



Citation: *JB v Minister of Employment and Social Development*, 2022 SST 322

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

Decision

Appellant: J. B.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 3, 2020 (issued
by Service Canada)

Tribunal member: Anne S. Clark
Type of hearing: Teleconference
Hearing date: February 15, 2022
Hearing participant: Appellant
Decision date: March 8, 2022
File number: GP-21-278

Decision

[1] The appeal is allowed.

[2] The Appellant, J. B., is eligible for a *Canada Pension Plan* (CPP) disability pension. Payments start as of November 2018. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 40 years old. She lives with her two young children and her boyfriend. She studied culinary arts in college and last worked as a senior cook in a hospital. She also has experience working for a call centre and as a bartender.

[4] The Appellant had her second child in July 2016. She took maternity leave until July 2017. She looked forward to returning to work. After several weeks the Appellant became ill with what she described as a respiratory condition. She had trouble breathing even with medication including puffers and steroids. She had to stop working. On August 11, 2017, her boyfriend found her in the bedroom having what appeared to be hallucinations. He called for help and she was airlifted to a hospital with “multi-organ” failure.

[5] The Appellant learned she had a condition called atypical hemolytic uremic syndrome (aHUS). She was treated in hospital and did recover. She does not have ongoing symptoms. She learned she could have another episode although it is rare. She knows there is nothing she can do to prevent it. The extreme illness and fear of recurrence creates an extraordinary amount of anxiety for her. This aggravated her mental health conditions and she has not recovered from that.

[6] The Appellant has managed limitations from depression and anxiety since about 2003. She also had symptoms of psychosis in 2013 after she had her first child. Mental health symptoms increased after she had her second child in July 2016 and increased again after she developed aHUS. She said symptoms from aHUS made her stop

working but continuing limitations caused by mental health conditions made her unable to return to work.

[7] The Appellant applied for a CPP disability pension on October 15, 2019.¹ The Minister of Employment and Social Development (Minister) refused her application.² The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[8] The Appellant says she can't function well enough to interact with others and return to any work because of limitations caused by chronic depression and anxiety. The incident in August 2017 also aggravated her chronic anxiety. She said she hasn't been able to function well enough to handle household tasks or many of her own basic personal needs.

[9] The Minister says the Appellant is not eligible for a CPP disability pension. The Minister wrote that she recovered from the aHUS and does not have limitations from that condition. The Minister noted that the Appellant has a mood/anxiety disorder but that does not prove she has a disability because an evaluation showed she has the capacity for work.

What the Appellant must prove

[10] For the Appellant to succeed, she must prove she has a disability that is severe and prolonged by the hearing date, February 15, 2022. This is the Appellant's minimum qualifying period or MQP.³

¹ The application begins at page GD2-14.

² The Minister's reconsideration decision begins at page GD2-4.

³ 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 page GD2-22.

[11] The Minister submitted the Appellant's MQP ended on December 31 2019.⁴ The Minister's submission is wrong. The Appellant's MQP extends beyond December 31, 2019, because of the child-rearing provision.⁵

[12] Under the child-rearing provision, a parent doesn't have to contribute to the CPP when they are out of the workforce to care for a child under seven years of age. The Appellant's youngest child was born in July 2016. She was the primary caregiver of a child under seven beginning in July 2016. That will continue until after December 31, 2022. This means her MQP is extended until December 31, 2022. Since the Appellant's MQP ends after the hearing date, she has to prove she had a severe and prolonged disability by the hearing date.

[13] The *Canada Pension Plan* defines "severe" and "prolonged."

[14] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁶

[15] This means I have to look at all of the Appellant's medical conditions together to see what effect they have on her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or "real world" picture of whether her disability is severe. If the Appellant is able to regularly do some kind of work to earn a living, then she isn't entitled to a disability pension.

[16] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁷

[17] 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.

⁴ The Minister said this in submissions at GD5.

⁵ See sections 44(2.2) and 49(d) of the *Canada Pension Plan* and section 77 of the *Canada Pension Plan Regulations*.

⁶ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁷ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[18] The Appellant has to prove she has 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 is disabled.

Reasons for my decision

[19] I find that the Appellant had a severe and prolonged disability by February 15, 2022. I reached this decision by considering the following issues:

- Is the Appellant's disability severe?
- Is the Appellant's disability prolonged?

Is the Appellant's disability severe?

[20] The Appellant's disability is severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations do affect her ability to work

[21] The Appellant has mental health conditions that include depression, anxiety, chronic low mood with paranoid tendencies, and possible schizoaffective disorder of the bipolar type. She was also diagnosed with aHUS in 2017.⁸ However, I can't focus on the Appellant's diagnoses.⁹ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.¹⁰ 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 affect her ability to work.¹¹

[22] I find that the Appellant has functional limitations.

⁸ The Appellant's conditions and symptoms are summarized in a report from one of her mental health professionals beginning on page GD2-37.

⁹ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

¹⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

¹¹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

– **What the Appellant says about her functional limitations**

[23] The Appellant says that her mental health causes functional limitations that affect her ability to work. She says she is so anxious she cannot focus on anything else. She fears everything. She cries easily and is overwhelmed by simple daily activities. She has very low energy and does not interact well with others. Fatigue is constant and she is easily irritated. She finds anxiety makes her unable to make decisions or take on any responsibility. She cannot cook for her family and has to rely on her boyfriend or the children for basic household tasks.

[24] The Appellant thought she was improving after she started taking medication but it did not last. She is unable to focus or concentrate. Now, she has no hope for the future.

– **What the medical evidence says about the Appellant's functional limitations**

[25] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work by February 15, 2022.¹²

[26] The medical evidence supports what the Appellant says. The Appellant's counsellors, psychiatrist, and nurse practitioner described her health conditions and the effect they have on her functional abilities. For example:

- In December 2019 Dr. Vienneau, Psychiatrist, wrote that the Appellant had symptoms of severe anxiety, depression and psychosis. She said the Appellant's symptoms meet the criteria of schizoaffective disorder and, if it was bipolar, it was a severe form.¹³
- In February 2020 J. Anderson, Nurse Practitioner, wrote that the Appellant has schizoaffective disorder. She had 21 visits over the last 12 months. Ms.

¹² See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹³ Dr. Vienneau said this in her letter at GD2-61.

Anderson said the prognosis for recovery is unknown but she did not think the Appellant would be able to return to work in the future.¹⁴

- Dr. Anand Natarajan, Psychiatrist, wrote that the Appellant was treated for mental health conditions beginning in 2003. At first she had symptoms of depression and anxiety. Once she was diagnosed with schizoaffective disorder of the bipolar type she began receiving received medication by monthly injections. She had an initial good response but that plateaued. The episode of aHUS in 2017 affected her mental health and she stopped work. She continued to be very emotional about the diagnosis and the medical crisis she experienced in 2017. Dr. Natarajan said the Appellant had increased severity in symptoms of depression in the past few years. She had auditory hallucinations and continued to have significant depression, anxiety, and paranoid tendencies. He wrote about the need to adjust medication for depression and medication for schizoaffective disorder to try to find a balance.¹⁵
- The Minister noted a functional scan that was completed in June 2019 and, according to the Minister, showed the Appellant has the capacity for work.¹⁶ The Minister also referred to the report from Dr. Sheridan who said the Appellant could participate in a functional assessment.¹⁷ The Appellant asked me to consider that these opinions and reports relate to her physical health. She acknowledged that she recovered, physically, from the episode in August 2017. I agree with the Appellant that these reports do not show the Appellant also recovered from the mental health symptoms. In fact, the evidence from the treating mental health professionals shows limitations from her mental health continue to prevent her from working.

¹⁴ See Ms. Anderson's report beginning at GD2-51.

¹⁵ Ms. Cameron's notes beginning at GD2-37.

¹⁶ The report is at GD3-34.

¹⁷ See GD4-29

[27] The medical evidence supports that the Appellant's ongoing mental health conditions prevented her from returning to work or participating in retraining by February 15, 2022.

[28] Next, I will look at whether the Appellant followed medical advice.

– **The Appellant has followed medical advice**

[29] To receive a disability pension, an appellant must follow medical advice.¹⁸ If an appellant doesn't follow medical advice, then she must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on her disability.¹⁹

[30] The Appellant has followed medical advice.²⁰ She sees her health professionals regularly. She takes medication as prescribed although she acknowledged that it is difficult at times because each medication affects other conditions. She struggles to cope with the side effects. She sees her primary caregiver about every two weeks. She has an appointment or call with a psychiatrist once every two months and talks to a therapist every two weeks. The evidence does not conflict with the Appellant's testimony that she follows medical advice.

[31] I now have to decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.²¹

– **The Appellant can't work in the real world**

[32] When I am deciding whether the Appellant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

- age

¹⁸ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁹ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

²⁰ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²¹ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

- level of education
- language abilities
- past work and life experience

[33] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.²²

[34] I find that the Appellant can't work in the real world. There is no denying that she is young, educated, and likely possesses transferable skills. However, she also has many limitations caused by mental health conditions. She continues to experience constant fatigue and overwhelming anxiety. She is unable to interact with others. She feels hopeless and is unable to focus or concentrate on even basic tasks. I find that those limitations outweigh her education and transferable skills, and preclude her from being a candidate for re-training or for alternate work.

[35] At the hearing, the Appellant gave straightforward, plausible evidence about how her mental health condition affects her. I believe what she told me. She talked about her work and how much she enjoyed it. I believe she would return to work if she could.

[36] Any transferable skills the Appellant has don't make her employable. Her problem is that the limitations that prevent her from working at her previous job also prevent her from doing any other type of work, including part-time work. Because of depression, anxiety, and schizoaffective disorder of the bipolar type, she is unreliable and unable to pursue retraining or employment.

[37] I find that the Appellant's disability was severe by February 15, 2022.

Is the Appellant's disability prolonged?

[38] The Appellant's disability is prolonged.

[39] The Appellant's conditions began in 2003 (depression and anxiety) and 2017 (schizoaffective disorder of the bipolar type and increased anxiety from the crisis

²² See *Villani v Canada (Attorney General)*, 2001 FCA 248.

caused by aHUS). These conditions have continued since then, and they will more than likely continue indefinitely.²³ At the beginning of treatment the Appellant had some relief. However, she did not improve enough to be able to return to work. Even with ongoing treatment and therapy her symptoms have not improved further. The evidence does not show her conditions will likely resolve or improve with time or treatment.

[40] I find that the Appellant's disability was prolonged by February 15, 2022.

When payments start

[41] The Appellant had a severe and prolonged disability in August 2017. This was when she was unable to continue working because of limitations caused by mental health conditions.

[42] However, the *Canada Pension Plan* says an appellant can't be considered disabled more than 15 months before the Minister receives the disability pension application. After that, there is a four-month waiting period before payments start.²⁴

[43] The Minister received the Appellant's application in October 2019. That means she is considered to have become disabled in July 2018.

[44] Payment of her pension starts as of November 2018.

Conclusion

[45] I find that the Appellant is eligible for a CPP disability pension because her disability is severe and prolonged.

[46] This means the appeal is allowed.

Anne S. Clark

Member, General Division – Income Security Section

²³ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that a Appellant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

²⁴ Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.