

**Citation: *P. J. v. Minister of Employment and Social Development*, 2015 SSTGDIS 93**

**Date: August 21, 2015**

**File number: GP-13-1161**

**GENERAL DIVISION- Income Security Section**

**Between:**

**P. J.**

**Appellant**

**and**

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

**Respondent**

**Decision by: Virginia Saunders, Member, General Division - Income Security Section**

**Decided on the record on August 21, 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 July 18, 2012. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] After reviewing the documents and submissions already filed by the parties, the Tribunal decided to proceed on the record pursuant to Section 28 of the *Social Security Tribunal Regulations* for the following reasons:

- a) The member has decided that a further hearing is not required.
- b) The issues under appeal are not complex.
- c) This method of proceeding 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] 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).

[4] 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.

[5] 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**

[6] The Tribunal must decide the Appellant's MQP. The Tribunal must also 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**

[7] The Appellant's disability application revealed that she was born in 1953. She had children born in August 1977 and February 1993, for whom she was the primary caregiver. She stated in her application that in her most recent job she worked in a nursing home, and that she stopped in 1993 because it closed. She stated that she could no longer work as of March 31, 2008, because of severe depression and anxiety, bipolar disorder, and panic attacks. She stated that she had been admitted to hospital in 2009 for severe anxiety and panic attacks, and to a mental health facility between September and November 2011. It is noted at various places in the file that the Appellant and her husband immigrated to Canada from Iran in 1979.

[8] The Appellant's Record of Earnings indicated that she made valid contributions to the CPP in 1983 through 1994.

[9] The file contains office records from the Appellant's family doctor, Dr. P. Warshawski; reports from North Shore Mental Health; reports from Dr. H. Mallavarapu and Dr. A. Gandhi, both psychiatrists; and reports from Dr. D. Mullard, a general practitioner with Delta Mental Health.

[10] Dr. Warshawski's office notes for 2001 and early 2002 indicated that she saw the Appellant for a number of reasons including muscle pain, allergies, blood in the urine, and headaches. The first mention of depression is in October 2006. In April 2007 the Appellant was reported to be off anti-depressants, and depression is not mentioned again until August 2008.

[11] Dr. Warshawski's records, and reports by Drs. Mallavarapu and Mullard, indicated that in 2008 and later the Appellant reported that she had a history of periodic depression beginning around 1986. She reported that she did not complete nurse's training, partly due to anxiety about examinations. Instead she helped her husband out with his vending machine business. When her husband retired she found that she had less to do, which became a problem, and she began to worry about finances. The reports indicated that the Appellant had significant mental health intervention beginning in September 2008 when she was admitted to hospital.

[12] A report by Dr. Gandhi dated July 16, 2010, stated that she saw the Appellant with her husband. She first saw her in February 2010, then in May, June and July of that year. Her history described the Appellant as not having worked for the past two years, prior to which she had been busy working with her husband in their vending machine business. She began to feel depressed and anxious after her husband decided to sell the business, and there was a deterioration in her condition after which she had a brief admission to hospital in September 2008. After taking Seroquel, fluvoxamine (Luvox) and Effexor, she had improvement in her condition and remission in her symptoms of depression and anxiety. She stopped taking Effexor and eventually began having marked anxiety again. Her condition deteriorated again around December 2009.

[13] Dr. Gandhi stated that the Appellant reported first having depression in 1986, with a second episode when her daughter was injured when she was one year old. Her current diagnosis was Major depression with anxiety features, and a possibility of Bipolar Disorder Type II.

[14] Dr. Gandhi stated the Appellant reported that she had been sleeping well. She reported significant improvement, and was able to identify when anxiety symptoms occurred and was able to divert her attention. A post-script to this report indicated that on July 27, 2010, the Appellant saw Dr. Gandhi in an unscheduled visit because of exacerbation of anxiety and insomnia. It was decided to adjust her medications.

[15] Subsequent reports from Dr. Gandhi in January, May and November 2012, reported improvement in the Appellant's condition. The report of November 26, 2012, stated that the Appellant was making progress, that her mood was stable, she was sleeping well and her energy and motivation were good.

[16] In a report dated February 22, 2013, Dr. Gandhi repeated the above information, advising that the Appellant had a positive response to treatment in 2010 and had follow-up until August of that year. She then began having depression again around August 2011, with psychosocial stressors. Her condition continued to deteriorate in spite of treatment. Dr. Gandhi stated that in her opinion the Appellant was still suffering from Major depression with anxiety features, with a possibility of Bipolar disorder Type II. Although she had improvement in her symptoms, she still had impairment in her psychosocial functioning affecting her ability to engage in employment and to deal with stressors associated with any job in a consistent manner.

[17] The Respondent submitted a file note which indicated that on April 12, 2013, one of its employees had a telephone conversation with the Appellant's husband, in which the latter stated that he had taken the Appellant to work with him to get her out of the house because she was so depressed, and that she had not been paid a salary. He stated that his wife's English was not very good, and that he had helped her complete her disability questionnaire.

[18] The Appellant completed an Employer Questionnaire dated April 12, 2013, in which she stated that she began working for her husband in August 1998, and she stopped in March 2008 because he closed his business. She stated that she did not have a job title and that she had been taken along with her husband sometimes just to get out of the house. She worked approximately 15 hours per week, doing a little bit of washing and returning cans. She stated that she was unable to concentrate and work, and that she had been taken to work by her husband so that she would not feel lonely. She stated that she was not much help and was more of an observer.

## **SUBMISSIONS**

[19] The Appellant submitted that she qualifies for a disability pension because she has a severe and prolonged condition.

[20] The Respondent made no submissions to the Tribunal.

## **ANALYSIS**

### **Minimum Qualifying Period**

[21] As stated above, one of the pre-conditions to receiving a CPP disability pension is that the person applying must have made valid contributions to the CPP for not less than the minimum qualifying period (MQP).

[22] Paragraph 44(2)(a) of the CPP provides that for disability purposes a person is considered to have made contributions for not less than the MQP only if the contributions are made on employment earnings that are above the basic exemption for disability. This means that a person's contributions to the CPP in any given year only count for the purposes of a disability application if he or she earned above the basic exemption for disability in that year. The amount of the basic exemption for disability purposes is calculated each year with reference to sections 18, 19 and 20 of the CPP.

[23] The Child Rearing Provision (CRP) can benefit a person who was the primary caregiver for a child under the age of 7 by allowing any of those years to be removed from the contributory period if the person did not earn above the basic exemption.

[24] The MQP requirements that are currently in place are set out in paragraph 44(2)(a)(i) of the CPP. In the Appellant's case, they require valid contributions to have been made in four out of six years. The Record of Earnings indicates that the Appellant made valid contributions to the CPP in 1983 through 1994. By applying the CRP, the years 1995 through 1999 are removed from the Appellant's contributory period and may be disregarded. Of the remaining years, the last six year period in which the Appellant had four years of valid contributions began on January 1, 1991 and ended on December 31, 2001.

[25] The Tribunal finds that the Appellant's MQP ended December 31, 2001

[26] The Appellant must prove on a balance of probabilities that she had a severe and prolonged disability on or before December 31, 2001.

### **Severe**

[27] The Appellant claims to be disabled by depression. While there is evidence that in 2008 and later, she reported a history of depression going back to 1986, there is no evidence that her symptoms prevented her from pursuing a substantially gainful occupation at that time or for

many years after. Dr. Warshawski's notes are silent on the issue of depression until well past 2001. There are no other medical records to suggest that the Appellant sought treatment for any mental health issues until 2006 at the earliest. The Appellant's statements since 2008 indicated that her previous depression was periodic.

[28] The Appellant and her husband made statements in a number of interviews with physicians that indicated that she was a contributing worker at the vending machine business until it was sold in 2008. The suggestion that she only went to the workplace because she was lonely, and that she was unproductive and unable to concentrate, was not made by either the Appellant or her husband until 2013 when she was pursuing her disability application. The Tribunal does not accept this evidence as truthful. Had the Appellant's participation in the workplace been compromised by her mental condition prior to 2008, it is probable that she and her husband would have mentioned that to the many different physicians and mental health workers they saw when she was investigated and treated in 2008 and later.

[29] Even accepting that the Appellant had depressive episodes beginning in 1986, in order for her to qualify for CPP disability benefits she must show that these made her incapable regularly of pursuing any substantially gainful occupation before December 31, 2001, and that her condition has persisted since that time. Medical records from 2001 do not support such a conclusion. Medical records since 2001 indicate that she was relatively well until 2008.

[30] While it is arguable that the Appellant's condition in 2008 or later may have interfered with her work capacity, there is nothing to indicate that at or before her MQP of December 31, 2001, she was suffering from symptoms or receiving treatment for them, or that they had any effect whatsoever on her ability to pursue some type of work. Her condition was therefore not "severe" as that term is defined in the CPP.

### **Prolonged**

[31] Since the Tribunal found that the disability was not severe at December 31, 2001, it is not necessary to make a finding on the prolonged criterion.

## **CONCLUSION**

[32] The appeal is dismissed.

Virginia Saunders  
Member, General Division - Income Security