

**Citation: *C. L. v. Minister of Employment and Social Development*, 2015 SSTGDIS 41**

**Date: May 7, 2015**

**File number: GT-121685**

**GENERAL DIVISION- Income Security Section**

**Between:**

**C. L.**

**Appellant**

**and**

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

**Respondent**

**Decision by: Vikki Mitchell, Member, General Division - Income Security Section**

**Heard by Questions and answers from March 24, 2015 until May 7, 2015**

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on December 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] On February 17, 2015 the Appellant's representative was sent a letter requesting information which would assist the Tribunal Member in determining the appropriate type of hearing. Since this information had not been received by the response date of March 16, 2015, the Tribunal Member has therefore chosen to proceed by written questions and answers.

[3] The hearing of this appeal was by Questions and answers for the following reason: There are gaps in the information in the file and/or a need for clarification.

[4] Canada Post records show that the Notice of Hearing was signed for by the Appellant on March 30, 2015 and by the representative's office on the same date.

[5] No written answers were received by the filing date of April 25, 2015.

[6] The representative was contacted by telephone on April 30, 2015 and information was given to her regarding how to file a request for an extension of time. No request had been received by May 7, 2015.

[7] The Tribunal member has made a decision on the basis of the material in the file.

### **THE LAW**

[8] 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 Tribunal.

[9] 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).

[10] 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.

[11] 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**

[12] After reviewing the Record of Earnings statement, the Tribunal finds that the MQP date is December 31, 2014.

[13] 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 date of the MQP.

## **EVIDENCE**

[14] The Appellant was 38 years old at her MQP. She has a college education with a diploma as a child and youth worker. She worked in this capacity with the Conseil Scolaire Catholique Franco-Nord from January 2005 until June 29, 2011. She left this job due to a cancer diagnosis. At the time of application she was receiving chemotherapy with the possibility of further radiation treatment. She was taking Gabapentin and CipraleX and was receiving social work counselling.

[15] The CPP medical report was completed by a doctor who had known the Appellant for 4 months. The doctor's name and the date are illegible. The diagnosis was breast cancer which was found during pregnancy. The treatment was chemotherapy.

[16] On November 3, 2011 the Appellant was seen at the Northeast Cancer Centre in X. A biopsy on August 4, 2011 had revealed fairly extensive ductal carcinoma in situ of high grade. On September 1, 2011 the Appellant underwent bilateral mastectomies with immediate reconstruction. The left breast implant had to be removed due to infection. She had started chemotherapy. Further radiation treatments were discussed.

[17] A progress note dated May 17, 2012 indicated that the Appellant had done well with the radiation treatments and her side effects had now settled. She was to see Dr. Cusack in the Well Follow Up Clinic in August. There is no report from this meeting.

[18] A letter from the Appellant's family doctor dated August 27, 2012 stated that the Appellant had had several complications as a result of her surgeries including large recurrent seromas over the surgical incisions which required drainage. This had only recently improved. This has led to clinical depression and situational anxiety. She was being treated with counseling and anti-depressants. She was taking Ciprex, Clonazepam and Neurontin. The Appellant had difficulties performing simple activities of daily living and remained weak, fatigued and functionally limited due to surgery, side effects of chemotherapy and medications. Dr. Morrison concluded that the Appellant was totally disabled for an indefinite but prolonged period of time.

[19] Dr. Morrison wrote in May 2013 that the Appellant remained disabled from any type of employment on a long term basis and her condition had the potential to deteriorate even further.

[20] A Record of Earnings statement dated February 21, 2015 showed earnings of \$13988 in 2013. The Appellant did not respond to a question asking for an explanation of these earnings.

## **SUBMISSIONS**

[21] The Appellant's representative submitted in writing that the Appellant qualifies for a disability pension because:

- a) Her recovery from breast cancer surgery and treatment has been compromised by multiple complications. This has led to depression and situational anxiety.
- b) Her doctor advised that she is totally disabled for an indefinite but prolonged period of time.

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

- a) There is no evidence to show a recurrence of the cancer.
- b) The radiation specialist indicated that she has done quite well with radiation and her side effects have settled quite well.
- c) The purpose of the CPP is to provide a pension where a disability forces a claimant to leave the workforce on a long-term basis and not to tide a claimant over a temporary period where a medical condition prevents him or her from working. It is certainly acknowledged Ms. ... would have had a period of disability whilst she underwent treatment for cancer; however, the medical evidence shows this treatment was successful and does not suggest the presence of any serious lingering side effects of such.
- d) While the family physician is supportive in finding the Appellant's mental condition disabling, there is no evidence of specialist referrals or aggressive treatments for this condition.

## **ANALYSIS**

[23] The Appellant must prove on a balance of probabilities that she had a severe and prolonged disability on or before December 31, 2014.

## **Severe**

[24] The Appellant did not respond to the written questions posed by the Tribunal. These questions sought information regarding her current medical condition and requested documentation regarding her treatment for depression and anxiety. The Tribunal member also requested an explanation for income reported in 2013. Since no answers were provided, the Tribunal has made a decision based on the information in the file.

[25] The Tribunal accepts the Respondent's arguments that there has been no evidence of recurrence of the cancer and that according to the most recent specialist report, the Appellant had done well with radiation and was to be seen in the Well Follow Up Clinic. Since no specialist reports have been provided dated later than May 2012, the Tribunal must accept that no further cancer treatment has been required.

[26] The Appellant's doctor has been supportive of the Appellant's application for CPP disability benefits and in May 2013 considered her totally disabled. There is no documentation relating to the Appellant's treatments for depression and situational anxiety other than a statement in August 2012 that she was receiving counselling and taking antidepressants.

[27] The Appellant's MQP is December 31, 2014. The latest information in the file is the letter from the family doctor dated May 2, 2013.

[28] The Appellant has not satisfied the Tribunal that on a balance of probabilities she had a severe disability as defined in the CPP at the time of the MQP.

## **Prolonged**

[29] Since the Tribunal found that the disability was not severe, it is not necessary to make a finding on the prolonged criterion.

## **CONCLUSION**

[30] The appeal is dismissed.

Vikki Mitchell  
Member, General Division - Income Security