



Citation: *DC v Minister of Employment and Social Development*, 2023 SST 34

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant:	D. C.
Representative:	David Brannen
Respondent:	Minister of Employment and Social Development
Representative:	Viola Herbert

Decision under appeal:	General Division decision dated March 18, 2022 (GP-21-112)
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Tribunal member:	Kate Sellar
Type of hearing:	Teleconference
Hearing date:	September 13, 2022
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	January 10, 2023
File number:	AD-22-379

Decision

[1] I'm allowing the appeal. The General Division made an error. I'll give the decision that the General Division should have given: the Claimant is entitled to a disability pension. Payments are effective January 2019.

Overview

[2] D. C. (Claimant) has a history of depression, anxiety, insomnia, and irritable bowel syndrome (IBS). In 2018, she was diagnosed with Parkinson's disease, although her symptoms started earlier (possibly in 2014 when she stopped working).

[3] The Claimant applied for a *Canada Pension Plan* (CPP) disability pension on December 12, 2019. The Claimant had to show that she had a severe and prolonged disability on or before December 31, 2007.¹

[4] The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed to this Tribunal.

[5] The General Division dismissed the Claimant's appeal, deciding that she "hasn't had a severe disability since 2007. Her disability wasn't prolonged by then."² The General Division decided that the Claimant's conditions did not affect her ability to work until years after the end of the minimum qualifying period (MQP).

[6] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (Act).³

¹ December 31, 2007 is the last day of the Claimant's minimum qualifying period, or MQP. It's calculated based on her contributions to the Canada Pension Plan.

² See paragraph 6 in the General Division's decision.

³ Before December 5, 2022, the Appeal Division addressed errors of fact as set out in the *Department of Employment and Social Development Act* (Act) at section 58(1)(c). Section 242(2) of the *Budget Implementation Act* 2021, No.1, says that sections 58(1) and 59(1) of the Act as it read before December 5, 2022 continue to apply to appeals like this one.

[7] The General Division made an error of fact and an error of law. To fix the errors, I'll give the decision that the General Division should have given: the Claimant is entitled to a disability pension. Payments start April 2018.

Issues

[8] The issues in this appeal are:

- a) Could the General Division have made an error of fact (or of law) by failing to consider the Claimant's insomnia as one of the conditions that may have affected her ability to work?
- b) Could the General Division have made an error of fact by ignoring some evidence in the doctor's notes about the Claimant's symptoms of irritable bowel syndrome in 2011 and 2012?
- c) Could the General Division have made an error of fact by misunderstanding the evidence about the effect that the Claimant's anxiety and depression had on her ability to work from 2010 to 2015?
- d) If the General Division made any of these errors, what should I do to remedy (fix) them?

Analysis

[9] In this decision, I'll describe the approach the Appeal Division takes when reviewing General Division decisions. Then I'll explain how I've decided that the General Division made an error of fact and an error of law. Then I will give the decision that the General Division should have given.

Reviewing General Division decisions

[10] The Appeal Division does not give the Claimant or the Minister a chance to re-argue their case again from the beginning. Instead, the Appeal Division reviews the General Division's decision to decide whether it contains errors.

[11] That review is based on the wording of the Act, which sets out the “grounds of appeal.” A claimant has a ground of appeal where the General Division makes an important error of fact either by ignoring or misunderstanding the evidence (such that the finding isn’t supported by the evidence).⁴

[12] The law requires me to assume that the General Division considered all the evidence, even if it doesn’t discuss all the evidence in the decision. However, a claimant can overcome that assumption if the evidence was important enough that the General Division should have discussed it.⁵

Error of fact about the Claimant’s insomnia

[13] The General Division made an error of fact by ignoring evidence about the Claimant’s insomnia during the MQP. This was important evidence about a condition that the General Division should have discussed. Since ignoring this evidence is skipping over one of the conditions the Claimant had at the time of the MQP, it can also be described as an error of law. The law requires the General Division to consider all the conditions together, not just the biggest one or the main one.⁶

[14] The General Division decision does not mention the Claimant’s sleep problems or insomnia.

[15] The Claimant argues that the General Division ignored some of the medical evidence about the Claimant’s insomnia. For example, the doctor’s notes from March 2007 stated that the Claimant had not been sleeping for weeks.⁷ And in a later report, the doctor stated that the Claimant had poor sleep since 2007 and was diagnosed in 2009 with periodic limb movement of sleep (after the had a sleep study). The doctor

⁴ For more about errors of fact, see *Walls v Canada (Attorney General)*, 2022 FCA 47.

⁵ See the Federal Court of Appeal Decision *Simpson v Canada (Attorney General)*, 2012 FCA 82 and the Federal Court decision in *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

⁶ See the Federal Court of Appeal’s decision in *Bungay v Canada (Attorney General)*, 2011 FCA 147.

⁷ See GD2-415.

stated that the sleep issues made it hard for the Claimant to concentrate and affected her ability to cope with stressors.⁸

[16] The Claimant's insomnia continued to affect her from 2010 through to 2012. The doctor prescribed medication, which the Claimant refilled at various times between 2010 and 2012.⁹

[17] The Minister argues that the General Division made no error of fact about the Claimant's insomnia. The Minister argues that the insomnia first appeared in January 2008 with the Claimant's depression. The Minister says that the doctor treated the insomnia. The doctor noted that the Claimant's sleep was improving in February 2009. It was managed with medication and, later, a sleep study. The Minister argues that the Claimant's insomnia wasn't severe.

[18] In my view, the General Division made an error of fact. The Claimant had multiple conditions that she said affected her ability to work. The Claimant's problem with sleep was important enough for her doctor to document it in 2007, and then at her appointment very early in 2008, the doctor diagnosed insomnia.

[19] Given that the General Division must consider all the Claimant's conditions together, it is important for the General Division to discuss that evidence about the Claimant's significant sleep disturbance in 2007 and the corresponding diagnosis and treatment plan in early 2008. It doesn't matter whether the insomnia alone was severe.

[20] The doctor documented significant problems with sleep in 2007. That was important enough that the General Division needed to discuss it. The General Division ought to have discussed and explored the affect that the Claimant's sleep problems may have had on her ability to work. Without exploring that, the General Division made an error of fact about what conditions the Claimant had at the end of the MQP. One of the conditions was insomnia.

⁸ The Claimant relies on GD4-192.

⁹ The Claimant relies on medical information in the record at GD5-164, 174, 222, 233 and 235 about treating her insomnia with medication.

[21] Since the first error I've identified goes to a significant factual (and legal) error about one of the Claimant's conditions, I will move on to address remedy.¹⁰

Fixing the Error

[22] Once I find that the General Division made an error, I can decide how to remedy (fix) the error.

[23] I can give the decision that the General Division should have given, or I can return the matter to the General Division for reconsideration.¹¹ I can decide any question of law necessary for dealing with an appeal.¹²

[24] The Claimant and the Minister both agreed that if I were to find an error, I should give the decision that the General Division should have given. Giving the decision that the General Division should have given is an efficient way to move forward in many cases.¹³

[25] I will give the decision that the General Division should have given.

The Claimant has a severe disability

[26] To be eligible for a disability pension, the Claimant must have a severe disability within the meaning of the CPP. A person with a severe disability is "incapable regularly of pursuing any substantially gainful occupation."¹⁴

[27] Each part of that definition has meaning. A severe disability in the CPP context is connected to what a person can and cannot do (when it comes to work). The things people cannot do because of a disability are sometimes called "functional limitations."

¹⁰ In the remedy section, when I give the decision that the General Division should have given, I'll cover the evidence about IBS in 2011 and 2012, as well as the evidence about the Claimant's anxiety and depression from 2010 to 2015 (the other issues the Claimant raised on appeal).

¹¹ See section 59 of the Act, which applies to this case (see footnote 2 in this decision)

¹² See section 64 of the Act.

¹³ See section 2 of the *Social Security Tribunal Regulations* about the need to proceed in a way that is fast, fair, and just.

¹⁴ See section 42(2) of the *Canada Pension Plan*.

[28] In my view, the Claimant proved that she has a severe and prolonged disability within the meaning of the CPP. I have considered:

- the Claimant's medical conditions (which involves assessing the conditions in their totality—all the possible impairments that could affect capacity to work)¹⁵
- the Claimant's background (including age, level of education, language abilities, and past work and life experience)¹⁶
- the steps the Claimant has taken to manage the medical conditions, and whether she has unreasonably refused any treatment¹⁷

Medical conditions

[29] The Claimant had symptoms of IBS, insomnia, anxiety, and depression as of December 31, 2007, when her MQP ended. The symptoms associated with these conditions changed in intensity over time, but taken together, they resulted in functional limitations that affected the Claimant's ability to work. The Claimant was incapable regularly of pursuing any substantially gainful occupation by December 31, 2007.

– Diarrhea and IBS

[30] The medical evidence shows that the Claimant had a pattern of difficulty with diarrhea since at least 2006.

[31] On May 3, 2006, the Claimant's doctor reported that she had been experiencing diarrhea since Easter Sunday.¹⁸ Medical records show the Claimant again saw her

¹⁵ The Federal Court of Appeal discussed this in a case called *Bungay v Canada (Attorney General)*, 2011 FCA 47.

¹⁶ These factors I need to consider come from a case called *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁷ See *Klabouch v Canada (Social Development)*, 2008 FCA 33; and *Sharma v Canada (Attorney General)*, 2018 FCA 48. In those cases, the Federal Court of Appeal explained that claimants need to make reasonable efforts to manage medical conditions. There is no reference to exhausting all treatment options. The requirement set out in *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211, is that claimants cannot unreasonably refuse treatment, which is different from exhausting all treatment options.

¹⁸ See GD2-412.

doctor for diarrhea in May 2007 and again January 2008.¹⁹ In April 2008 her doctor reported that her “bowels have been upset”.²⁰

[32] In the years following the end of the MQP, the Claimant continued to experience diarrhea. The symptoms were quite serious from March 2010 to May 2010 for example.²¹ The Claimant’s doctor referred her for a colonoscopy. She was reporting having quite significant diarrhea and alternating periods of constipation. This pattern continued in 2011 through to 2013:

- In April 2011, the Claimant went to the doctor with frequent symptoms of diarrhea.²²
- In September 2012, her doctor reported that the Claimant still had thinner bowel movements, and that nothing had changed since her colonoscopy in 2010.²³
- In November 2012, her doctor wrote that the Claimant’s stools had been the same for years.²⁴
- In April 2013, the notes document again that the Claimant had a history of diarrhea, which had been worse than usual for the past six months.²⁵

[33] The Claimant was not diagnosed with IBS until 2013. Another specialist thought the problem was linked to gallstone disease. However, the Claimant experienced a symptom commonly associated with IBS (diarrhea) consistently for many years. The symptoms worsened in 2012.

¹⁹ May 2007 notes about diarrhea is at GD5-77, and notes from January 2008 are at GD5-80.

²⁰ See GD5-108.

²¹ The doctor summarized these problems in a consultation note at GD5-173.

²² See GD2-248.

²³ See GD2-

²⁴ See GD2-431.

²⁵ See GD2-431.

[34] In her testimony, the Claimant explained that diarrhea was a longstanding problem for her, whether doctors connected it to anxiety, panic, or ultimately to IBS.²⁶

[35] I am satisfied that the Claimant was experiencing diarrhea on or before the end of the MQP, and that it contributed to her incapacity to work at that time. The urgent, repeated, and unpredictable need to use the washroom is a functional limitation because it limits the time that a person is physically able to attend to work. Diarrhea was a continuous problem for the Claimant in the years after her MQP. The Claimant gave evidence about the ways it interfered with work efforts after the end of the MQP, which I'll discuss later.

– Anxiety and Depression

[36] The Claimant's doctor referred her for a mental health assessment many years after the MQP in 2017. I mention this post-MQP assessment first because under the heading "past psychiatric history", this assessment states that the Claimant was diagnosed with depression in 2007 and prescribed venlafaxine. She saw a counsellor and she reported that she had been going to the hospital for panic attacks in 2017.²⁷

[37] The Claimant saw her doctor on January 23, 2008.²⁸ The doctor's notes state that her husband said she had become increasingly emotional and irritable, and that she was having trouble controlling her emotions. She was feeling depressed but not suicidal, had been crying a lot, and had not been able to manage her business at home.²⁹ She had poor concentration. She was not sleeping well and was feeling shaky and experiencing palpitations. She had panic attacks before and felt that she was having them again. The doctor treated her with almost an hour of counselling and started her on an anti-depressant medication.³⁰

²⁶ The Claimant's testimony about this is in the Recording of the General Division Hearing, where she discusses diarrhea from IBS or from anxiety as "basically the same thing" at about 53:11.

²⁷ See GD2-148.

²⁸ See GD5-102.

²⁹ The "business" was breeding cats at home. I accept the Claimant's evidence that this was a failed hobby, in which she sold 3 or 4 cats in total. See Recording of the General Division hearing at about 1:22:04.

³⁰ See GD5-103.

[38] The doctor's visit in January 2008 was just after the end of the MQP. At that visit, the doctor learned about a worrying **pattern** of behaviour from the Claimant that significantly interfered with her ability to work.

[39] The testimony at the hearing made clear that the Claimant's husband took some time away from work because the Claimant was having trouble coping. The Claimant's husband explained in documents that that by January 23, 2008, the Claimant had been having a lot of difficult coping with everyday activities, she had been experiencing a lot of anxiety, that lead to panic attacks, bouts of crying for no real reason, and feelings of depression with no way out.³¹

[40] She described uncontrollable bouts of internal as well as external tremors and palpitations. Her husband writes that these were scary and very concerning. He states that he came downstairs and found her curled up in the corner of the glass doors, staring out the window and unable to function on any normal level. He used his leave credits at his work to help her and the family out full time from January 23, 2008, to March 19, 2008.³²

[41] The Claimant testified about the difficulty she had at this time when her husband stepped in to help with even with routine tasks at the grocery store like putting items in the cart.³³

[42] In my view, the evidence is clear that the Claimant's anxiety and depression were resulting in functional limitations (irritability, shaking, poor concentration, not sleeping, panic attacks, palpitations, bouts of crying, starting out the window without functioning) by the end of December 2007. These functional limitations meant that she had trouble taking care of routine tasks around her home, let alone work at the end of 2007. By only a few weeks into January of 2008, her husband was staying home to care for the Claimant and their young family. The Claimant was not well enough to work in any capacity.

³¹ See GD2-12.

³² Again, see GD2-12.

³³ This testimony is in the Recording of the General Division Hearing at about 53:59.

[43] I find from the pattern of behaviour the Claimant described to her doctor in January 2008 that she had these symptoms in December 2007 as well. This is also consistent with her diary entries from 2007 that suggest she was becoming depressed at the end of that year.³⁴

[44] The Claimant had ongoing symptoms of depression between 2010 and 2015, so the disability was continuous. Specifically:

- On March 15, 2011, the Claimant's doctor noted that she wasn't feeling well, with shortness of breath, heart palpitations, and chest pains, which seemed to be related to anxiety and stress. The Claimant's doctor provided the Claimant with several sessions of counselling.³⁵
- By April 14, 2011, the Claimant's doctor reported that D. C. was experiencing frequent episodes of palpitations associated with sweating, jitteriness, insomnia, and dyspnea. The doctor referred to this as "symptoms of sympathetic overdrive."³⁶
- On August 5, 2011, the Claimant's doctor noted anxiety neurosis, and noted "low mood." The Claimant had depressive symptoms and the plan was to reconnect with a counsellor.³⁷
- On November 7, 2012, the Claimant noted palpitations with no change in symptoms.³⁸
- Doctors continued to list depression as one of the Claimant's medical conditions in referrals leading up to 2013.

³⁴ See GD2-484.

³⁵ See GD2-427.

³⁶ See GD2-428.

³⁷ See GD2-429.

³⁸ See GD2-431.

- By May 2013, the Claimant's doctor reported that the Claimant was anxious and constantly overwhelmed. She was not coping, especially related to work.³⁹

– **Insomnia**

[45] As I mentioned above, the doctor's notes from March 2007 stated that the Claimant had not been sleeping for weeks.⁴⁰ The doctor's notes from January 2008 show that she was not sleeping well again.⁴¹ In February 2008, the Claimant was improving and in terms of sleep, but by April 2008 was renewing her prescription for sleep medication for multiple months after 2008.

[46] In a later report, the doctor stated that the Claimant had poor sleep since 2007 and was diagnosed in 2009 with periodic limb movement of sleep (after she had a sleep study). The doctor stated that the sleep issues, anxious mood, and panic attacks made it hard for the Claimant to concentrate and affected her ability to cope with stressors.⁴²

[47] The Claimant's problems with sleep were continuous after the end of the MQP. In February 2009, the doctor noted that she needed sleep aids and antidepressant. She also wrote that D. C.'s mood was continuing to improve and that she had a nervous habit of picking at her skin.⁴³

[48] In April 2009, she had a sleep study and was given a diagnosis of primary snoring, without apnea, as well as maintenance insomnia. The sleep stated that her leg movement while asleep improved with clonazepam and that she had increased arousals at night.

– **Considering the conditions together**

[49] The Claimant's medical evidence along with the testimony at the hearing show that she had significant restrictions due to her medical conditions on or before the end of her MQP on December 31, 2007, and continuously since that time. She has a

³⁹ See GD2-436.

⁴⁰ See GD5-66.

⁴¹ See GD5-80.

⁴² See GD2-112.

⁴³ See GD2-426.

combination of conditions including anxiety, depression, insomnia, and IBS. The combination of these conditions, when considered in their totality, show serious functional limitations that would affect work.

[50] Chronic diarrhea, abdominal pains, low mood, panic attacks, poor sleep, difficulty concentrating, and poor memory are all documented in the Claimant's medical file. Although the severity of each individual condition fluctuates through the years, I need to stay focused on the cumulative impact of the Claimant's conditions.

Work attempts

[51] I recognize that there is some evidence that the Minister says shows that the Claimant had some capacity to work. The Claimant worked after the end of the MQP.

[52] Sometimes, the work a claimant does after the relevant period shows that they have always had work capacity. In that case, post-relevant period work can support the conclusion that the disability wasn't severe during the relevant period and continuously after that.

[53] Other times, the work a claimant does after the relevant period can be evidence of a "failed work attempt." In other words, it can help to show that the disability was severe. In that case, the decision-maker needs to consider why the claimant's earnings aren't evidence of an ability to work. Why did the work attempt fail? How long did the attempt last?

[54] The Federal Court of Appeal says that there is "no doubt" that a return to work that lasted only a few days would be a failed attempt, but that "two years of earnings consistent with what had been earned before cannot be a failed attempt."⁴⁴

[55] Certain questions need asking when considering what post-relevant period work tells us about whether a claimant was incapable regularly of any substantially gainful work. These questions include the following:

⁴⁴ See *Monk v Canada (Attorney General)*, 2010 FC 48.

- Was the claimant able to find and keep a job, go to work regularly, and be reliable? (that is the “incapable regularly” part of the definition of a severe disability)
- Was the claimant capable of doing enough of the kind of work that would allow them to earn a living? (that is the “substantially gainful” part of the definition of a severe disability)
- Was the claimant working for a benevolent employer? (the “work” part of the definition of a severe disability covers this)

– **What the Claimant’s post-MQP works says about being capable regularly**

[56] The Claimant completed a certificate in June 2012 that allowed her to do some personal support worker (PSW) tasks.⁴⁵ She missed work a few times due to health reasons.⁴⁶

[57] I find the Claimant’s testimony about this work to be helpful.⁴⁷ She testified that she did the job two days a week. She explained that it was a 10-minute drive to that job but that she couldn’t always make it in the car without experiencing diarrhea. She testified that she had bad diarrhea all the time in the job and that it wouldn’t go away. It was inconvenient and embarrassing and sometimes she would leave work, race home, change, and return (while she left patients waiting for their showers). She testified that she was afraid of going to meetings or trying to upgrade her certificate because of diarrhea.

[58] In my view, this job failed because of the Claimant’s disability. She was not able to continue in the role because of her diarrhea, even though the job was part-time.

⁴⁵ See GD2-52.

⁴⁶ See GD5-263 and GD5-265.

⁴⁷ This testimony is in the Recording of the General Division hearing at about 54:00 and again at about 1:14:00.

[59] The Claimant left the PSW job to start working a retail job at a chain discount department store. A doctor noted that the Claimant found the retail job less stressful, and that stress contributed to her IBS.⁴⁸

[60] The Claimant testified that the employer offered her full-time hours, but she declined because of her IBS. She said it was crazy and that she couldn't handle all those hours. She said she had IBS symptoms the year before she stopped working all together. She said that she was throwing up in the sink at the retail job. It seems that she managed to work that job for 30 hours per week until June 2014 (less than a year).⁴⁹

[61] The Claimant acknowledged that cases like *Monk* suggest that the length of time a person works post-MQP is relevant when deciding what that work tells us about being capable regularly of work. It is easy to conclude that working for several weeks is a failed work attempt. However, maintaining a job for two years and then quitting because of a disability may well be harder to view as a failed work attempt.

[62] The Claimant argues and I accept that I must consider the work in its context. The impact of the Claimant's conditions meant that she could not work consistently enough to maintain either of the jobs she tried. They were failed work attempts even though she managed to maintain them for months rather than weeks at a time. The Claimant's attempts to work are therefore not evidence of work capacity.

– **What the Claimant's post-MQP work says about earning substantially gainful income**

[63] The Claimant's post-MQP work does not show that she was able to pursue any substantially gainful income.

[64] She had some contributions to the Canada Pension Plan refunded in both 2012 because her earnings were so low. In 2013, the Claimant's earnings were below

⁴⁸ See GD5-285-286.

⁴⁹ The Claimant's testimony about the retail job is in the Recording of the General Division hearing starting at about 1:15:00.

\$14,000.⁵⁰ She had many years before her health failed in which she made much more than that.⁵¹ The decision in *Monk* suggests that it matters whether the work was also not at or near the pre-disability level of earnings.⁵²

[65] The Claimant argued that she earned so little that she would not have been required to report it if she had been receiving CPP disability pension. In that context, she argues that the length of time that she managed to keep working becomes less important.

[66] Starting in 2014, a *Canada Pension Plan Regulation* defined a substantially gainful salary or wage to be equal or greater than the maximum annual amount a person could receive as a disability pension.⁵³ In 2014, a substantially gainful salary or wage was \$14,836.20. In 2014, the Claimant earned roughly half that much.⁵⁴ Her work attempt failed in 2014 and she did not work again after that. As such, the Claimant did not earn substantially gainful income within the meaning of that regulation.

[67] I accept the Claimant's argument that the work she completed both in personal support and in retail represented her maximum effort, both in terms of time (turning down full-time hours) and in terms of hourly wage.

– **The Claimant's post-MQP work wasn't benevolent**

[68] The Claimant did not give any evidence that would suggest that the work either as a PSW or at the retailer was benevolent. It was work. I have no evidence that suggests the work was modified in any significant way such that she was not really working in a competitive work environment.

[69] Ultimately, the unpredictable nature of the Claimant's diarrhea led her to failing at work more than once after the MQP. The impact of the Claimant's conditions means

⁵⁰ See GD2-82.

⁵¹ The Claimant's unadjusted pensionable earnings between 1987 and 1994 were between \$18,517 and \$28,271. See GD2-82.

⁵² I understand the underlying principles that *Monk* describes about failed work attempts to be worth considering here because section 68.1 of the *Canada Pension Plan Regulations* did not come into effect until 2014.

⁵³ See section 68.1 of the *Canada Pension Plan Regulations*.

⁵⁴ The Claimant's unadjusted pensionable earnings in 2014 was just \$7,365.

that she was unreliable and unpredictable and therefore she was incapable regularly of substantially gainful employment.⁵⁵

The Claimant's background

[70] When deciding whether the Claimant has functional limitations that affect his ability to work, I need to consider how employable the Claimant is in the real world, given his:

- Age
- level of education
- ability to speak, read, and write in English
- past work and life experience⁵⁶

[71] The Claimant was 40 years old in December 2007 at the end of her MQP.

[72] The Claimant testified that she finished high school. She completed a four-week fast track program to get a certificate for personal support work in 2012.

[73] She speaks, reads, and writes in English.

[74] However, the Claimant's past work and life experience do present a barrier to employment. She worked in a clerical job with the government for many years starting in 1985. The Claimant had children in 1990, 1995, and 1996. It seems that in about 1995 or 1996, she stopped working in that job because she could not access affordable childcare. She worked at home caring for her young children. She started working again in 2003 stocking shelves when her children were school-aged. She stopped again in 2005.

⁵⁵ The Federal Court of Appeal explained in *Atkinson v. Canada*, 2014 FCA 187 that when deciding whether a disability is severe under the CPP, predictability is the essence of regularity.

⁵⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[75] She tried to breed cats from home, but I accept her evidence that this was a hobby more than a failed business venture. I draw no conclusions about work capacity from this. The Claimant still owns cats.

[76] The Claimant worked in a retail job stocking shelves and working in a photo finishing department after the end of the MQP. She testified that when she has looked for work there have been barriers. Clerical work now requires computer skills that she says she does not have. She managed the four-week training course for the personal support work but was not able to upgrade those skills any further because of her IBS.

[77] In my view, the Claimant's gaps in employment earlier in career resulting from a lack of affordable childcare made it difficult for her to maintain transferrable skills for clerical jobs.

[78] Her retail work was more manageable in terms of stress and her physical symptoms, but it was also low paying. She could not manage full time hours. The Claimant lacked transferrable skills for a higher paying clerical role, and her physical symptoms were a barrier to the kind of training or upgrading she would need to do to access higher paying work.

Steps to manage medical conditions

[79] The Claimant has taken steps to manage her conditions, and she has not refused any treatment unreasonably. Claimants have an obligation to show efforts to manage their medical conditions.⁵⁷

[80] The Claimant's medical records show that she saw her doctor regularly.

[81] The Claimant participated in efforts to diagnose her conditions, including having a colonoscopy, bloodwork, and a sleep study.

[82] The Claimant participated in treatments to help manage her conditions. She took prescribed medications (including for sleep and to help with her depression and

⁵⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48 and *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

anxiety). She tried suggestions her doctor made about her diet. She had surgery that did not lessen the diarrhea. She participated in counselling with her doctor. She agreed to a referral to a psychiatrist.

The disability is prolonged

[83] The Claimant's disability is likely to be long-continued and of indefinite duration. This means it is prolonged within the meaning of the CPP.⁵⁸

[84] The Claimant's prognosis for her anxiety and depression is to remain the same. She has difficulty coping with stressors and this is expected to last and is continuous.⁵⁹ The Claimant's doctor further states that from a strictly medical standpoint, she does not expect that the Claimant will return to any type of work in the future.

[85] I find that the Claimant has shown that she had a severe and prolonged disability by December 2007, the last month of her minimum qualifying period. However, a Claimant cannot be considered disabled more than 15 months before applying for the disability pension. The Claimant did not apply for the disability pension until December 2019. So, for the purpose of the disability pension, the earliest the Claimant can be considered disabled is September 2018. Payments start four months after the onset of the disability, in January 2019.⁶⁰

Conclusion

[86] I am allowing the appeal. The General Division made an error of fact and an error of law. I gave the decision that the General Division should have given: the Claimant is entitled to a disability pension under the *Canada Pension Plan*. Payments start effective January 2019.

Kate Sellar
Member, Appeal Division

⁵⁸ See section 42(2) of the *Canada Pension Plan*.

⁵⁹ See GD2-112.

⁶⁰ See section 69 of the *Canada Pension Plan*.