Citation: *J. P. v. Minister of Human Resources and Skills Development*, 2015 SSTGDIS 27

Appeal No: GT-120499

BETWEEN:

J. P.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

SOCIAL SECURITY TRIBUNAL MEMBER:	Jeffrey Steinberg
HEARING DATE:	February 9, 2015
TYPE OF HEARING:	Videoconference
DATE OF DECISION:	April 8, 2015

PERSONS IN ATTENDANCE

J. P., the Appellant
Celeste Courville, the Appellant's legal representative

DECISION

[1] The Tribunal finds that a *Canada Pension Plan* (CPP) disability pension is payable to the Appellant.

INTRODUCTION

[2] The Appellant's application for a CPP disability pension was date stamped by the Respondent on June 28, 2011. The Respondent denied the application at the initial and reconsideration levels and the Appellant appealed to the Office of the Commissioner of Review Tribunals (OCRT).

[3] The hearing of this appeal was by video conference for the reasons given in the Notice of Hearing dated October 15, 2014.

THE LAW

[4] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Social Security Tribunal.

[5] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

a) Be under 65 years of age;

b) Not be in receipt of the CPP retirement pension;

c) Be disabled; and

d) Have made valid contributions to the CPP for not less than the Minimum Qualifying Period (MQP).

[6] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[7] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

ISSUE

[8] There was no issue regarding the MQP because the parties agree and the Tribunal finds that the MQP date is December 31, 2013.

[9] In this case, the Tribunal must decide if it is more likely than not that the Appellant had a severe and prolonged disability on or before the MQP.

EVIDENCE

Documentary Evidence

[10] In the CPP Questionnaire dated June 27, 2011, the Appellant indicated that she stopped working on March 24, 2010 due to Post Traumatic Stress Syndrome (PTSS) - Vicarious Trauma. She described having suicidal thoughts, nightmares, anxiety, depression, anger, and panic attacks. She also described other health related conditions including asthma, diverticular disease, allergies, high blood pressure, osteopenia and thyroid problems. She stated that as a result of the PTSS, she went into a very deep depression, isolated herself and was unable to perform household chores. She sees a

psychiatrist on an ongoing basis and is prescribed Calcium, Cipralex, Synthroid, Losec, Apo-Fluticasone, Sandoz Calcitonin, Ventolin and Flovent. She has also seen a therapist, Ms. Maille, since December 2008.

[11] The Appellant attended college and obtained a Social Service Worker Diploma and Addictions Studies Certificate from X University. She worked between April 4, 2005 and March 24, 2010 as a counsellor in a rape crisis shelter.

[12] In an undated CPP Medical Report which described the most recent appointment as having taken place in June 2011, Dr. Kanya-Forstner, family physician, reported that he had treated the Appellant for more than 10 years. He diagnosed Post Traumatic Stress Disorder (PTSD), noting that the Appellant had been repeatedly exposed to unpleasant situations at work. She subsequently developed anxiety and panic attacks. As her work involved meeting and counselling victims of child abuse, she was unable to perform the job she was trained to do. According to Dr. Kanya-Forstner, given the duration of symptoms, he suspected that the Appellant would always experience intense anxiety and poor cognitive function when reminded of her previous experiences. He stated it was doubtful she would be able to return to work in any capacity in an area suitable for her qualifications.

[13] On April, 6, 2010, Mariette Maille, MSW/RSW, summarized her involvement with the Appellant in 2008/2009. She reported that the Appellant initially experienced signs/symptoms of compassion fatigue and vicarious trauma. She was physically and emotionally exhausted and anxious at the thought of returning to her former work. Although she returned to work in a non-frontline job, she contacted Ms. Maille in a state of crisis after attempting to return to front-line work.

[14] On June 4, 2010, Maureen Howard, BSW/RSW reported that the Appellant had two counseling sessions with her. According to Ms. Howard, the Appellant was experiencing many symptoms of vicarious trauma - a condition in which the therapist experiences trauma reactions to the stories of the people they are helping. She reported experiencing flashbacks, sleeping problems, nightmares, depression and anxiety.

[15] On June 9, 2010, Ms. Maille reported that she continued to meet with the Appellant in May and June 2010.

[16] On September 10, 2010, Dr. Richard, psychiatrist, assessed the Appellant. He indicated that she had worked for more than 5 years as a social services worker, recently worked in a more administrative job for about 15 months (mid-January 2009 to mid-March 2010), and returned to clinical work between mid-March 2010 and March 22, 2010 following which she was no longer able to continue. Dr. Richard diagnosed PTSD, chronic course, and estimated a "GAF of 52 worst last year: 47". He stated that she was unable to return to her job. He noted she had tried to return in March and "literally crashed" when she saw her first patient. She was still suffering from "full-blown" PTSD. He did not believe she was able to return to any remunerative work due to the severity of her anxiety, recurring symptoms, avoidance behavior as part of PTSD, hyper alertness, emotional instability, anger and rage flare-ups. He believed she would be able to return to an administrative job much faster than a clinical job in 6-9 months.

[17] On February 16, 2011, Dr. Eshleman, psychiatrist, saw the Appellant and reported improvement since she was last seen. He reported that the Appellant's appointments with Ms. Maille had decreased from once every two weeks to once every three weeks. She was starting to laugh again, had noticed some improvement in sleep and was socializing. However, she had also expressed some concerns about attending her psychiatry appointment due to fear of being "triggered". She was turning 58 in April 2011 and expressed ambivalence about the risk of returning to work in the area of counselling and mental health. She did not feel she would ever be able to do so and was fearful of a relapse. According to Dr. Eshleman, the Appellant continued to have symptoms of PTSD, which were evident in his waiting room. He scheduled a follow up and recommended adjustment to her medications.

[18] On March 14, 2011, Ms. Maille summarized her involvement with the Appellant starting in December 2008. At that time, the Appellant had compassion fatigue and vicarious trauma and was suffering symptoms of PTSD. Despite therapy, she would still become highly anxious at the thought of returning to the "helping" field. She eventually

returned to work and was offered a transfer from front-line work to organizing a shelter at which time she stopped attending therapy. On March 25, 2010, she contacted Ms. Maille in crisis as she had recently tried to return to front-line work but was unable to manage. Her doctor and psychiatrist recommended that she return to long-term therapy. The main goals of therapy were to maintain emotional stability and carry out trauma work to deal with vicarious trauma issues and deal with PTSD symptoms. According to Ms. Maille, the Appellant had significantly improved since September 2010. During the past two months, she was able to retain emotional stability except for isolated incidents, e.g., she reacted when a former client approached her while she was in the psychiatrist's waiting area. However, she was greatly improved in all aspects of daily functioning. After much work and effort, on most days, she was "now able to pass a client's home, to meet with her co-workers and go to public places without feeling overly anxious". However, she still was unable to hear difficult stories or be exposed to violence on television without feeling overwhelmed. Ms. Maille opined that based on her age, level of severity of vicarious trauma or PTSD symptoms and the years she worked in the field, it would "seem unlikely that she will ever be able to return to front line work or in any jobs related to the helping field without immediately being negatively affected once again".

[19] On April 12, 2011, Dr. Eshleman saw the Appellant, who reported she was feeling better but had ongoing fear of meeting somebody, which would set off a trigger to replay their history of abuse. She managed to go into her workplace several times, which was significant progress. However, she continued to be focused on flashbacks, which were usually triggered but would sometimes also occur randomly. She anticipated places where she might run into clients but indicated she could now go to the mall, had been to the office and to another location. However, sometimes, she would still feel the need to escape from the situation. She continued to follow up in therapy with Ms. Maille. Dr. Eshleman believed there was improvement based on her ongoing psychotherapy and increased her Celexa.

[20] On May 19, 2011 Dr. Eshleman saw the Appellant, who reported that she was not doing well. Following a period of noticeable improvement, her condition deteriorated

following a trigger which involved meeting an ex-colleague with whom she had developed a rape crisis centre/programming. She experienced a recurrence of suicidal ideas, felt unwell, did not get out of bed and had disrupted sleep and recurrent nightmares regarding past work or violence. She subsequently improved but was still finding it difficult to get out of bed daily. She was avoiding people and TV with violence as well as the workplace and associated people, even though previously she was able to go to the workplace and do some copying. She was continuing to work with Ms. Maille, who recommended that she not attempt to return to work as a frontline worker given the risk of relapse. Dr. Eshleman suggested that the Appellant "wait and see" before commenting about future "limits or potential". He stated that such work would always pose a risk for potential trigger for her symptoms and that the question was whether she could feel physically and mentally healthy and develop techniques/tools to manage such work.

[21] In a CPP Medical Report dated September 19, 2011, Dr. Eshleman reported that he started treating the Appellant in November 2010. He diagnosed PTSD and Major Depressive Disorder secondary to PTSD. He anticipated that there would be ongoing improvements as there has been a predictable response to the medication to date. On antidepressants, she had a rapid response. However he did not believe she would be able to return to her previous work or any related occupation as the PTSD was chronic and recurrent if exposed to triggers. Given her long employment history in the mental health/social services field, Dr. Eshleman did not envision that the Appellant could avoid exposure in the public workplace. He stated that X is a relatively small city where one rapidly becomes exposed to many related issue. Her symptoms currently persisted and her other medical conditions, e.g., hypertension, GERD, would likely be exacerbated by any deterioration in her mental health status.

[22] On February 17, 2012, Dr. Eshleman wrote to the Respondent concerning the denial of the Appellant's CPP disability application. He expressed the opinion that the Appellant was eligible to receive benefits. He stated he initially assessed her in November 2010 with PTSD with panic, major depressive disorder secondary to PTSD related anxiety and medical problems including hypothyroidism, hypertension, GERD, osteoporosis and a history of hypoglycemia. He described symptoms of compassionate

fatigue, vicarious trauma and mental and physical exhaustion which contributed to PTSD. He also noted her "extreme exposure" having worked in Child and Family Services, Addiction Services, Women's Shelter and Rape Crisis Centre for more than 20 years and personal experience in an abusive marriage. Although she reported improvement in her depressed mood, she continued to have symptoms of anxiety and panic when exposed to triggers. For example, at her last appointment, she described seeing a nurse in the office who had been a prior client, which contributed to her "shock and surprise" lasting several minutes. She required someone to accompany her shopping. Her sleep was fair although she needs to nap in the afternoon. Her energy had improved and she was increasing her social contacts as her tolerance was improving. According to Dr. Eshleman, Dr. Kanya- Forstner agreed that the Appellant should not return to work. Her blood pressure had dropped since being off work. Dr. Eshleman stated this was consistent with his position that her medical problems would be at risk of worsening if she were exposed to abuse histories or triggers. He noted adjustments to her medications and indicated that she was experiencing more anxiety potentially from a reduction in Cipralex. Dr. Eshleman stated he would continue to see the Appellant, directed her to increase her Cipralex and suggested a trial of Wellbutrin. According to Dr. Eshleman, the Appellant was motivated to get better, however her symptoms were chronic and she continued to have symptoms when exposed unexpectedly. He stated: "Considering that she worked in the field for more than 20 years and her current age, I am not in support of her returning to work. It is inevitable that she will be exposed to people she knows or worked with, as well as simply issues in the media and as such, will continue to be at risk of experiencing trigger- symptoms of PTSD and related panic. As I indicated, she continues to experience symptoms currently".

[23] On March 22, 2012, Dr. Kanya-Forstner wrote to the Appellant's disability insurer. He stated the Appellant continued to experience significant impairment due to her underlying PTSD and was unable to leave the house alone without experiencing panic attacks associated with nausea and palpitations. As a result, she required someone to accompany her. She was further limited by the fact that almost every time she would meet a former work associate or client, her symptoms are "even further magnified resulting in an almost complete inability to leave her home for several days". Her symptoms were also

worsened by media reports/images reminding her of previous traumatic experiences at work. At home, she continued to describe poor sleep related to nightmares and reported poor motivation, concentration and depressed mood. Despite his efforts and those of Dr. Eshleman and her counselor, the Appellant had little change in her symptoms given the ease with which they return when reminded of traumatic events. He opined that she was unable to return to work.

[24] On May 4, 2012, Dr. Eshleman wrote to the Respondent and took issue with their reliance on his February 2012 report to support their position that the Appellant was not prevented from all types of work. He clarified that he was not in support of the Appellant returning to any type of work and stressed that this was not a change from his previous assessment. He stated he did not believe her related training/qualifications or experience would be transferable to any work-type that would avoid the risk of her being exposed to triggers of PTSD with Panic and secondary Depression. He stated: "This would be especially true in our small Community where there are multiple intertwined relationships across domains of function". He noted that the duration of illness alone would suggest a poor prognosis. Although she had some improvements, her symptoms fluctuated and were reactive demonstrating that they are intermittent, though recurrent. She was experiencing recurrence of her anxiety symptoms including panic, reduced patience in social situations, fatigue with limited capacity for function even within her home and impaired cognition. There was also evidence of ongoing intolerance of exposure to triggering situations which are typically unexpected. He stated it is impossible to differentiate between work –related stress from the PTSD and secondary depression. He anticipated exacerbation of her physical disorders such as IBS and GERD with stress. He also stated that based on her previous two episodes off work due to "burn out" with her current episode counting as a third, she was at near 100% risk of having future episodes if exposed to unnecessary stress. Dr. Eshleman further stated: "Ms. J. P. continues to have symptoms that would interfere with her working any capacity. She is needing to use techniques of anxiety management and cognitive behavior therapy as she tries to increase her function both within the home and out in the Community,..". He also stated: "In my prior notes including the February 17, 2012 note, I make no indication that her condition is such that she could do any type of work."

[25] On February 26, 2013, the Appellant was seen by Dr. Adesanya due to anemia and for exclusion of Celiac disease. He reported there was no evidence of Celiac disease. The Appellant was found to have significantly elevated ANA of 1 in 640 titer with a homogenous pattern. She had no polyarthritis but polyarthralgias which she attributed to fibromyalgia. Given high titers, she was sent for more specific blood tests to rule out lupus, mixed connective tissue disease and scleroderma.

Oral Testimony

[26] She was born on April 23, 1954 and is age 60.

[27] She completed Grade 12, obtained a diploma in Social Work and a Certificate in Addiction Studies.

[28] She worked 22 years in the social work field. She worked for S. C. Addiction Services for 10 years, Child and Family Services (CFS) for 5-7 years and the Rape Crisis Centre (the Centre) where she stopped working in March 2010. She had worked at the Centre for approximately 5 years.

[29] When she worked at CFS, she was exposed to cases involving sexual abuse of children. She recalled one specific case which triggered nightmares. She decided to leave as she could no longer handle the job. She also worked with cases involving women and violence at S. C. Addiction Services, which also caused her to experience nightmares. There was insufficient debriefing at the Centre, where she would return from court upset. Such lack of debriefing would intensify her feelings of anger.

[30] She has been diagnosed with PTSS, anxiety and depression. She has also been diagnosed with fibromyalgia, acid reflux, diverticulitis and asthma.

[31] She cannot cope at home with depression. Her spouse does the cooking and most of the cleaning. She has not functioned at home since she stopped working due to lack of motivation.

[32] She is less tired today than she was years ago when she would sleep all the time due to depression.

[33] She still gets panic attacks. She usually goes everywhere with her husband. She can infrequently manage meeting a friend at a coffee shop or visiting them at their home. However, she cannot go out on her own due to fear and anxiety. A friend accompanied her to water aerobics. While her friend is in X, she has not gone to the pool.

[34] On January 2, 2015, she was suicidal the whole day and was also suicidal (albeit less severely) several weeks later.

[35] Her medications include: puffers for asthma; Ciprolex 10 mg once daily; Gapabentin 300 mg at night for pain from fibromyalgia (she also has arthritis in her hands); Anusol for hemorrhoids; Losec for acid reflux; Wellbutrin (discontinued); medication following cataract surgery; Synthroid 88 mcg (which has made a difference), Calcium and Glucosamine for pain.

[36] She had her appendix removed in March/April last year. They found polyps and also removed a hernia. The polyps are extremely dangerous. Her siblings and children were told to get colonoscopies, given the risk of cancer presented by such polyps.

[37] During a typical day, she gets up, has breakfast, goes on the computer, may shower - although her hygiene has decreased. Her spouse "forces" her to go out for a walk or coffee. They return home and she is back on the couch until supper. After supper, she is back on the couch until she retires to bed at around 9:00 pm.

[38] She used to have company. Although she managed to have her family over this past Christmas, she could not cope having everyone over at the same time due to her condition. Although she loves her grandchildren, she no longer has the required patience.

[39] She is forgetful. She used to love to read. She now has trouble retaining information. She used to have a cottage. They sold it last year due to financial difficulties, however she also did not feel like going.

[40] She has an ongoing dispute with her Long Term Disability Provider. Her benefits were discontinued after two years. She recently started receiving CPP retirement benefits.

[41] She previously received counselling from Mariette Maille. After her Long Term Disability Provider discontinued her benefits, the Appellant's employer continued to pay for counselling for an additional 3-4 months. After she was let go from the Centre, the counselling was terminated.

[42] She used to see her psychiatrist, Dr. Eshleman on a regular basis. She believes she started to first see him in November 2010. He recently fell ill and has been on sick leave for the past 5-6 months. On February 27, 22015, she will see a new psychiatrist, Dr. Croft. She also sees her family doctor. She has never refused treatment.

[43] She has also seen other doctors and has been diagnosed with arthritis. She also saw Dr. Fales, Kirkland Lake, for her eyes and Dr. Adesanya.

[44] Her last employer was very supportive. One day, she "blew up at the secretary for no reason at all. The employee suggested she work at a start- up women's shelter where she worked between January 2009 and March 2010. She felt better and returned to her previous front- line work at the Centre. During her first shift, it all "came apart".

[45] Each time she has gone off work, her anxiety has gotten worse. She has PTSD and cannot just change jobs and go to another one. When she went off work, she had significant anger issues: CFS did not protect children and the police would blame women victims. She would suffer anxiety and nightmares. She has a recurring nightmare in which someone kills her entire family in front of her with a machete. In her mind, the nightmares are real. They have decreased but she still gets triggers. For example, if her husband is watching something violent on TV, this can trigger a nightmare. She may experience nightmares up to two times a month although some months she may experience only one and sometimes none. The following day a nightmare, she is a complete "basket case". If she walks down the street and sees a former client, this may

also act as trigger. She experienced a trigger in Dr. Eshleman's waiting room after she saw a former client.

[46] She used to love to travel. Some family members have condominiums in X however she is too scared to travel.

[47] When she stopped working, she would sleep 12-15 hours. Now she sleeps around 12 hours.

[48] Since she stopped working, certain things have improved. For example, she can better control her anger. Others things have worsened such as her suicidal thoughts.

[49] She has not attempted to return to work. She is too ill to do so. Although she had some improvement in function in March and April of 2011 and "pushed" herself to go the Centre to talk about her feelings, she could not do so now.

[50] Despite the improvements noted by Ms. Maille in March 2011 and Dr. Eshleman in April 2011, she would not have been able to work in a non-social work related job due to her condition.

[51] At the time the Long Term Disability Insurer was about to discontinue her benefits, she took the position that if she was going to look for work, the worker would have to accompany her and stay with her on the job since she could not go alone.

[52] She cannot go to Walmart on her own without getting a panic attack. Therefore, she does not believe she can go to work. She would also have difficulty managing a job given her difficulties reading a book.

[53] In February 2012, she may have attempted to go shopping on her own while she was receiving a lot of counselling. However, she does not believe she succeeded. AS a result, she required someone to accompany her. She will not go grocery shopping alone today. Her husband has to accompany her.

[54] When she stopped working, it felt as though the symptoms associated with her fibromyalgia had intensified.

[55] According to an October 2014 report of the Arthritis Society authored by Mary Ellen Marcon, physiotherapist and addressed to the X Hospital Rheumatology Clinic (and read into the record by the Appellant's legal representative), the Appellant has arthritis in her hands and plantar fasciitis. Current concerns identified included hand pain and plantar fasciitis for 6 months. Her history was noted to include painful hands for two years. She was noted to have reduced grip strength in both hands. Ms. Marcon provided an impression of overuse dysfunction of the hands - computer.

SUBMISSIONS

[56] The Appellant submitted that she qualifies for a disability pension because:

a) The May 2012 report of Dr. Eshleman addresses both the Respondent's concerns and the Appellant's inability to return to work. He is well aware of her condition and appropriate weight should be given to the report.

b) The Appellant gave credible testimony. If she could work, she would.

c) She loves her family. However, due to her limited capacity to function, she cannot have them all together for a visit at Christmas.

d) In terms of commercial realities, her age, medical conditions, and past narrow field of work, no employer would hire her.

e) The case law supports the proposition she is not required to relocate. She has spent her whole life in her community – *See Deschamps v. MHRD November 18, 2002 CP 17036*; and *Smith v. MSD (September 26, 2007) CP 24972 (PAB*).

[57] The Respondent submitted that the Appellant does not qualify for a disability pension because:

a) Although Dr. Eshleman did not support a return to work in her previous job, an independent psychiatric medical examiner (Dr. Richard – September 10, 2010) suggested she could do so in an administrative capacity.

b) She successfully performed her job for 18 months in the past after having difficulties with "compassion fatigue and vicarious trauma" in 2008.

c) A social worker, Ms. Maille (March 14, 2011) supported the idea that she had significantly improved and while a return to "front line" work was not appropriate, other work was not ruled out.

d) The evidence does not support Dr. Eshleman's support of her claim of disability, given the definition of disability for CPP purposes. Although she should likely not return to her previous job, two other sources endorse improvement in her overall condition when removed from that work setting and alternative work as an option.

e) She succeeded in the past in an alternative setting.

f) Based on the objective evidence, including reports of continued improvements and despite Dr. Eshleman's advocacy position, she is capable of working in a suitably modified capacity.

ANALYSIS

[58] The Appellant must prove on a balance of probabilities that she had a severe and prolonged disability on or before the MQP.

Severe

[59] The evidence indicates that the Appellant has some issues with arthritis in her hands, some polyarthralgias and reduced grip strength in her hands, as well as asthma,

diverticular disease, allergies, high blood pressure, osteopenia and thyroid problems. The Tribunal is not satisfied, however, that these conditions individually and/or cumulatively rendered her incapable regularly of performing her previous job or sedentary work on or before the MQP. Also, there is a dearth of medical reports elaborating on the above conditions and their severity as defined in the CPP on or prior to the MQP.

[60] However, the Tribunal notes that the Appellant stopped working in 2010 due to PTSD and anxiety. The Tribunal is satisfied, based on the medical record and the Appellant's testimony that she was incapable regularly of performing her previous job on or before the MQP, given the certainty of being exposed to triggers in relation to her PTSD and anxiety. The more difficult question is whether the Appellant was incapable regularly of pursuing any other substantially gainful occupation including work where she would not be exposed to triggers.

[61] The medical record provides some basis for suggesting that the Appellant could return to other work. For example, in the undated CPP Medical Report, Dr. Richard, psychiatrist, expressly opined in his September 2010 report that the Appellant would be able to return to an administrative job much faster than a clinical job in 6-9 months. In his February 16, 2011 report, Dr. Eshleman noted that the Appellant, herself, expressed some ambivalence about the risk of returning to work in the areas of counselling/mental health and was fearful of a relapse. This would suggest that she did not harbor similar concerns about returning to other work. In her March 2011 report, Ms. Maille, social worker, reported significant improvement in the Appellant, indicating that on most days, she was "now able to pass a client's home, meet with her co-workers and go to public places without feeling overly anxious." Although Ms. Maille believed it was unlikely that the Appellant would ever be able to return to front- line work or any job related to the helping field, she did not entirely rule out other work. Dr. Eshleman also noted progress in his April 12, 2011 report. He noted the Appellant managed to go to her workplace several times and could now go to the mall, had been to the office and to another location. In his May 2011 report, after noting a deterioration in function, Dr. Eshleman stated that front-line work would always pose a risk for potential trigger of

symptoms and indicated a “wait and see” approach before commenting on future limits or potential. In his September 19, 2011 report, Dr. Eshleman stated he did not believe that the Appellant would be able to return to her previous job or any related occupation as the PTSD is chronic and recurrent if the Appellant is exposed to triggers. This implies to the Tribunal that she could return to a job where she was not exposed to triggers.

[62] The Tribunal finds, however, that on careful consideration, the medical record is less conclusive on the issue of the Appellant’s capacity to work in non-social work related jobs. Firstly, although Dr. Richard opined on September 10, 2010 that the Appellant would be able to return to an administrative job much faster than a clinical job in 6-9 months, he did not follow up with her to confirm his prognosis. The Tribunal finds this to be significant, in particular given his low GAF rating of 52 (worst last year 47). Secondly, although Dr. Eshleman noted some improvement on the Appellant’s part in February 2011, he also reported that she had expressed concerns about attending her appointment with him given her concerns about triggers. It is evident to the Tribunal that the Appellant’s fear and anxiety at that time manifested itself outside of a social work related workplace setting. Significantly, Dr. Eshleman stated that the Appellant continued to have PTSD symptoms which were evident in his waiting room and that she required follow-up treatment and adjustment to her medication. Thirdly, the Appellant’s gains seemed short-lived. Although Ms. Maille reported functional improvement in her March 14, 2011 report, e.g., the ability to pass a client’s home, meet with co-workers and go to public places and Dr. Eshleman noted similar improvements the following month, Dr. Eshleman described a significant deterioration in function in May 2011 after the Appellant met with an ex-colleague. Fourthly, Dr. Eshleman’s September 2011 report could be read in two ways. On the one hand, he indicated he did not believe that the Appellant would be able to return to her previous job or any related occupation, which might imply that she could return to other work. On the other, he clarified that, given her long employment history in the mental health/social services field, he did not envision that she could avoid exposure in the public workplace. He stated X is a relatively small city where one rapidly becomes exposed to many related issues. The Tribunal interprets this to mean that the Appellant could not realistically perform any job given the likelihood of being exposed to decompensating triggers in the

community. Fifthly, on February 17, 2012, Dr. Eshleman confirmed that the Appellant continued to have symptoms of anxiety and panic when exposed to triggers. He provided an example where she saw a nurse in his office who had been a prior client and noted she requires someone to accompany her when she goes shopping. He emphasized it would be inevitable she would be exposed to people she knows or worked with and would continue to be at risk of experiencing trigger-symptoms of PTSD and related panic. Only one month later, Dr. Kanya-Forstner reported that almost every time the Appellant met a former work associate or client, her symptoms became magnified resulting in her complete inability to leave the home for several days. He also noted that she required someone to accompany her when leaving the house and that she described poor sleep related to nightmares and poor motivation, concentration and depressed mood.

[63] The Tribunal is satisfied based on a review of the medical record and Appellant's testimony that the Appellant was incapable regularly of pursuing any substantially gainful occupation on or before the MQP. Given her "real-world" environment, she runs the very real risk of being exposed to triggers for her PTSD by running into former clients or ex-colleagues at large in the community. Given such triggers, which Dr. Eshleman characterized as "inevitable" and the fact that the Appellant has to have someone accompany her when she leaves the house to go shopping, swimming, etc., the Tribunal is satisfied that her disability realistically renders her incapable regularly of performing any job. Her PTSD and anxiety, which result in behavioural avoidance of triggers, essentially render her housebound, with the limited exception of infrequently meeting a friend for coffee, where she has the prior certainty of knowing she will not be unaccompanied at her destination.

[64] The Tribunal is further satisfied that the Appellant has difficulties with concentration and motivation, e.g., difficulty reading a book or managing a family function with a large group of people, which would further adversely affect her capacity to perform any substantially gainful occupation.

[65] Although the Appellant experienced a brief period of improvement in March and April 2011, the evidence supports a finding that she did not consolidate those gains. The medical record demonstrates that her condition deteriorated shortly afterwards in May 2011 after she met an ex-colleague, which event acted as a decompensating trigger. Since then, she has avoided her previous workplace, avoided associating with people and suffered a recurrence of suicidal ideas. She has not recovered to the point she travels freely in the community. As previously noted, her husband generally accompanies her when she leaves the home.

[66] As indicated by Dr. Kanya-Forstner in his March 2012 report, the Appellant is unable to leave the house alone without experiencing panic attacks associated with anxiety, nausea and palpitations and needs someone (usually her spouse) to accompany her. When at home, she continues to describe poor sleep related to nightmares, in turn, related to triggers, and also reported poor motivation, concentration and depressed mood. Although the Appellant testified that her nightmares have reduced in frequency, she can still get up to two a month and requires a full day to recover. All of these factors support a finding that the Appellant was incapable regularly of pursuing any substantially gainful occupation on or before the MQP.

[67] Although an argument could be made that the Appellant could work if she moved away from X where she is exposed to triggers for her PTSD, the Tribunal finds that the jurisprudence does not mandate this result. Although the case of *Canada (Minister of Human Resources Development) v. Rice, 2002 FCA 47, [2002] 2 F.C.* specifies that socio-economic factors such as labour market conditions are irrelevant to the determination whether an individual is disabled, the Appellant does not contend that she is disabled because no suitable jobs exist in the X job market. Rather, she contends, and the Tribunal accepts, that she is incapable regularly of pursuing any substantially gainful occupation, given her PTSD and anxiety which cause her to avoid triggers in the community. This is an entirely different situation from the circumstances contemplated in *Rice* and takes into account the Appellant's "real-world" circumstance as mandated by the case *of Villani v. Canada (Attorney General) (C.A.), 2001 FCA 248, [2002] 1. F.C. 130.* That is to say, the triggers, which render her housebound unless accompanied by

her spouse or meeting a friend at predestination, inescapably form part of her "real-world "setting.

[68] The Tribunal further notes that the Appellant has established a network of treating physicians in her home city. It is there that she sees her family doctor, her psychiatrist, Dr. Eshleman (who is currently on sick leave) and is currently scheduled to see a substitute psychiatrist. Given these circumstances and the principle that an appellant mitigate his or her condition by reasonably pursuing medical treatment, which she has done, the Tribunal is unable to conclude that relocation to another community is mandated on the facts of this case. In any event, given her ongoing problems with concentration and motivation and the additional factor of her age, the Tribunal finds it is unlikely that any employer would realistically hire the Appellant even if she were to relocate.

[69] The Tribunal is satisfied, given her susceptibility to triggers for her PTSD and the impact exposure to such triggers has on her health and mental well-being, her poor motivation, concentration and general housebound status, that the Appellant suffered the onset of a severe disability in March 2010 when she had to stop working. The Tribunal is further satisfied that her condition remained severe at the MQP and on a continuous basis thereafter.

Prolonged

[70] The Tribunal is satisfied that the Appellant's disability was prolonged as of March 2010. As indicated by Dr. Eshleman in his February 2012 report, her symptoms are chronic in nature. She continues to have symptoms when exposed unexpectedly and she remains at risk of experiencing triggered symptoms of PTSD and related panic. The Appellant testified that she continues to have problems with concentration, motivation and nightmares. She generally needs to be accompanied by her spouse when she leaves the house. At the time of hearing, the Appellant was waiting to see a new psychiatrist given Dr. Eshleman's unavailability.

CONCLUSION

[71] The Tribunal finds that the Appellant had a severe and prolonged disability commencing in March 2010 due to her PTSD and anxiety related symptoms. According to section 69 of the CPP, payments start four months after the date of disability.
Payments start as of July2010.

[72] The appeal is allowed.

Jeffrey Steinberg
Member, General Division