Citation: *LP v Minister of Employment and Social Development*, 2022 SST 335

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	L. P.
Representative:	Paul Sacco
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated May 4, 2021 (issued by Service Canada)
Tribunal member:	Michael Medeiros
Type of hearing:	Teleconference
Hearing date:	February 16, 2022
Hearing participants:	Appellant Appellant's representative
Decision date:	March 8, 2022
File number:	GP-21-1207

Decision

[1] The appeal is allowed.

[2] The Appellant, L. P., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of December 2019. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 49 years old. She worked for many years in the insurance industry as a customer service representative, and then case manager. She stopped working in February 2014 because of PTSD, depression, and anxiety. In 2015, she developed severe left hand/arm pain. In 2018, she started having regular dizzy/black-out episodes. She tried gradually returning to work in September 2018, but could only make it to April 2019, when her medical conditions became too much to manage. She hasn't worked since.

[4] The Appellant applied for a CPP disability pension on November 26, 2020. 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.

[5] The Appellant says that she has a severe and prolonged disability. She is in constant pain, fatigued, unable to concentrate, prone to dizzy/black-out spells, anxious, and depressed. She tried her best to return to work in 2018, but her attempt failed. She can't see how she could manage any job while dealing with her daily, unpredictable symptoms.

[6] The Minister says that the evidence does not support a severe and prolonged disability. The evidence does not show any severe pathology or impairment which would have prevented her from performing work within her limitations. The Appellant may not be able to return to her usual job, but that doesn't mean she can't do other work more suitable to her conditions.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2020. This date is based on her contributions to the CPP.[1]

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

[9] A disability is **severe** if it makes an Appellant incapable regularly of pursuing any substantially gainful occupation.[2]

[10] 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 that she could earn a living from, then she isn't entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.[3]

[12] 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.

[13] 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.

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[1] 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 at GD2-39 to 41.
[2] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.
[3] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability by December 31, 2020. I reached this decision by considering the following issues:

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

Was the Appellant's disability severe?

[15] The Appellant's disability was 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

[16] The Appellant has PTSD, depression, anxiety, chronic pain in her left hand/arm, and orthostatic hypotension (dizzy/black-out episodes caused by low blood pressure). However, I can't focus on the Appellant's diagnoses.[4] Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.[5] 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.[6]

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

– What the Appellant says about her functional limitations

[18] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says that the combination of her many symptoms create physical and psychological challenges that impact all aspects of her life, including work.

[19] She has suffered from **PTSD, depression, and anxiety** for many years as a result of an 18-year physically and emotionally abusive relationship. She had several lengthy absences from work between 2011 and 2013 because of stress and anxiety

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[4] See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[5] See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.
[6] See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

from the relationship.[7] After the relationship ended in 2014, she experienced a significant increase in her anxiety. She stopped working in February 2014 because of these symptoms.

[20] Her ex-partner was – and continues to be – a significant source of stress and anxiety. In addition to the lasting impact of past abuse, his behaviour remained threatening and abusive after the relationship ended. The Appellant had to obtain a restraining order at one point. The Children's Aid Society have been involved. She has been in and out of court, and continues to seek proper child support. She still fears for her safety. She worries that one day he will "flip" and kill her.

[21] She feels that her PTSD, depression, and anxiety have not really improved since she first stopped working in February 2014. She has had many ups and downs over the years. She continues to have goods days and bad days. Not working removed a stress from her life that had increased her symptoms, but for the most part, her condition remains the same.

[22] Sometime in 2014 or 2015, she developed a lot of **pain in her left hand/arm**. She was in constant pain and could not use her left arm at all. If anything touched her hand, it would send shooting pains up her arm. It took over a year before she could see a specialist. They found a ganglion cyst in her left wrist. She had surgery in February 2016 to remove the cyst. Unfortunately, the surgery did not resolve her pain.

[23] She feels pain in her left arm all the time. On a scale of 1 to 10, she rates her usual pain a 5 to 7. On bad days, the pain can reach a 9 or 10 out of 10. The pain from her left wrist/hand sends shooting pain up her arm and into her armpit. Her fingers cramp and curl into a ball with overuse. Touching or rubbing against her arm causes a "pins and needles" and burning sensation.

[24] Sometime in 2018, the Appellant started to have regular **dizzy/black-out episodes**. She had experienced these sort of episodes periodically throughout her life.

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[7] The Appellant told Dr. Lanius that she was absent from work for 3 months in 2012, and for 6 months in 2013: see Dr. Laninus' report, dated June 8, 2020, at GD2-550.

She found these episodes increased over time with the stress of the domestic abuse and the chronic pain in her left arm.

[25] The episodes happen in the following two different ways:

- **Black-out** – Sometimes when standing, everything will go black. She will drop whatever is in her hands and her body shakes. She doesn't know how long they last. When she comes out of it, she goes into a sweat and feels shook up and exhausted.

- **Dizzy** – Sometimes when moving from sitting to standing or when walking, she gets very dizzy and feels the room spinning. She has to go to ground to prevent herself from "passing out." This can happen anywhere. After, she feels very weak and tired.

[26] The Appellant says she has the following limitations because of her medical conditions:

- **Physical limitations because of left hand pain** – She can't use her left hand without causing significant pain. Typing makes her left hand cramp and spasm, and her whole arm hurt. Walking can be painful because of her arm swinging.

- **Sleep** – The pain in her arm affects her sleep. Sometimes, anxiety can affect it too. She usually sleeps between two to three hours a night. When the pain is really bad, she doesn't sleep at all.

- **Energy / Motivation** – She has very low energy. She feels tired all the time. Three to four days a week, she will go back to bed after her kids go to school, sometimes for the whole morning. Black-out/dizzy episodes make her even more tired.

- **Concentration / Memory** – She has a hard time concentrating and retaining information. She forgets appointments. She finds herself rereading the same page five to ten times. She can't concentrate at all when the pain is bad.

- **Social interaction / Being in public** – It is difficult for her to be in public and deal with people she doesn't know. Talking on the phone to a stranger causes high anxiety. She remains fearful of her ex-partner and is afraid to leave the house. If she does go out, she will have her kids or friends with her.

- **Stress / Anxiety** – She struggles to cope with stress, especially when taking on something new. She is often anxious and tearful. She has panic attacks about once a week.

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

[27] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work by December 31, 2020.[8]

[28] The medical evidence supports what the Appellant says.

[29] The Appellant was diagnosed with major depressive disorder and unspecified anxiety disorder by Dr. Lefcoe, psychiatrist, in March 2013.[9] This diagnosis, along with PTSD, has since been confirmed by other doctors.[10]

[30] The Appellant's PTSD, depression, and anxiety have the following symptoms and associated limitations:[11]

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[8] See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.
[9] See Dr. Lefcoe's consultation note, dated March 8, 2013, at GD-147.
[10] See Dr. Homji's medical report, dated June 25, 2017, at GD2-139 to 142; Dr. Williamson's letter, dated July 25, 2014, at GD2-288 to 297; Dr. Upfold's letter, dated September 2, 2014, at GD2-301 to 302; Dr. Upfold's attending physician statement, dated April 9, 2014, at GD2-305 to 307; Dr. Homji's attending physician statement, dated July 22, 2019, at GD2-390 to 393; and Dr. Lanius' report, dated June 8, 2020, at GD2-549 to 559.
[11] See Dr. Lanius' report, dated June 8, 2020, at GD2-549 to 559; Dr. Homji's attending physician statement, dated July 22, 2019, at GD2-390 to 393; Dr. Upfold's functional assessment, dated September 2, 2014, at GD2-303 to 304; and Dr. Upfold's attending physician statement, dated April 9, 2014, at GD2-305 to 307.

- Problems sleeping, including nightmares linked to past trauma.
- Panic attacks (difficultly breathing and chest pain).
- Low mood, energy, and motivation.
- Problems with memory, concentration, and decision-making.
- Easily distressed and tearful.
- Sensitivity to stress that makes it hard to tolerate even minor stressors.

[31] The Appellant was assessed by Dr. Lanius, psychiatrist, in June 2020. Dr. Lanius said that the Appellant's longstanding symptoms of PTSD and depression make it very difficult for her to function both socially and occupationally.[12] Dr. Lanius concluded that, "given the chronicity of [her] PTSD and depressive symptoms, her prognosis for a return to work remains poor, and it is unlikely that she will ever be able to return to work."[13]

[32] The Appellant sought medical attention for incapacitating left hand pain in July 2015.[14] She was diagnosed with a ganglion cyst on her left wrist in December 2015.[15] The cyst was surgically removed in February 2016.[16] She continued to feel pain in her left wrist after the surgery.[17] In January 2020, she was diagnosed with chronic complex regional pain syndrome.[18]

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[12] See Dr. Lanius' report, dated June 8, 2020, at GD2-558.
[13] See Dr. Lanius' report, dated June 8, 2020, at GD2-559.
[14] See Dr. Black's consultation note, dated October 28, 2015, at GD2-163.
[15] See Dr. Suh's consultation note, dated December 9, 2015, at GD2-164
[16] See Dr. Suh's clinic note and operative report, dated January 29, 2016 and February 10, 2016, at GD2-261 and 265 to 266.
[17] See Dr. Suh's clinic note, dated June 23, 2016, at GD2-226 to 227; Dr. Chum's EMG note, dated August 29, 2016, at GD2-179 to 181; Dr. Homji's clinical note, dated March 1, 2016, at GD2-260; Dr. Homji's clinical note, dated April 18, 2016, at GD2-245; Dr. Homji's clinical note, dated April 27, 2017, at GD2-189; and Dr. Wilson's letter, dated August 15, 2017, at GD2-649 to 650.
[18] See Dr. Miller's EMG report, dated January 22, 2020, at GD2-405 to 406. See also Dr. Homji's attending physical statement, dated July 22, 2019, at GD2-391-393.

[33] The Appellant experienced increasing episodes of dizziness, starting in December 2017.[19] She saw her family doctor, Dr. Homji, about it in March 2018.[20] In July 2018, Dr. Mendonca, neurologist, diagnosed these dizzy spells as pre-syncope (light-headedness; feeling faint) related to low blood pressure. In March 2019, she started to have black-out episodes in addition to the dizziness.[21] Orthostatic hypotension, a form of low blood pressure, was confirmed as the diagnosis in May 2019.[22]

[34] The medical evidence supports that the Appellant's conditions prevented her from working by December 31, 2020.

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

– The Appellant has followed medical advice

[36] To receive a disability pension, the Appellant must follow medical advice.[23] If she 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.[24]

[37] The Appellant has followed medical advice.[25] She stopped taking some of her medication, but her explanation is reasonable.

[38] The Appellant has seen a psychiatrist regularly since at least 2014.[26] Her long-time psychiatrist, Dr. Upfold, said that she "works hard in treatment."[27] She participated

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[19] See Dr. Mendonca's letter, dated July 5, 2018, at GD2-659 to 660.
[20] See Dr. Homji's clinical note, dated March 20, 2018, at GD2-666 to 667; and Dr. Homji's attending physician statement, dated July 22, 2019, at GD2-390 to 393.
[21] See Dr. Homji's letter to Dr. Sun, dated March 18, 2019, at GD2-352 to 353; and Dr. Homji's letter to Dr. Sun, dated June 12, 2019, at GD2-363 to 364.
[22] See Dr. Sun's consultation note, dated May 9, 2019, at GD2-369 to 371; Dr. Homji's clinical note, dated June 12, 2019, at GD2-383; Dr. Sun's clinic note, dated August 29, 2019, at GD2-380 to 381; and Dr. Wisenberg's letter, dated May 13, 2019, at GD2-664 to 665.
[23] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[24] See *Lalonde v Canada (Minister of Human Resources Development*), 2002 FCA 211.
[25] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[26] See Dr. Upfold's letters, dated September 2 and October 21, 2014, at GD2-300 to 302.
[27] See Dr. Upfold's letter, dated January 15, 2016, at GD2-268.

in work hardening programs with occupational therapists in 2014 and 2016.[28] In 2018 and 2019, she participated in an intensive therapy program that provided support leading up to and during a gradual return to work attempt.[29]

[39] She saw many specialists over the years to address her chronic hand pain and dizzy/black-out episodes. She tried cortisone injections for pain relief, but it had only a minor impact.[30]

[40] She has been prescribed many different types of medication to treat her depression, anxiety, and chronic hand/arm pain.[31] She had to discontinue some of them because of side-effects.[32] She was on cymbalta for five years, but found it did not relieve any pain and made her feel like a "zombie."[33] She was prescribed amitriptyline, also for depression and pain. It helped a little bit with her hand/arm pain, but made her nauseous and even more dizzy than normal. She continues to take lorazepam for anxiety as needed, which is usually a half to a whole pill per day.

[41] I find that the Appellant's choices about medication reasonable. She does not take some medication because of significant side-effects. She nonetheless takes lorazepam when needed. She said at the hearing that her family doctor, Dr. Homji, isn't currently recommending any medication that she is not taking.

[42] 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.[34]

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[28] See lifestyle restoration program reports, dated November 21, 2014, and January 30, 2015, at GD2-150 to 161; occupational therapy report, dated April 5, 2016, at GD2-168 to 171; and work hardening discharge report, dated May 10, 2016, at GD2-174 to 177.
[29] See Odyssey Health Services reports, dated February 1, 2018, to March 1, 2019, at GD2-424 to 463.
[30] See Dr. Wilson's letter, dated August 15, 2017, at GD2-649 to 650.
[31] See Dr. Lanius' report, dated June 8, 2020, at GD2-554.
[32] See Dr. Upfold's letter, dated January 15, 2016, at GD2-268.
[33] See Dr. Miller's EMG report, dated January 22, 2020, at GD2-405 to 406; and Dr. Homji's clinical note, dated August 27, 2019, at GD2-396.
[34] See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[43] 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
- level of education
- language abilities
- past work and life experience

[44] 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.[35]

[45] I find that the Appellant can't work in the real world. Her severe functional limitations leave her with no capacity to work. She is only 49 years old, has some post-secondary education, and strong work experience – factors that could help her find work. However, these factors do not overcome her limitations that prevent her from doing the basic requirements of any job.

[46] The Appellant's medical conditions severely limit her ability to do the following:

- **Complete basic tasks** – Her symptoms get in the way of daily activities. She is in constant pain. She has no energy. She has a hard time concentrating. She often feels anxious. She is very sensitive to stress.

- **Keep a schedule** – The pain, dizzy/black-out episodes, anxiety and depression are all unpredictable. Her various symptoms can impact each other – for instance, stress increases her hand/arm pain.

- **Function in public** – She is afraid to go out in public alone. She finds it difficult to interact with strangers.

[35] See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[47] I do not agree with the Minister that the Appellant has the capacity for alternative work. Her failed gradual return to work from September 2018 to April 2019 is strong evidence that she can't do any job. It represented her best chance to maintain substantially gainful work – she was returning to a familiar job with significant therapeutic support and workplace accommodation. Unfortunately, the combination of her conditions eventually overwhelmed her ability to continue working.

[48] Before and during her gradual return to work, the Appellant had the assistance of a private health service in addition to her regular psychotherapist, Dr. Upfold. The health service provided individual behavioural therapy as well as work hardening exercises and support for her left hand/arm.[36] She completed 37 weeks of active treatment (126 therapeutic contact hours) before her graduated return to work in September 2018.[37] She continued to receive this additional support until March 2019.[38]

[49] The Appellant was excited to get back to work. The notes of her psychiatrist, Dr. Upfold, and her family doctor, Dr. Homji, from around that time seemed positive.[39] She started on part-time hours with training and job shadowing for the first four or five months, working up to full-time hours by January 2019.[40]

[50] Despite all the preparation and support, the Appellant continued to experience active symptoms of her conditions after she returned to work. She missed roughly 24 days of work in seven months because of her conditions.[41] She says that she wanted to work and was pushing herself. But, by April 2019, she had to stop working because she could no longer manage her job while dealing with with her hand/arm pain, the dizzy episodes, and the stress and anxiety. She doesn't think that remaining on part-time hours would have made any difference because of the severity of her daily symptoms.

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[36] See Odyssey Health Services letter, dated May 1, 2018, at GD2-452 to 455.
[37] See Odyssey Health Services letter, dated October 1, 2018, at GD2-435 to 436.
[38] See Odyssey Health Services letter, dated March 1, 2019, at GD2-424.
[39] See Dr. Upfold's clinical notes, dated March 12, 2018, to January 27, 2020, at GD2-413 to 423, 426, 429 to 431, 434, 437, 440, 443, 447, 451, 456, 460 to 461; and Dr. Homji's clinical notes, dated February 7, 2018, to June 17, 2019, at GD2-666 to 680.
[40] See Odyssey Health Services letter, dated March 1, 2019, at GD2-424.
[41] See Dr. Lanius' report, dated June 8, 2020, at GD2-555.

[51] I find the Appellant has no work capacity. The evidence proves that any job would cause significant pain and distress. In my view, it is unrealistic to expect that she could manage her various medical conditions while meeting the demands of a job. She says that she can't after making her best effort to return to work in 2018, and I believe her.

[52] I find that the Appellant's disability was severe by December 31, 2020.

Was the Appellant's disability prolonged?

[53] The Appellant's disability was prolonged.

[54] The Appellant's conditions became disabling in April 2019, when she stopped working for the last time. It may be that she never regained the capacity for substantially gainful employment after she stopped working the first time in February 2014. But, by April 2019, she had lost whatever work capacity she had left. These conditions have continued since then, and they will more than likely continue indefinitely.[42]

[55] The following factors lead me to find that the Appellant's disability is likely to be long continued and of indefinite duration:

- She started missing work because of her conditions in 2011, and has only managed about seven months of work since February 2014, despite years of regular psychotherapy and other treatment efforts.
- Her failed attempt at gradually returning to work in September 2018 was after extensive occupational and behavioural therapy.
- She has seen many specialists for her hand/arm pain and dizzy/black-out episodes, but no recommendation has made a lasting improvement.

[42] 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.

- Dr. Lanius, psychiatrist, said in June 2020 that "given the chronicity of her symptoms and her lack of significant response to treatment, her condition will likely prevent her from obtaining and maintaining suitable alternative employment now and in the future."[43]

[56] I find that the Appellant's disability was prolonged by December 31, 2020.

When payments start

[57] The Appellant had a severe and prolonged disability in April 2019, when she stopped working because of her medical conditions.

[58] However, the *Canada Pension Plan* says an Appellant can't be considered disabled more than 15 months before the Minister receives their disability pension application. After that, there is a four-month waiting period before payments start.[44]

[59] The Minister received the Appellant's application in November 2020.[45] That means she is considered to have become disabled in August 2019.

[60] Payment of her pension starts as of December 2019.

Conclusion

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

[62] This means the appeal is allowed.

Michael Medeiros

Member, General Division – Income Security Section

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[43] See Dr. Lanius' report, dated June 8, 2020, at GD2-555.
[44] 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.
[45] The Appellant previously applied for CPP disability benefits in January 2017: see GD2-92 to 97. Her application was denied. She appealed to the Social Security Tribunal, but withdrew her appeal prior to the hearing because she had returned to work: see Mr. Sacco's letter, dated May 22, 2019, at GD2-48.