP is to provide a pension to those who are disabled from working on a long-term basis, not to help people through a temporary period when they cannot work.<sup>15</sup> I find this is the case with the Claimant.

### **CONCLUSION**

[35] The Claimant had a severe and prolonged disability in August 2016. However, the CPP says she cannot be deemed disabled more than fifteen months before the Minister received her disability application. After that, there is a four-month waiting period before payment begins. The Minister received the Claimant's application in

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<sup>13</sup> GD2-288

<sup>14</sup> GD2-288

<sup>15</sup> This is explained in *Canada (MHRD) v. Henderson*, 2005 FCA 309

January 2018. That means she is deemed to have become disabled in October 2016.  
Payment of her pension starts as of February 2017.

Adam Picotte  
Member, General Division – Income Security