Citation: *S. O. v. Minister of Employment and Social Development*, 2015 SSTGDIS 37

Date: May 5, 2015

File number: GT-119983

GENERAL DIVISION- Income Security Section

Between:

S. O.

Appellant

and

Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)

Respondent

Decision by: Jeffrey Steinberg, Member, General Division - Income Security Section

Heard by Videoconference on April 23, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

S. O., the Appellant
Chris Topple, the Appellant's legal representative
Lorna Hughs, observer

INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on June 28, 2011. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT) and this appeal was transferred to the Tribunal in April 2013.

[2] The hearing of this appeal was by Video Conference for the following reasons: i) videoconferencing is available in the area where the Appellant lives; ii) the issues under appeal are not complex; and iii) the form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[3] 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.

[4] 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).

[5] 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.

[6] 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

[7] There was no issue regarding the MQP because the parties agree and the Tribunal finds that the MQP date is December 31, 2018.

[8] In this case, the Tribunal must decide if it is more likely than not that the Appellant had a severe and prolonged disability as of the date of the hearing given the future MQP date.

EVIDENCE

Documentary Evidence

[9] In the CPP Questionnaire dated May 6, 2011, the Appellant indicated she stopped working in October 2010 as a cashier/sales clerk at Northend Market where she started working in May 2007. She stopped working due to maternity" stating: "cannot return due to onset of condition".

[10] The Appellant was born in 1981 and obtained a high school diploma. She states that since around December 2010, she could no longer ride a bike for very long. Her knees and hands are affected. She could not play catch with her daughter greater than ten minutes. She also could not sit greater than 30 minutes due to the fact she becomes very stiff making it hard for her to get up. She also described difficulty with walking stating she needs to shorten her pace and requires support. She can walk 30-45 minutes. Pushing a stroller hurts her elbows. She can stand for 30- 45 minutes which makes her feet very tender. She cannot climb stairs and tries

to use a ramp. She described restrictions involving lifting, carrying, reaching and bending. She has difficulty performing household maintenance activities such as cleaning the bathtub. The effects of her arthritis are variable. Some days, she can carry her 25 lb. son for 10 minutes around the house; other days she cannot pick up a bag of milk. She is prescribed Sulfasalazine, (use to treat pain and swelling in arthritis), Methotrexate (used to treat arthritis) and Celebrex.

[11] In his May 15, 2012 CPP Medical Report, Dr. Panowyk, family physician, indicated he knew the Appellant for more than 15 years. He diagnosed seropositive rheumatoid arthritis. He stated she presented in April 2009 with polyarthralgia. In May 2009, he referred her to Dr. Silecky, rheumatology, who confirmed the diagnosis and has followed her for polyarthralgia in her feet, fingers, shoulders and hip. He stated she had nine recurrent flare ups during 2-3 months lasting 2-5 days. He stated she had swelling to her hand joints, however her range of motion was full but painful. She had no visible joint deformity. He has prescribed Methotrexate and Salazopyrin. Under Prognosis, Dr. Panowyk stated: "Chronic condition/expect disability to be permanent".

[12] In the June 27, 2011 CPP Medical Report, Dr. Silecky, rheumatology, reported he knew the Appellant since May 2009. He diagnosed seropositive rheumatoid arthritis. He described the onset of joint pain in December 2008. It was initially controlled with Salazopyrin. She had a flare up in January/February 2010. She went off that medication due to pregnancy. She was well during pregnancy. She had a subsequent flare up in December 2010 post-partum. She was advised to wean her baby by April 2011 to allow treatment. She has active arthritis (elbows, hands, feet) when examined in April 2011. The plan was to start Methrotrexate and Salazopyrin when she stopped breast feeding. He indicated the prognosis depends on the Appellant's response to treatment. He stated she was potentially treatable however her response could not be predicted.

[13] In an August 27, 2009 report, Dr. Silecky, reported that the Appellant, who was diagnosed with seropositive rheumatoid arthritis with an onset date of December 2008, had a positive rheumatoid actor of 843. He found one swollen joint on May 9, 2009. She reported no discomfort since being treated with medication. On examination, she had no actively inflamed

joints. Dr. Silecky stated the Appellant most likely had early rheumatoid arthritis. He prescribed Sulfasalazine and stated he would see her in 3 months.

[14] In a February 23, 2010 report, Dr. Silecky reported the Appellant had recurrent episodes of joint pain lasting 2-3 days for the past few months. He stated that symptoms can be incapacitating and that her shoulders and hands were affected. Joint examination showed no actively inflamed joints. Treatment consisted of Sulfasalazine. He added Hydroxychloroquine and Celebrex and stated he would see her in about six months' time.

[15] In an August 12, 2010 report, Dr. Silecky reported the Appellant had stopped her medication in February 2010 due to pregnancy. She was about 7.5 months pregnant and due in October 2010. According to Dr. Silecky, she had the odd "short lived" flare up during pregnancy. Joint examination showed no swelling or stress pain in peripheral joints.

[16] In an April 14, 2011 report, Dr. Silecky reported that the Appellant was 6 months postpartum and breastfeeding. After he saw her in December 2010, her arthritis started to flare up. Examination showed flexion deformities -both elbows and swelling in 3, possibly 4 MCP joints and 3 PIP joints. The MTP joints were tender to squeeze. He recommended intramuscular Methylprednisolone for immediate relief and resumption of Methotrexate once she weaned her infant off of breastfeeding. She would then start back on Sulfasalazine. He also arranged for x-rays of her hands and feet to check for erosions. The same day, an x-ray of both feet revealed mild and early osteoarthritic change at the left 1st metatarsophalangeal joint. There were no radiographic findings of rheumatoid arthritis. X-rays of both hands did not detect any abnormality or pathology. In an August 4, 2011 report, Dr. Silecky reported the Appellant was able to wean her baby and restart Methotrexate in June 2011, which she was taking along with Sulfasalazine. Examination continued to show swelling in 2 MCP joints, possibly synovial thickening in 2 MCP joints as well as tenderness in 3 MTP joints. Dr. Silecky wanted to switch her to injectable Methotrexate and indicated he would review her in 3 months.

[17] In a February 27, 2012 report, (GT1-78) Dr. Silecky advised the Respondent that the Appellant had seropositive rheumatoid arthritis with a rheumatoid factor of 845 IU with onset of joint symptoms around December 2008. Following onset of symptoms, she experienced recurring flare-ups of joint pain. In February 2010, all medication had to be discontinued due to

pregnancy. When seen on December 6, 2010, she was nursing and doing well but shortly afterwards, she started to develop a flare up of her rheumatoid arthritis. When seen on April 11, 2011, she had developed flexion deformities in both elbows, swelling in 3-4 MCP joints and in 3 PIP joints with tenderness in all the MTP joints on squeezing. She was given intramuscular Methylprednisolone for immediate relief. She restarted Methotrexate in June 2011 as well as Sulfasalazine. Examination in August 2011 showed swelling in 2 MCP joints with synovial thickening in 2 additional MCP joints and tenderness in 3 MTP joints. Due to continued evidence of disease activity, medication was switched to injectable Methotrexate although she continued with Sulfasalazine. In November 2011, she had improvement with the combination of injectable Methotrexate and Sulfasalazine. However, she still had some swelling in the MCP and PIP joints of the right index finger but was able to make a fist and the elbow had improved. In February 2012, she sent Dr. Silecky a note indicating that she had experienced flare ups more recently. Dr. Silecky stated she might require more aggressive treatment. Treatment options would include anti TNF agents. He noted that rheumatoid arthritis is a chronic illness characterized by period flare ups and explained that disease activity may flare even after periods of good control. He stated her prognosis depended on a combination of the course of her illness and response to additional treatment which was yet to be determined.

[18] On April 19, 2012, Dr. Silecky reported that the Appellant was seen in advance of her scheduled appointment because of flare ups occurring over the past two and one-half weeks. The flare ups might last a day or two and occur a couple of times a week. According to Dr. Silecky, they were incapacitating (she would have difficulty lifting her arm or using her hand). Shoulders and hands were affected. On examination, she did not show any actively inflamed joints. The treatment plan consisted of intramuscular injections of Depo Medrol to see if they stopped the flare-ups or Leflunomide which Dr. Silecky indicated he was reluctant to use because of the Appellant's childbearing age. The third option consisted of placing her on an anti TNF (antitumor necrosis factor) agent. He indicated he would give her the Depo-Medrol injection and see how she did and, if necessary, provide anti TNF therapy

Oral Testimony

[19] The Appellant completed high school. She never received on the job training. She last worked as cashier for a period of about 3 years. She worked between 20-27 hours per week and earned minimum wage. She also did some clean up and stocking of merchandise. A number of years previous, she worked at another convenience store.

[20] She was diagnosed with rheumatoid arthritis in 2008. Her symptoms first started about 6- 9 months before she was diagnosed. Although she had symptoms at work, she was not placed on modified duties or reduced hours. The employer learned of her condition after she was diagnosed.

[21] The family doctor is Dr. Panowyk. He has been her doctor for at least 15 years. After being diagnosed, he referred her to Dr. Silecky, a rheumatologist. She last saw Dr. Silecky in February 2015. Since she is currently pregnant, he told her to see him one month after her delivery. She is due to deliver on September 2, 2015 and will see him the following month. In the meantime, she has discontinued all medication, which may cause birth deformities.

[22] She gave birth to a son in October 2010. Before that pregnancy, she took medication that she also discontinued during the pregnancy. She explained that during pregnancy, symptoms of rheumatoid arthritis go into remission. Her symptoms remitted during her previous pregnancy and are currently in remission.

[23] She last saw Dr. Panowyk last Friday. He confirmed she still has rheumatoid arthritis (currently in remission due to pregnancy). As happened following her previous pregnancy, her rheumatoid arthritis symptoms will return full-swing after she gives birth and she needs to be prepared for that.

[24] The Appellant explained that rheumatoid arthritis impairs her by causing pain and stiffness in her joints, which makes it difficult for her to be mobile depending on the joint(s) affected. She is affected in the knuckles of her hands, her shoulders, her knees and the knuckles in her toes. On occasion, her hips are also affected. One joint is affected a couple of days at a.time and the pain moves to other joints. Her sleep is affected when she is in pain and she cannot get comfortable. She will nap during bad days and try to be restful.

[25] After the birth of her son, her symptoms returned and she resumed taking medication about six months later. Her symptoms returned with greater severity than prior to the pregnancy. The symptoms returned during breastfeeding. She stopped breastfeeding to take medication. She received assistance from her spouse, her daughter (then age 10) and her parents to look after her son.

[26] She lives in a two story house. She climbs stairs holding the railings, uses caution and moves slowly. She does not have a driver's license. Her spouse drives. She will accompany him into stores. If the drive is long, she will get stiff and it will be harder for her to get in and out of the car.

[27] She has a computer at home which she uses infrequently for banking.

[28] She stopped working in October 2010 as she was going to give birth. She was off work for one year. Since her symptoms came back, she thought it would be impossible to return to work due to her severe pain and stiffness.

[29] She has not been to school or looked for work since she last worked. Her spouse is the sole income earner in the home. Her daughter is now age 14 and resides with her and her spouse.

[30] She saw Dr. Silecky in 2014 approximately once every six months. He prescribes her medication. Before she became pregnant, she was taking injections (Methotrexate) weekly and pills (Sulfasalazine) 4 pills daily. She would also take folic acid.

[31] She received a Depo Medrol injection once. She did not receive any further injections. Dr. Silecky put her on Methotrexate instead which is stronger.

[32] She sees Dr. Panowyk about once a year. She did not discuss returning to work with him.

[33] She has not discussed a possible return to work with Dr. Silecky, at least not entirely. She mentioned she was having difficulties and was not sure if she would be able to do so. He said it would depend on medication.

[34] After she gives birth, her family members will help her to look after the new born.

[35] If it were possible, she would someday like to return to work but is not sure how reliable she can be. At her previous job, she would stand almost the whole time which affected her ankle and feet. It made her joints stiffen. After standing 5 hours at a time, she would be very stiff.

[36] If she had a job where she could sit, it would depend whether she could handle it. Sometimes she might be able to and other times not, depending on her symptoms.

[37] She has not attempted to increase her education since she stopped working. She looked into Ontario Disability Support Program (ODSP) benefits, however her spouse earns too much income for her to qualify.

[38] She has had to give up bike riding, using the computer more frequently and going for walks.

[39] She tends to be forgetful while on medication but does not know if this is caused by her medication. She thinks her mood may be affected by the medication. She cannot recall what the side effects are of the medication are. She gets benefit from the medication. It helps although the symptoms are always there.

[40] During pregnancy, she has better range of motion. However, she can still be stiff, achy and sore.

[41] After her son was born, her symptoms returned worse. Dr. Silecky expects the same things to happen after she gives birth. He says it is common for symptoms to come back very strong. He has explained that rheumatoid arthritis will never go away. As far as she knows, the only time symptoms remit is when a woman is pregnant. Although the disease progresses, Dr. Silecky stated she was lucky the disease was caught for treatment purposes at her young age. She does not plan on having further children.

[42] Her daughter is now 14 (15 in July). She will help out again with the care of her sibling.

[43] Both sitting and standing can be bad. Sitting for a period of time causes discomfort, stiffness and pain. Standing is hard on her feet and ankles. She is affected by damp rainy weather. Cold and humidity also affect her condition.

[44] She has good and bad days. On a scale of 1-10 (10 being very bad), on a bad day she is a 10. On a good day, she would rate her pain as 2-3.

[45] She does some reading at home and watches some television.

[46] During the day, if her spouse is working and daughter and son are at school, she will take her newborn outside on a good day.

[47] Medication is paid for through her spouse's drug plan.

[48] The pain in her shoulders, hands, and hips give her the most trouble. In terms of the effects of pain, apart from interrupted sleep, when she gets up in the morning she feels exhausted. She gets up around 7:30 am. Most of the time, she can cook her own meals. If she has a bad episode, her spouse makes her meals. During a flare, she needs help showering and washing her hair. One bathroom is on the second floor and another in the basement. She tends to use the one in the basement which has fewer stairs. She will accompany her spouse into stores. On some occasions, she will not do so. She does not use a walker or cane.

[49] She can be pain free (when not pregnant) but it is hard to predict when this will happen.

[50] She cleans her house when able and relies on her family to help out when she is unable. She is better in the afternoon.

[51] The Tribunal asked some questions. The Appellant confirmed with the Tribunal that she stopped working in October 2010 because she went on maternity leave. The Tribunal asked whether, if she did not leave work due to maternity leave, she would have been able to continue working. The Appellant testified she might have been able to do so, however she was uncertain. She stated her arthritis is unpredictable so it is hard to say. It did get worse. She does not believe she would have been able to remain at the job. Before she went off on maternity, her attendance was okay. She would try to take it easy. Infrequently - but with increasing frequency - she would call in to say she was unable to attend work.

[52] The Tribunal asked some questions based on Dr. Silecky's letter dated April 19, 2012 (GT1-70) in which he recommended intramuscular injections of Depo Medrol, did not recommend Leflunomide due to the risk of birth defects and further recommended possible anti TNF therapy. The Tribunal asked the Appellant to clarify whether she had a Depo Medrol injection in April 2012. She stated she received an injection in 2011 and that she might have been mistaken as to the nature of the injection received. She stated she did not want her to receive a specific medication given her childbearing age. The Tribunal indicated this would likely be Leflunomide that Dr. Silecky ruled out on that very basis. The Appellant stated she received a cortisone injection but was not sure if it was Depo Medrol. The Tribunal pointed out to the Appellant that the medical record referred to earlier methotrexate injections. She stated this may be what she was referring to and that she was confused as to this issue. The Tribunal notes that the medical record also refers to an earlier steroid injection that the Appellant received. The Tribunal called the Appellant's attention to the fact Dr. Silecky stated he would perform a skin test to be followed by injection of Depo-Medrol and asked her whether she could recall this sequence of events. To the best of her recollection, the Appellant testified she had a skin test which came back okay. She thought it was for the Methotrexate. She reiterated she was unclear about receiving a Depo-Medrol injection. The Tribunal asked the Appellant whether she ever received anti TNF therapy. The Appellant had no recollection.

[53] The Appellant confirmed she will give birth in September 2015. She likely became pregnant in December 2014. The Tribunal asked her about the frequency and duration of her flare ups between April 2012 (the last report on file from Dr. Silecky) and December 2014 (when she became pregnant and her symptoms remitted). The Appellant stated she would experience a flare up approximately once every few weeks or once monthly. They would last between 2-3 days. They could affect any of the joints she previously described but mainly her shoulders, hands and hips.

[54] During a flare up of the hands, her hand would be useless. For example, she could not grip items or turn her wrist. When her shoulders were affected, the simple weight of her arms would cause pain. If her hips were affected, the pain would affect walking, sitting, getting up and climbing stairs.

[55] In terms of good days and bad days, good days are frequent. However, flare ups may occur once every couple weeks to once a month. She also has "in-between" days where she has to take over the counter medication or use cold or warm compresses. This would happen at least weekly on account of pain, albeit not as severe as the pain caused by flare ups.

[56] The Tribunal reminded the Appellant that in his 2012 report, Dr. Silecky stated she experienced flare ups a couple of time a week. Given her testimony that flare ups occur once every two weeks, the Tribunal asked her whether they occurred less frequently after April 2012. She responded affirmatively.

[57] Before she became pregnant in 2014 (and her symptoms went into remission), she does not believe she would have been able to manage a sitting job during a flare up. During non-flare up periods, she would also still experience stiffness and aches. She stated that sometimes with arthritis, use and non-use of a joint can cause pain and stiffness. During non-flare up periods, it would also be hard to predict when she would be in pain. Even if she did not experience a flare up, pain could still interfere with her ability to do a job.

[58] She was uncertain why no updated medical reports were filed between April 2012 and now. The Appellant's legal representative stated that although he requested further reports, Dr. Silecky did not provide any. He offered as an explanation the fact nothing had changed. He also commented that the Appellant sees Dr. Panowyk only once annually.

[59] On redirect, the Appellant stated that flare ups can be provoked by repetitive activity. She described one occasion where she changed lightbulbs on a string of Christmas tree lights. Her hands subsequently became very sore and stiff. If she walks for any period of time, she gets stiff and immobile.

SUBMISSIONS

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

a) She is a young woman but afflicted with a debilitating condition which impacts on her activities of daily living, which reflects her inability to sustain work. She would require extraordinary accommodations.

b) At GT1-32, Dr. Silecky set out the medications and noted that in 2010, all medication had to be discontinued due to pregnancy. He referenced a steroid injection (form of prednisone) and described the course of medication. He also referred to anti TNF medication. The question is what medications would best take the edge of pain. He summarized the nature of the Appellant's impairment at GT1-33 stating:

> Rheumatoid arthritis is a chronic illness characterized by periodic flare ups. Disease activity may flare even after periods of good control. Her prognosis depends on a combination of the course of her illness and response to additional treatment which has yet to be determined.

c) Medication does not remove the pain but helps her maintain her equilibrium to get by. It takes the edge off the pain.

d) Flare ups can be caused by repetitive activity.

e) In terms of the *Villani* factors, she completed high school only and has only worked in minimum wage jobs. She does not have a lot to offer an employer despite her young age. Her range of motion is very limited during flare ups. At GT1-70, Dr. Silecky characterizes the flare ups as incapacitating and writes: "When she has them, they are incapacitating (She would have difficulty lifting her arm or using her hand)".

f) If she is at work and has a flare up, she would have to be off her feet. She could not operate a computer in a seated position. This could cause a flare up. Her hips would also be affected.

g) She might be able to find a job but would not be able to sustain it even with extraordinary accommodation from an employer.

h) The nature of the disease is prolonged. Her body is attacking itself. Dr. Silecky told her it will get worse with age. All one can do is attempt to control it with medication which itself has side-effects. The disease and practical activity can provoke flare ups.

i) The pregnancy has to be considered in context. She cannot take medication while pregnant and her symptoms are in remission during pregnancy. After she previously gave birth, her symptoms returned. They will return again after her pending delivery.

j) Given the unpredictability of flare ups, it is very hard to gauge her employability. She cannot work with regularity. She also has vocational barriers to work. Her sleep is interrupted. She is better in the afternoon than the morning.

k) It is not practical to expect her to sustain herself in employment. Her activities of daily living are sedentary and she receives help from family. This is a picture of what she would encounter in a work setting only worse. For example, she could not rest as required.

l) She suffers from a degenerative disease which worsens with age and is even weather related.

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

a) She underwent an April 2011 x-ray of her feet and hands. There were no abnormalities or pathology noted in her hands. Her feet had very mild early osteoarthritic changes seen. There were no radiologic findings of rheumatoid arthritis or erosive changes seen.

b) In his February 27, 2012 report, Dr. Silecky mentioned the Appellant had improved since resumption of her medication. She claimed she experienced flare ups. He saw her in April 2012 in advance of her scheduled appointment for complaints of increased symptoms. Examination failed to reveal any actively inflamed joints.

c) Dr. Panowyk is supportive of the Applicant's condition. In his May 2012 report, he indicated that the condition is chronic and "Expect disability to be permanent". Although her examination revealed swelling to her hand joints, it

also noted full range of motion with no visible deformities in her joints. She continued to be treated with Methotrexate, Salazopyrin and Folic Acid. Despite complaints of continued flare ups, there is no indication she was started on more aggressive and recommended Depo-Medrol or anti TNF therapy. Therefore, not all treatment options have been exhausted. She is 35 years from retirement age and it would be expected that with proper medical management, she would be able to pursue some type of work within her limitations.

d) While her condition limits her employment options, it does not preclude all types of employment including sedentary or light duties.

ANALYSIS

[62] The Appellant must prove on a balance of probabilities that she had a severe and prolonged disability on or before the hearing date given the December 31, 2018 MQP date.

Severe

[63] The Tribunal is not satisfied, on balance, based on the medical record and the Appellant's testimony that she has satisfied her onus to establish on a balance of probabilities that she has undergone all recommended treatment to address her flare ups.

[64] In her very candid, credible and candid testimony, the Appellant retracted her earlier testimony that she received an injection of Depo-Medrol. She stated she might have been thinking of another medication and that she was unable to state with certainty whether she ever received an injection of Depo-Medrol. Similarly, she had no recollection whether she was ever placed on anti TNF therapy.

[65] Absent any updated medical reports from Dr. Silecky between April 2012 (the date of the last medical report on file with the Tribunal) and the April 23, 2015 hearing date three years later, along with the Appellant's inability to confirm whether she ever received Depo Medrol injections or anti TNF therapy, the Appellant has failed to satisfy the Tribunal that she has pursued all recommended treatment recommendations.

[66] The Appellant's legal representative contended in his closing submission that medication does not remove the Appellant's pain but only helps her to maintain her equilibrium to get by and takes the edge off the pain. He also stressed that flare ups can be caused by repetitive activity.

[67] Although the Appellant testified that she experiences what she described as "in-between" pain when she does not experience flare ups, the Tribunal finds that it is flare up pain which effectively renders her incapable of functioning in the workplace. As noted by Dr. Silecky in his April 19, 2012 report:

> Flare ups can last for a day or two and can occur a couple of times a week. When she has them, they are incapacitating (She would have difficult lifting her arm or using her hand). Shoulders and hands have been affected.

[68] The Tribunal finds that if the Appellant is able to bring her flare ups under control, whether or not they are provoked by repetitive activity, and further taking into account her "in-between" pain, she possesses residual capacity regularly to perform a substantially gainful occupation. The question, therefore, is whether the flare ups can realistically be brought under control. In his April 19, 2012 report, Dr. Silecky stated the following:

> Additional treatment options would include intramuscular injection of Depo-Medrol to see if the flare ups can be stopped.

[69] The Tribunal finds it remains an open question at this time whether additional treatment options, such as the kind recommended by Dr. Silecky in his April 2012 report, could stop her flare ups. As previously indicated, absent evidence that such treatment was attempted and failed, the Tribunal is not satisfied the Appellant has pursued all reasonable treatment recommendations advanced by her treating specialist. Consequently, the Tribunal is not satisfied that the Appellant's condition was severe as of the hearing date.

[70] Although the Tribunal is sympathetic to the Appellant's plight, nevertheless, the evidence falls short of supporting a finding of severity for the reasons as set out above.

Prolonged

[71] Having found that the Appellant's disability is not severe, it is not necessary to make a determination on the prolonged criterion.

CONCLUSION

[72] The appeal is dismissed.

Jeffrey Steinberg
Member, General Division - Income Security