



Citation: *ZR v Minister of Employment and Social Development*, 2022 SST 364

## **Social Security Tribunal of Canada General Division – Income Security Section**

# **Decision**

**Appellant:** Z. R.  
**Representative:** M. G.

**Respondent:** Minister of Employment and Social Development

---

**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated December 24, 2020 (issued by Service Canada)

---

**Tribunal member:** Tengteng Gai

**Type of hearing:** Teleconference

**Hearing date:** February 8, 2022

**Hearing participants:** Appellant  
Appellant's representative  
Appellant's witness  
Interpreter

**Decision date:** February 18, 2022

**File number:** GP-21-1015

## Decision

[1] The appeal is dismissed.

[2] The Appellant, Z. R., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant is 55 years old. She has a primary school education. She immigrated to Canada from Cuba in 1998.

[4] The Appellant worked as a cleaner. She last worked from January 2018 to November 2018. She stopped working because of pain, migraines, and fatigue from Lupus.

[5] The Appellant applied for a CPP disability pension on November 28, 2019.<sup>1</sup> The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[6] The Appellant argues that she had a severe and prolonged disability. She argues that she was suffering from Lupus symptoms in 2015.

[7] The Minister argues that the Appellant hasn't proven that she had a severe and prolonged disability by December 31, 2015.

---

<sup>1</sup> See date stamp on Medical Report at GD2-76; and Minister's submissions at GD6-3.

## What the Appellant must prove

[8] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by her Minimum Qualification Period (MQP) of December 31, 2015.<sup>2</sup> This date is based on contributions to the CPP.

[9] The *Canada Pension Plan* defines “severe” and “prolonged.”

[10] A disability was **severe** if it made an Appellant incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup>

[11] This means I have to look at all of the Appellant’s medical conditions together to see their effect on her ability to work. I also have to consider her background including her age, level of education, and past work and life experience. I do this to get a realistic or “real world” picture of whether her disability was severe. If the Appellant was able to regularly do some kind of work that she could earn a living from, then she isn’t entitled to a disability pension.

[12] A disability was **prolonged** if it was likely to be long continued and of indefinite duration, or was likely to result in death.<sup>4</sup>

[13] This means the Appellant’s disability can’t have an expected recovery date. The disability must be expected to keep the Appellant out of the workforce for a long time.

[14] The Appellant has to prove she had a severe and prolonged disability. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she was disabled.

---

<sup>2</sup> Service Canada uses an Appellant’s years of CPP contributions to calculate their coverage period, or “minimum qualifying period” (MQP). The end of the coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*. The Appellant’s CPP contributions are on GD2-5.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## Reasons for my decision

[15] The Appellant hasn't proven she had a severe and prolonged disability by her MQP date of December 31, 2015.

### The Appellant's disability wasn't severe

[16] I find that the Appellant's disability wasn't severe. I base this on several factors. I explain these factors below.

#### – The Appellant testified that she had functional limitations

[17] The Appellant had Lupus. However, I can't focus on the Appellant's diagnosis.<sup>5</sup> Instead, I must focus on whether she had resulting functional limitations that got in the way of her earning a living.<sup>6</sup> When I do this, I have to look at **all** of the Appellant's medical conditions, not just the main one, and think about how they affected her ability to work.<sup>7</sup>

[18] I find the Appellant's testimony sincere.

[19] At the hearing, the Appellant said that she functional limitations that affected her ability to work in the following ways:

- She had migraines.
- Her hands felt weak. She had difficulty holding objects.
- She could not walk longer than an hour.
- She could not stand longer than two hours.
- She could not bend down.

[20] The Appellant's witness, her daughter, testified that she saw the Appellant's pain worsen over the years.

---

<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[21] The Appellant's other witness, her husband, testified that he saw the Appellant's health deteriorate and that she often had to sit and rest.

– **The medical evidence doesn't support the Appellant's testimony**

[22] The Appellant must provide medical evidence that her functional limitations affected ability to work by her MQP date of December 31, 2015.<sup>8</sup>

[23] The Appellant and her witnesses genuinely believed that her functional limitations affected her ability to work. However, the medical evidence doesn't support their testimony. I based this finding on the following:

- The medical evidence doesn't address the Appellant's Lupus around her MQP date of December 31, 2015. Although the medical evidence noted functional limitations, they weren't dated to the MQP date and therefore aren't supportive for her appeal. This appeal must focus on her medical condition and limitations by her MQP date.<sup>9</sup>
- The medical evidence closest to her MQP date is an October 2, 2019, report from Dr. Silverberg, a specialist of internal medicine.<sup>10</sup> Dr. Silverberg noted joint pain over the last five years and listed a number of limitations. However, Dr. Silverberg didn't backdate these limitations to the MQP date. The limitations were also described in the present tense. This suggests that these limitations affected her on the date of the report, and not by her MQP date.
- The other medical evidence is from Dr. Dzieciol, the family doctor. Dr. Dzieciol initially noted limitations for Lupus, with an onset of 2014.<sup>11</sup> However, Dr. Dzieciol clarified later in the report that the onset for Lupus symptoms was July 2019, well after the Appellant's MQP date.<sup>12</sup>

---

<sup>8</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>9</sup> See *Johnson v Canada (Attorney General)*, 2016 FC 1254.

<sup>10</sup> See Dr. Silverberg's report at GD2-12.

<sup>11</sup> See Dr. Dzieciol's report at GD2-82.

<sup>12</sup> See Dr. Dzieciol's report at GD2-85.

[24] When asked about functional limitations from Lupus by her MQP date, the Appellant testified that she was only diagnosed and treated for Lupus in 2019. Despite this, she maintained that she had symptoms of Lupus prior to her diagnosis and around her MQP date.

[25] While I am sympathetic to the Appellant's situation, I am not persuaded that she had functional limitations by her MQP date. This is because she hasn't provided objective medical evidence of a severe disability existing on or before her MQP date of December 31, 2015.<sup>13</sup> The medical evidence she provided doesn't show that she had functional limitations that affected her ability to work by her MQP date. As a result, she hasn't proven she had a severe disability.

[26] When I am deciding whether a disability was severe, I usually have to consider an Appellant's personal characteristics. This allows me to realistically assess an Appellant's ability to work.<sup>14</sup>

[27] I don't have to do that here because the Claimant's functional limitations didn't affect her ability to work by December 31, 2015. This means she didn't prove her disability was severe by then.<sup>15</sup>

## **Conclusion**

[28] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe. Since I found that her disability wasn't severe, I don't have to consider whether it was prolonged.

[29] This means the appeal is dismissed.

Tengteng Gai  
Member, General Division – Income Security Section

---

<sup>13</sup> See *Canada (Attorney General) v Angell*, 2020 FC 1093

<sup>14</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>15</sup> See *Giannaros v Minister of Social Development*, 2005 FCA 187.