

**Citation: *M. B. v. Minister of Employment and Social Development*, 2015 SSTGDIS 89**

**Date: August 19, 2015**

**File number: GP-13-3180**

**GENERAL DIVISION - Income Security Section**

**Between:**

**M. B.**

**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**

**Decided on the record on August 19, 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 4, 2012. The Respondent denied the application initially. Upon reconsideration the Appellant was deemed disabled within the meaning of the CPP, with a date of onset of April 2013. The Appellant appealed the date of onset to the Social Security Tribunal.

[2] The hearing of this appeal was by On the Record for the following reasons:

- a) The member has decided that a further hearing is not required.
- b) There are no gaps in the information in the file or need for clarification.
- c) Credibility is not a prevailing issue.
- d) 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 Appellant's MQP is December 31, 2013.

[7] The Respondent has determined that the Appellant had a severe and prolonged disability as of April 2013.

[8] In this case the Tribunal must decide if this date of onset, as determined by the Respondent is correct.

## **EVIDENCE**

[9] The CPP medical report (October 2012) was completed by Dr. Ranjith who had known the Appellant since July 2008. The diagnoses were: arm and wrist pain, degenerative disc disease and sleep apnea. Any prolonged standing or walking brings on pain and numbness. She was taking analgesic medication as needed. For financial reasons the Appellant was unable to attend physiotherapy or purchase a CPAP. The prognosis was guarded.

[10] A clinical note from Dr. Ranjith dated November 22, 2012 advised the Appellant to decrease her weight and increase her physical activity. A note from January 14, 2013 stated that the Appellant was having joint pains but there were no joint deformities, no joint effusions and there was a full range of movements. The first clinical note to refer to low back pain and muscle spasms is dated April 3, 2013.

[11] In the CPP questionnaire, the Appellant stated that she last worked full-time on February 3, 2012 and could no longer work because of her medical condition as of November 26, 2012. She received regular Employment Insurance benefits from February 5, 2012 to November 24, 2012.

[12] An employer questionnaire dated July 6, 2013 indicated that the Appellant was employed as a child youth counsellor approximately 9 hours per week. She was exempted from some training due to her back condition. At this time she remained employed as a foster parent. She provided “shelter, clothing etc. to foster children in her care.”

[13] A letter dated June 11, 2013 from Dr. McInnes, specialist in physical medicine and rehabilitation indicated that the Appellant had been seen in March 2011 regarding carpal tunnel syndrome. Dr. McInnes felt many of her symptoms were originating from her cervical spine. An MRI in November 2010 showed moderate to severe right foraminal stenosis at C5-6. Dr. McInnes recommended physiotherapy.

[14] Dr. Chapman, orthopedic surgeon wrote on April 20, 2006 that he had seen the Appellant regarding severe low back pain that radiated to her right leg. A CT of the lumbar spine in June 2006 reported mild spondylolisthesis of L5 on S1 and degenerative changes at L4-5 and L5-S1. Following this report Dr. Chapman wrote that the lower end of her lumbar spine was “falling apart” and was very significantly unstable. He did not advise surgery at that time.

[15] On June 25, 2012 Dr. Chapman wrote that the Appellant reported intermittent numbness in both feet. She was still able to do groceries and was fairly functional around the house. There were no signs of spinal cord dysfunction or lumbar nerve root dysfunction. He believed her spine issues were being managed very well.

[16] Diagnostic imaging of the lumbar spine on April 17, 2013 showed multilevel degenerative changes most significant at L5-6 where there appeared to be a severe degree of central canal stenosis.

[17] A letter from Dr. Chapman dated June 24, 2013 stated that he had last seen the Appellant the previous year and she was now concerned because her legs were now going numb after standing or walking for more than 10 minutes. He recommended surgery for the spinal stenosis in the lumbar spine. She also reported bilateral hand numbness. Dr. Chapman ordered a cervical spine MRI and was to reassess after receiving the results.

[18] An MRI dated July 26, 2013 showed central and foraminal stenosis at C5-6 with mild cord compression and milder findings at C6-7.

[19] A letter dated August 9, 2013 from the Appellant's family doctor indicated that the Appellant had had ongoing back pain and bilateral arm numbness and weakness for two years. She was to be reassessed by an orthopedic surgeon on August 12, 2013.

[20] On March 23, 2015, Dr. Chapman completed a CRA disability tax credit form indicating that the Appellant had severe lumbar stenosis and could not walk more than 40 metres without stopping and could not stand for more than 10 minutes. He stated that this condition began in 2012. CRA accepted her eligibility for the tax credit from 2012 to 2019.

## **SUBMISSIONS**

[21] The Appellant submitted in writing that she qualifies for a disability pension as of November 2012 because:

- a) Her back problems were originally identified by MRI in 2010.
- b) Delays in getting recent MRI and CT scans through Dr. Chapman should not affect the determination of the date of onset.
- c) She was considered eligible for the Canada Revenue Agency disability tax credit in 2012.

[22] The Respondent submitted in writing that the Appellant does not qualify for a disability pension prior to April 2013 because:

- a) The Appellant received regular Employment Insurance benefits from February 2012 until November 2012 which indicates that she was ready willing and able to work during this period. There is no evidence to show deterioration of her condition in November 2012 or prior to April 2013.
- b) In November 2012 her family physician advised her to decrease her weight and increase her physical activity. There is no mention of low back pain until her office visit in April 2013.
- c) While the application for the disability tax credit states that the Appellant's restrictions began in 2012, there is no correlating medical evidence to support this position.

## ANALYSIS

[23] The Appellant must prove on a balance of probabilities that her disability met the CPP eligibility criteria before April 2013, the date of onset determined by the Respondent.

[24] The Tribunal recognizes that diagnostic testing showed evidence of cervical spine and lumbar spine problems in 2006 and 2010; however, the Appellant was able to continue working with this condition until February 2012 and her receipt of regular employment insurance benefits until November 2012 indicate that she was ready, able and willing to work during this period.

[25] The clinical note from the family doctor in November 2012 does not reflect a severe condition. The first clinical note from the family physician to refer to low back pain and muscle spasms is dated April 3, 2013.

[26] In June 2012 Dr. Chapman indicated that he felt the Appellant's spine issues were being managed very well. It was not until June 2013, based on the imaging in April 2013, that Dr. Chapman recommended surgery for the spinal stenosis.

[27] The Tribunal recognizes that there can be delays in accessing diagnostic testing. The Tribunal however gives weight to the family physician's clinical notes which do not refer to a severe condition until April 2013.

[28] *Frankum v. MHRD* (July 13, 2000), CP 9271 (PAB) provides some guidance regarding the consideration of the disability tax credit in analyzing an Appellant's disability under the CPP. This decision indicated that the criteria for the tax credit are not related to the capacity to perform substantially gainful employment. The Tribunal cannot give weight to this evidence provided by the Appellant.

[29] The Appellant has not satisfied the Tribunal that on a balance of probabilities she had a severe disability as defined in the CPP before April 2013, the date determined by the Respondent in their reconsideration decision.

[30] The appeal is dismissed.

Vikki Mitchell

Member, General  
Division - Income Security