



[TRANSLATION]

Citation: *LM v Minister of Employment and Social Development*, 2022 SST 550

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	L. M.
Representative:	Alcide Léger
Respondent:	Minister of Employment and Social Development
Representative:	Joshua Toews

Decision under appeal:	General Division decision dated April 29, 2021 (GP-19-346)
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Tribunal member:	Jude Samson
Decision date:	June 20, 2022
File number:	AD-21-226

Decision

[1] On consent, I am allowing the appeal, and I find that the Applicant is eligible for a disability pension.

Overview

[2] L. M. is the Applicant in this case. She argues that she is unable to work due to essential tremor. In addition, she experiences anxiety, panic attacks, anguish, and pain. She says that she has been unable to work since 2010 because of these conditions.

[3] In March 2017, the Applicant applied for a disability pension under the *Canada Pension Plan* (CPP). The Minister of Employment and Social Development decided that she wasn't eligible for this pension.

[4] The Applicant appealed this decision to the Social Security Tribunal's General Division. However, it dismissed the Applicant's appeal.¹

[5] The Applicant is now appealing the General Division decision to the Appeal Division. But the parties have reached a consent agreement that settles the issues under appeal.

The parties agree on the outcome of the appeal

[6] The parties to the appeal have asked me to make a decision based on the consent agreement they reached.²

[7] In summary, the parties agree as follows:

- a) The General Division made an error of law by not considering all of the Applicant's medical conditions together.³

¹ See the April 29, 2021, decision in the file GP-19-346.

² The parties provided me with their consent agreement at the June 17, 2022, settlement conference.

³ Section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act) allows me to intervene when an error of law is made. At paragraph 8 in *Bungay v Canada (Attorney General)*,

- b) In this situation, I should allow the appeal and give the decision the General Division should have given.⁴
- c) Taking into account all of the Applicant's medical conditions together and assessing her situation in the real world, the Applicant has established that she has been disabled under the CPP since October 2010, when she stopped working.
- d) Under the CPP, a person can't be deemed disabled more than 15 months before the Minister receives their application.⁵ Because of this, the Applicant is deemed disabled as of December 2015.⁶
- e) The Applicant is entitled to disability benefits as of April 2016.⁷

I accept the proposed outcome

[8] Based on the information available to me, I am allowing the appeal in line with the consent agreement outlined above.

[9] In particular, the General Division focused on the Applicant's shaking. However, she had other medical conditions that the General Division should have also considered. For example, the Applicant also provided evidence that she experiences anxiety, panic attacks, anguish, and pain. These conditions have also had a significant impact on her employability.⁸

2011 FCA 47, the Federal Court of Appeal tells us that, in assessing whether someone is disabled under the *Canada Pension Plan* (CPP), their medical conditions must be assessed in their totality.

⁴ Section 59(1) of the DESD Act gives me this power.

⁵ See section 42(2)(b) of the CPP.

⁶ The Minister received the Applicant's application for a disability pension in March 2017.

⁷ Section 69 of the CPP sets out a four-month waiting period.

⁸ See, for example, the note from a psychiatrist who assigned the Applicant a Global Assessment of Functioning score of approximately 50 (see GD2-70 in the appeal record). Also, the Applicant says that it is difficult for her to leave the house (see GD2-22, GD2-23, GD2-54, and GD2-60 to GD2-62 in the appeal record).

Conclusion

[10] I am allowing the Applicant's appeal. The General Division made an error of law. In the circumstances, I find that the Applicant is eligible for a disability pension under the CPP as of April 2016.

Jude Samson
Member, Appeal Division