



Citation: *AW v Minister of Employment and Social Development*, 2022 SST 1670

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

Decision

Appellant: A. W.
Representative: C. T.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 17, 2021 (issued by
Service Canada)

Tribunal member: Brianne Shalland-Bennett

Type of hearing: Teleconference

Hearing date: July 13, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: July 26, 2022

File number: GP-21-2038

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. W., isn't eligible for a Canada Pension Plan (CPP) disability pension.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant is 58 years old. She has a college diploma as a dental assistant. She is a trained dental hygienist. She has worked as a hygienist for over 30 years. She worked eight-hour shifts but says five-hour shifts were best for her. During the pandemic, she worked at her regular job and some assisting at another location. She stopped working at both jobs by December 16, 2020.

[5] The Appellant says she has a history of back, neck, and knee pain. She says she is also blind in her left eye. While working, she says these conditions bothered her. She managed by alternating between physical and sedentary tasks in front of a computer.

[6] The Appellant says she has had anxiety and depression since she was a teenager. She has been on and off different medications to try and manage her conditions. By 2020, she says her limitations affected her performance at work. She says she could no longer function. So, she stopped working. She hasn't worked since.

[7] The Appellant didn't know she had a substance use disorder until recently.

[8] The Appellant applied for a CPP disability pension on January 4, 2021.¹

[9] 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.

¹ GD2-32 to 34.

[10] The Appellant says her limitations affect her ability to function in daily life. Because of her symptoms, she doesn't think there is any work that she could do.

[11] The Minister says evidence shows the Appellant's conditions got better with treatment. She also has transferable skills with an ability to retrain. She may be able to do work suitable to her limitations, even part-time.²

What the Appellant must prove

[12] For the Appellant to succeed, she must prove she has a disability that is severe and prolonged by the hearing date.³

[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.⁴

[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).

[16] This is so I can get a realistic or "real world" picture of whether her disability is severe. If the Appellant can regularly do some kind of work that she could earn a living from, then she isn't entitled to a disability pension.

[17] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

² See GD7.

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 GD7-12 and 13. In this case, the Appellant's coverage period ends after the hearing date, so I have to decide whether she had a disability that as severe and prolonged by the hearing date.

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[18] 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.

[19] 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

[20] I find that the Appellant hasn't proven she had a severe and prolonged disability by the hearing date.

Is the Appellant's disability severe?

[21] The Appellant's disability isn't 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

[22] The Appellant has the following conditions:

- Anxiety, depression, and social anxiety.
- Obsessive-compulsive disorder (OCD).
- Substance use disorder.
- Degenerative disc disease.
- Blindness in her left eye.

[23] However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁷ 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.⁸

[24] I find that the Appellant has functional limitations that affect her ability to work.

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[25] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[26] The Appellant says she can't function in her daily life because of her depression and anxiety. It has only gotten worse since she stopped working. She relies on her daughter. She can't keep up with the housework though she has the whole day to do it. This includes folding the laundry that is in piles on the floor.

[27] Here is what else the Appellant says about her mental health:

- She is easily overwhelmed and gets anxious.
- Her anxiety causes her hands and body to shake and “betray her.”
- When she shakes, she can't function.
- Her shakes are spontaneous and uncontrollable.
- Making an appointment is overwhelming.
- New information is too overwhelming.
- When she is anxious or overwhelmed, she forgets things.
- She has nausea, anxiety, and vomiting when she has to go out.
- She is tearful. She may even cry if she has to go to an interview.
- Her concentration isn't as good. She needs to write things down.
- She has poor sleep and doesn't feel refreshed.
- She has a low mood and low motivation.

[28] The Appellant says she experiences social anxiety. She can go to the grocery store and familiar places alone. While at work, she didn't like to socialize. Now, she socializes with people she is familiar with. Once a week, she will drop off groceries and visit her elderly neighbour. She calls him daily because he is alone.

[29] The Appellant says she has limitations caused by her eyesight. She has a hard time looking at a computer. She used telescopic lenses to help her see when she was working. She can't drive in rainy weather or at night.

[30] The Appellant described some other physical limitations. She needs to sit down to do certain tasks. She feels pain in her knee and neck. She has a poor grip. She has muscle spasms in her neck because she has an extra bone in her spine. If she does groceries, she is limping after. At work, she managed because she wasn't doing too much physical or sedentary work for too long.

[31] The Appellant didn't say she had any limitations with her alcohol use. She has three or four drinks at a time. She drank less alcohol when she was working. She didn't know it was a problem until a psychologist told her it was. By her own admission, her alcohol use doesn't affect her ability to work. So, I didn't do more research into how alcoholism should be considered as a disability.

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

[32] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by the hearing date.⁹

The Appellant's Physical Limitations

[33] The medical evidence doesn't support what the Appellant says about her eyesight and physical limitations.

[34] In the Appellant's application and request for reconsideration, she didn't say she had physical limitations.¹⁰ The first time she mentioned her back condition, neck pain, and limitations caused by her eyesight was in her appeal.¹¹

[35] The medical evidence shows the Appellant had a history of degenerative disc disease in her neck and back as early as her 20s.¹² In his clinical notes, he reported that she had no musculoskeletal complaints or limitations with her back.¹³

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ See GD2-33 and GD2-14.

¹¹ The Appellant said she has degenerative changes in her back.

¹² See GD2-74.

¹³ See GD2-76 and GD2-84.

[36] The Appellant says she has been blind in her left eye since birth.¹⁴ She has also been diagnosed with age-related changes to her right eye, esotropia and amblyopia, and some inflammation.¹⁵ Dr. Parray's evidence shows she didn't have complaints or limitations with the Appellant's vision.¹⁶ In March 2022, the Appellant, herself, reported she was almost blind in one eye.¹⁷

[37] The Appellant described some physical limitations as described above. But, she says she managed by alternating between sedentary and physical duties. She managed using a computer and her tasks as a hygienist with telescopic glasses.

[38] In his medical report and recent correspondence, Dr. Parray doesn't list any physical limitations.¹⁸ The focus of most of her interactions, based on the clinical notes, has been her mental health.¹⁹

[39] The medical evidence doesn't have to list all the Appellant's functional limitations. It also doesn't have to outright say that these limitations stopped her from working for me to say that they exist or affect her ability to work.

[40] However, I find there isn't enough information in the file that shows the Appellant had significant and continuous physical limitations that have affected her ability to work and have continued to affect her ability to work. Given this lack of evidence, I can't conclude that she has physical limitations that affected her ability to work at all types of jobs, including her regular job.

The Appellant's Mental Health

[41] I find the medical evidence shows the Appellant has limitations because of her mental health.

¹⁴ See GD7-14.

¹⁵ See GD6-49.

¹⁶ See GD2-76, GD2-84,

¹⁷ See GD6-94.

¹⁸ See GD2-94 to 102 and GD6-94 to 95.

¹⁹ See GD2-74 to 93, GD6-48, GD6-55, GD6-58, GD6-62, GD6-71, GD6-74, GD6-80, and GD6-94 to 95.

[42] Dr. Lo is a psychologist who treated the Appellant once in January 2022. He diagnosed the Appellant with a mild alcohol use disorder, social anxiety disorder, and moderate recurrent major depressive disorder. Here is what he says:²⁰

- She described her mood as anxious and depressed.
- She denied any OCD symptoms.
- She said she had low energy and poor concentration.
- She said she could not cope at work.
- She has 25 alcoholic beverages per week.
- When she is anxious, she has chest tightness, is sweaty and feels nauseous.
- She is sensitive about comments from other people.
- Her alcohol use and her anxiety may both have reinforced one another.
- She doesn't like to socialize but can go out in public if she doesn't need to interact with them socially.

[43] Dr. Parray is the Appellant's family doctor. He is the main person treating her for her conditions. He supports that the Appellant has functional limitations that affected her ability to work because of her anxiety and depression. He doesn't mention any limitations caused by OCD. Here is what he says:²¹

- She panics easily and has excessive worry.
- She has poor sleep and is easily fatigued.
- She has labile emotions and mood swings.
- She is easily stressed and overwhelmed.
- She has a hard time keeping focus and has cognitive issues.
- She has low motivation.
- She has a poor ability to function.
- She has tremors in her hands because of her anxiety.
- The pandemic caused more anxiety and stress.
- He doesn't think she can go back to any type of work.

²⁰ See GD6-76 to 79.

²¹ See GD2-50, GD2-88, GD2-89, GD2-91, GD2-92, GD2-94 to 102, GD6-2, GD6-58, and GD6-71.

[44] In January 2020, Dr. Schmitz, an ophthalmologist said, her sleep may affect her vision and she was asked to go to a sleep clinic.²² Dr. El-keeb, a respirologist, treated her for her sleep in March 2020.²³ She thought her medication might affect her fatigue.

[45] I find the Appellant has limitations because of her depression and anxiety. They affected her ability to work at her regular job and some activities of daily living by the hearing date.

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

– **The Appellant has followed medical advice**

[47] To receive a disability pension, an appellant must follow medical advice.²⁴

[48] If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability.²⁵

[49] By the time of the hearing, the Appellant followed medical advice.²⁶

[50] The Minister says that the Appellant declined various therapy services.²⁷

[51] Before she stopped working, the Appellant was recommended treatment at different mental health services.²⁸ She denied any referral to these services. She says her symptoms make it hard to go to these programs. She finds it hard to have the motivation to make appointments and leave the house.

[52] The Appellant eventually sought additional treatment for her mental health. Her medical records with Dr. Parray showed she needed a referral to a mental health program for diagnostic reasons and for her CPP application.²⁹ She was assessed in

²² See GD2-116.

²³ See GD2-122 to 123.

²⁴ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁵ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

²⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁷ See GD7-5.

²⁸ See GD2-86 and GD2-88 to 89.

²⁹ See GD6-55.

January 2022. She started going to counselling and doing therapy in June 2022. She says she is learning methods on how to cope with her conditions.

[53] Here is what else I have considered:

- She regularly talks to her family doctor.
- She takes clonazepam and escitalopram. They help, but they aren't a cure.
- She takes CBD oil. It helps her to relax.
- She reads mental health books and information online, on her own.

[54] The Appellant was referred to substance abuse counselling. She is still on the waiting list for this program. She has tried to cut back on alcohol. She drank less for a few weeks, but her intake has gone up again. She will wait to see what the counsellor says before she cuts down again. I find it reasonable that she is waiting to speak with a counsellor to figure out how to manage her conditions.

[55] 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.³⁰

– **The Appellant can work in the real world**

[56] 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

³⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

[57] 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.³¹

[58] I find that the Appellant can work in the real world.

[59] The Appellant was 58 years old on the hearing date. Her age might make it harder for her to find a job. But, I find she has positive characteristics that might help her find work. Here is what I have considered:

- She can communicate well in English.
- She has done post-secondary education.
- She upgraded her skills while she was working through professional development courses.
- She has some computer skills.
- She did some office work and some light physical work as a hygienist.

[60] The Minister says Dr. Parry's evidence doesn't show any severe mental health symptoms or limitations. It argues that the evidence shows that the Appellant's cognitive difficulties would not prevent her from all types of work. The Minister also argues the Appellant said she felt less anxious and stressed.³²

[61] I find the medical evidence doesn't support that the Appellant can't work.

[62] While the Appellant was working, she says she was heavily medicated. She didn't miss her shifts. Eventually, the medication stopped working. She said her body betrayed her. She was shaking and had anxiety at work. Because of this, she says performance was poor and she could no longer function.

[63] The Appellant says she has gotten worse since she stopped working. But, the medical evidence supports she has reported some improvement with medication more than once. Here is what I have considered:

³¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

³² See GD7.

- In February 2021, she said that her anxiety was well controlled with medication. Dr. Parray reported her anxiety and depression were stable.³³
- In September 2021, she reported her medication helps. She was coping well. She didn't need to switch or add on medication. She was less stressed. Dr. Her anxiety and depression were stable.³⁴
- In January 2022, she still had social anxiety, but could be in public with restrictions.³⁵
- In June 2022, she reported feeling less anxious.³⁶

[64] I acknowledge that Dr. Parray doesn't think the Appellant can work. He says her limitations put her at risk of making errors, which would affect her ability to keep any job. I also accept that the consequences of the pandemic may have increased her anxiety and social worry.³⁷

[65] But, I find the Appellant might be able to regularly do some type of work. With reported improvements, she may be able to do work with less public interaction, like administrative work in an office or as a customer service representative in a call centre. She may be able to work somewhere outside a dental office, part-time. She was able to work when the medication helped at her regular job. With possible continued improvement, she may be able to work again.

[66] So, I can't find the Appellant was unemployable in a real-world context by the date of the hearing.

– The Appellant didn't try to find and keep a suitable job

[67] If the Appellant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts weren't successful because of her

³³ See GD2-92.

³⁴ See GD2-71.

³⁵ See GD6-78 and 79.

³⁶ See GD6-77.

³⁷ See GD6-2.

medical conditions.³⁸ Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.³⁹

[68] The Appellant didn't make efforts to work.

[69] The presumption by Dr. Parray is that the Appellant's limitations might lead to bad performance and might affect her ability to keep a job.

[70] But, the Appellant has made some reported improvements. Since then, she hasn't provided evidence that shows that she has tried to obtain and maintain a job that is suitable to her limitations, like part-time work. She hasn't shown that she would be unproductive and unreliable because of her conditions. Because she hasn't tried, I can't find that her efforts were unsuccessful because of her medical conditions.

[71] So, I can't find that the Appellant had a severe disability by the hearing date.

Is the Appellant's disability prolonged?

[72] Because I have found that the Appellant's disability isn't severe, I don't have to consider whether it is prolonged. But in this case, I will also explain why I don't think her disability is prolonged.

[73] To be prolonged, a disability must be likely to be long continued and of indefinite duration, or is likely to result in death.⁴⁰

[74] I acknowledge the Appellant has a long history of anxiety and depression. But, she worked with her limitations until December 2020.

[75] I find it more likely than not that her conditions aren't of indefinite duration by the date of the hearing. Here is why:

³⁸ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

³⁹ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

⁴⁰ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that you have to show a severe and prolonged disability by the end of your minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

[76] First, the Minister says that the evidence shows the Appellant's conditions are managed with minimal medication, no psychotherapy, or professional counselling.⁴¹

[77] I agree.

[78] It has been less than two years since the Appellant stopped working. As said above, the evidence shows she has had some improvements with treatment during this time. Ongoing improvements with medication and treatment haven't been ruled out.

[79] Second, the Appellant has treatment options ongoing and outstanding.

[80] The Appellant just recently started treatment with a specialist for her anxiety and depression. Dr. Lo and Dr. Parray both recommended therapy to her.⁴²

[81] The Appellant says she started going to counselling/cognitive behavioural therapy in June 2022. By the date of the hearing, she did about five sessions. She said it's making her think more about her symptoms. She's trying to change. She is in the process of learning. She wasn't sure if it was helping.

[82] I find it's too early to tell the effect of treatment, if any. The Appellant might see some benefit with therapy or learn skills to help her cope. It may impact her ability to work in the future.

[83] By the date of the hearing, the Appellant was still waiting for treatment for her alcohol use disorder and was on a waitlist. She wasn't treating her alcohol use until then. I find it may have some impact on her limitations. This is especially as Dr. Lo said that her alcohol use and her anxiety may both have reinforced one another.⁴³

[84] Again, it is unknown what effect the treatment might have on the Appellant's ability to function. But, she hasn't done it yet, so I can't conclude how this treatment may impact her capacity to work.

⁴¹ See GD7.

⁴² See GD2-88 to 89 and GD6-76 to 79.

⁴³ See GD6-76 to 79.

[85] For these reasons, I can't to conclude that the Appellant's condition is prolonged.

[86] I find it more likely than not that her disability isn't likely to be long continued and of indefinite duration by the hearing date.

Conclusion

[87] I find that the Appellant isn't eligible for a CPP disability pension because her disability isn't severe or prolonged.

[88] This means the appeal is dismissed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section