



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. S. v. Minister of Employment and Social Development*, 2016 SSTGDIS 36

Tribunal File Number: GP-14-1620

BETWEEN:

**S. S.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Verlyn Francis

HEARD ON: March 8, 2016

DATE OF DECISION: May 16, 2016

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

Appellant: S. S.

Representative: Howard Smith

### **INTRODUCTION**

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on June 19, 2013. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

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

- a) The Appellant will be the only party attending the hearing.
- b) The method of proceeding provides for the accommodations required by the parties or participants.
- 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.

[3] The hearing was originally scheduled January 6, 2016 but, at the request of the Appellant's representative, was adjourned to March 8, 2016.

### **THE LAW**

[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, since the MQP is after the date of the hearing, 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 hearing, March 8, 2016.

#### **EVIDENCE**

##### ***Application Materials***

[9] The Appellant was 38 years at the time of the hearing. She has a Grade 11 education. She worked in quality control for a woodworking company from 2009 to February 2011 when she stopped working because of injuries sustained in a car accident. She has not done a lighter job or different type of work, and she does not plan to return to work or seek work in the near future.

[10] In the Questionnaire for Disability Benefits, the Appellant states that the illnesses or impairments that prevent her from working are severe back, left shoulder and left knee pain.

She indicates that she is prevented from working because the pain makes it very difficult to stand and sit for any period of time. She has great difficulty moving around or lifting things. She states she has to stay home for most of the day and she has to get assistance to care for her children. As far as difficulties and functional limitations, she is limited to sitting for 15 to 20 minutes, and standing is limited to half-hour. She can walk about two blocks, maybe 20 to 30 minutes. Lifting is difficult. She can lift approximately 5 lbs and carry it 10 to 15 feet. She has severe difficulty extending her left arm and protects it. She cannot bend her knees without pain and bending forward causes severe back pain. It takes her much longer to dress due to pain and it is very difficult to wash and dry her hair. She requires assistance for cooking, cleaning and shopping. Back pain continually interrupts her sleep and she can only drive short distances. She has not tried to use public transportation. She does not indicate any difficulty with bowel and bladder habits, seeing, hearing, speaking, remembering, concentrating and breathing. Her medications were Advil every six hours and Tylenol as needed. She has received physiotherapy treatment and was awaiting the date and time for a magnetic resonance imaging (MRI) of her back.

### ***Oral Testimony***

[11] The Appellant testified that she came to Canada from Iraq when she was 16 years old. Her highest level of education was Grade 11 with about latter four or five years of her schooling in Canada. She lives in an apartment with her two children, a 15 years and a 5-year old born in April, 2011. Her last job for two years was doing quality control, looking at the veneer and grading them, for a veneer company. It is a physical job that requires her to stand up and bend down during her nine-hour shift with half hour for lunch. Before that, she had done the same job, quality control, for four to five years at another company. Prior to that, in 1999, she worked off and on in shipping and receiving at a video tape company for about two or three years.

[12] She was pregnant when she was involved in a motor vehicle accident (MVA) on September 30, 2010 on her way to work. Her vehicle was hit from behind and hit the Toronto Transit Commission bus in front of her vehicle. She was taken to hospital by ambulance where an ultrasound indicated that the baby was not injured. Her left knee, her left shoulder, lower back, and her neck from her shoulder down were hit. Her knee and back was really hurting but

they could not take x-ray because she was pregnant. She was off work for five days. She went back to work but could not do the job. Her employer allowed her to sit but made no other accommodations for her. Her back was really hurting her. She claimed her plan was to start maternity leave on March 29, 2011 but she left work in February 2011 because she could not take the pain anymore. Her daughter was born on April 5, 2011. She had planned on taking maternity leave for one year and returning to work in March or April 2012.

[13] The Appellant testified that her back was the worst injury and, in September 2011, her back was very bad. She would sit and could not get up. Her shoulder and knee were giving her problems but her back was the worst. None of her health problems have gone away and she has not had any new health problem since. She had an accident prior to this one but it was not as bad. A year after the accident, her health was worse and there was no work she could do then. By September 2012, none of her health problems improved, but had worsened in that time. There was no work she could have done at that time. In the year up to September 2013, none of her health problems improved. As her back hurt, her mind got worse because there was too much stress. Between September 2012 and 2013, her health got worse. In the Appellant's view, there was no job she could do when she could not concentrate. She gets annoyed for no reason. September 2014, four years after the accident, none of her health problems got better. They got worse. In the winter, she cannot go outside. After the accident she did not try any other type of work and she has been off work since that time. There was no work she could do. The Appellant testified that her employer asked her to return to work if she wanted but there is nothing she can do there. By September 2015, none of her health problems got better. She claimed there was no work she could do in September 2015 and Dr. Scherer assessed her and said there is no job she can do.

[14] As far as treatment, the Appellant claims the doctors have said they cannot do anything and she has to live with it. She did physiotherapy for one year and it did not help. She would feel worse the day after physiotherapy. They did laser, massage, ultrasound therapy and she did not get any lasting relief. Psychologically, she does not know what is going on. She has been diagnosed with depression from too much stress. When she drives, she thinks someone is going to hit her from behind. She has not seen a psychologist. Her former doctor retired and she has finally found a new family physician. In the last six months, she has seen her family doctor four

or five times. She has done x-rays, and she has bacteria in her stomach and low iron. She got creams for her shoulders. She takes Motrin for pain every day – one or two gives her temporary relief and it wears off.

[15] She has been diagnosed with chronic pain. The pain is very bad. She walks and it hurts, she sits down and it hurts, she lies down and it hurts. She cannot carry her daughter, even when she is not well. Her health is not better today.

[16] The Appellant indicated that a typical day starts with her getting up at seven. Her older child takes care of himself and her sister helps with her daughter. If she walks them to the school bus, she comes back and sits down. She showers in a stand-up shower but does not need assistive devices. She dresses in baggy loose clothing so it is easy for her. Her doctor told her to do exercises and she tried and she could not walk because of her legs. She is not doing any exercises during the day. If she lifts weight, her shoulder hurts and if she walks, her back hurts. She can drive for 30 minutes, stand 10 minutes, sit 10 minutes, and walk 10 minutes. She cannot lift much weight. The heaviest item she can carry is her purse but she cannot put it on her shoulder. Bending down is very difficult. She has difficulty using a computer because of her shoulder and the pain going into her neck. She can sit at the computer for 10-15 minutes.

[17] She used to cook, clean and do laundry but now she cannot do anything. Her sister and sister-in-law help, especially with her daughter. Her sister helps with the laundry. She cannot take her children to the park to play and she cannot go to Wonderland with her son because that involves walking. She cannot go swimming. She used to love walking outdoors and she cannot do that. Her injuries affect her children, especially her son, who she used to do a lot with and she cannot do it now.

[18] The Appellant testified that she went to her family doctor and indicated she could not sit or stand. She was sent for x-ray and the doctor said her disc had shifted and they did MRI. He sent her to a back doctor but she had to wait another seven months to see a doctor at St. Michael's Hospital. He also said you have a disc problem, and he told her she has to live with the pain and recommended exercise and pain killers. He advised against surgery. Her family doctor gave her Tylenol#3 which made her drowsy and he eventually told her to stop taking it after she had her daughter and after her CT scan found out the problem. She claimed he did not

want her to get used to it. Tylenol was not working and it only made her sleep and forget about her pain. She did not have any side effects from Tylenol except it made her drowsy. Motrin relaxed her when she could not take the pain. On cold days, she cannot take the pain and it is very hard.

[19] The Appellant testified she wants to return to the workforce but there is no job that she could do. She could not do a light job doing office work part time because she cannot come in every other day and no one is going to give her a job. After February 2011 she did not try any other type of work and she has been off work since that time. She has not looked for work. She did not explore retraining or do courses to train for another job because, at school, you have to sit for two to three hours. She has not done any paid or unpaid volunteer work. She does not see herself doing any job. Her pain and suffering has prevented her from looking for alternate work.

### ***Medical Evidence***

[20] An MRI of the lumbar spine on March 27, 2012 showed no significant abnormality at levels T10-11 through to L2-3, and L3-4 is normal. At level L4-5, there is degenerative disc disease with loss of T2 signal within the disc. There is an annular tear posteriorly. This is associated with a fairly broad left paracentral disc herniation. This produces mild mass effect upon the thecal sac and mild mass effect upon the left L5 nerve root. At level L5-S1, there is mild bilateral facet degeneration but no other abnormality.

[21] At the request of her representative, the Appellant was assessed by Dr. Ken Fern, orthopaedic surgeon, on July 10, 2012 who provided an independent medical report. Dr. Fern reviewed an MRI and CT scan report of the lumbar spine. After taking a medical history which involved two motor vehicle accidents on October 25, 2009 and September 30, 2010, he noted she had back problems from the first accident and attended physiotherapy for approximately once a month up to the time of the second accident. She was 14 weeks pregnant at the time of the second accident and gave birth on April 5, 2011. She did approximately a year of physiotherapy but had stopped by the time she saw Dr. Fern. Her only medication at that time was Advil. She stopped working in February 2011 after going on maternity leave. She was

scheduled to return to work in February 2012 but has not returned due to her back problems. Her two children were 11 years and 15 months at the time of the assessment.

[22] On physical examination, Dr. Fern found she was reasonably comfortable in the seated position but had discomfort moving from one position to another, especially from sitting to the supine position and back to sitting. Her gait was fairly normal. Her back had a slower spinal rhythm with tenderness in the paraspinal musculature, tenderness along the lower lumbar regions. She had reduced range of motion of the thoracolumbar spine and there was no pain with simulated rotation through the pelvis or simulated axial compression. Her power and sensation were intact in all myotomes and dermatomes in her lower extremities. She had intact and symmetric lower extremity reflexes. Straight leg-raising was negative in the sitting and supine positions bilaterally. Both hips had pain-free ranges of motion. There was no swelling, warmth or erythema in her left knee. The range of motion was about 0 to 140 degrees with no crepitus. There was normal overall alignment, no effusion and no significant tenderness. There was no pain with patellar compression and her left knee was grossly ligamentously stable. The remainder of the examination of the musculoskeletal system was unremarkable.

[23] Dr. Fern concluded that the clinical findings were consistent with the Appellant's reported symptoms. Her injuries are consistent with initial sprain and strain and myofascial type injuries to the lumbar spine. His prognosis then and in the long term was fairly guarded. In his view, the severity and persistence of her back problems and symptoms make the likelihood of a full recovery unlikely. He considered her impairments with her back were serious, significant and permanent and he anticipated that she will have residual symptomatology that will decrease her overall physical functioning and endurance levels and lead to some permanent physical restrictions.

[24] After reviewing the MRI scan of March 27, 2012, Dr. Fern was of the opinion that the tear and disc bulge at L4-5 were the result of the motor vehicle but did not recommend surgical intervention which he considered extremely unreliable for the Appellant's chronic pain problems. In his view, her left leg symptomatology is more in keeping with referred pain rather than being due to an active left L5 radiculopathy. The most significant issue is a chronic pain problem and syndrome had developed in the Appellant's lower back which has led to altered



sleep pattern and likely significant psychological and emotional consequences – although he conceded that psychological impairment is outside his practice and expertise. His suggestion was continuation of conservative treatments and referral to a chronic pain management program.

[25] Dr. Paul Muller, neurosurgeon, saw the Appellant for neurosurgery ambulatory consult at St. Michael's Hospital on April 23, 2013. He indicated that the Appellant was involved in a motor vehicle accident on September 30, 2010 when her vehicle was struck from behind and forced into a TTC vehicle in front of her. She was taken to hospital. She was three months pregnant and an ultrasound was taken to show that the baby was fine. After delivery, she underwent an MRI which showed degenerative disk at L4-5 with an associated annular tear and disk protrusion, a little eccentric to the left which is not causing much compression of the adjacent neural structures. Dr. Muller indicated that his examination of the Appellant tended to bear this out. She can straight-leg raise 90 degrees bilaterally in the sitting position. Her reflexes are physiologic. Her power is within normal limits and there is no sensory loss. Range of motion of her back is a bit limited in that she can only flex down to touch her knees but is otherwise quite alright. Her general body habitus is probably within normal limits. His recommendation was no surgical treatment but rather physiotherapy with attention to lumbar mobilization and weight loss. At that time, she was not on any medications.

[26] Dr. James Peter Rowan, family physician, completed the Medical Report accompanying the Application on July 7, 2013. Dr. Rowan indicates that he has known the Appellant for 13 years and started treating her for the main medical condition in October 2010. Her last visit was June 28, 2013. His diagnoses were: MVA injuries to cervical and lumbar spine, herniated disc at L4-5 on MRI, with impingement of L5 nerve root. The significant findings were persistent pain in the neck and back since MVA. She was 16 weeks pregnant at time and investigation was deferred until after delivery. She was seen by Dr. Muller, neurosurgeon, in April 2013 who felt surgery was not an option, and advised physio and rehab. In the two years prior to the application, she had not been admitted to hospital. The relevant physical findings and functional limitations noted by Dr. Rowan were chronic stiffness in lower back, sciatica in left leg with reduction in range of movement, ability to lift or bend; pain is continuous; no neuro deficit per se; difficulty providing child care; unable to do housekeeping duties. Her medications were

Tylenol #2 and Advil as needed. Treatment was NSAID (non-steroidal anti-inflammatory), exercises and physiotherapy. Dr. Rowan's prognosis was unknown. He indicated she had symptoms for three years since injury with no signs of improvement so far. A repeat MRI was pending to rule out spinal stenosis. She was then unfit to work and needed one year to rehabilitate and determine prognosis for future. She needs an intensive back rehabilitation program with exercises plus core strengthening. He indicated he believes there is a chance this could become a chronic disability.

[27] On August 13, 2013, at the request of the Appellant's representative, Dr. Fern again assessed the Appellant for the purpose of providing a medical report and not for treatment. He reviewed an MRI report dated July 7, 2013. After taking a history from the Appellant, Dr. Fern found on examination that her neck revealed only some tenderness around the left trapezial region and in the paraspinal musculature with no other findings. There was some tenderness around the left shoulder along the anterior and superior aspects, but no instability was noted in the shoulder. He pointed out that the MRI of July 2013 did not document any significant changes from her previous MRI. Dr. Fern's diagnosis was that the pain radiating into her left leg remained consistent with a referred pain problem and she was not a candidate for surgery. She had developed a significant chronic pain disorder and syndrome in her back. She had made maximal medical recovery. Her symptoms appeared to worsen in her back and she continues to have ongoing pain in her neck and left shoulder associated with decreased range of motion of the shoulder. He described her prognosis at that time and long-term as extremely poor. He anticipated she will have some permanent physical restrictions in her activities.

[28] Dr. G. D. Gale of the Pain and Disability Assessment Centre conducted a medical-legal assessment of the Appellant on November 2, 2013. Her medication at that time was Advil. On examination, her sitting posture was normal, gait was normal, she could walk heel to toe, she could stand on one leg, Romberg and Trendelenburg tests were normal. After reviewing medical documents, taking an oral history and examining the Appellant, Dr. Gale's diagnosis was lumbosacral sprain, cervicothoracic sprain, sprain of the left iliotibial tract, post-traumatic headache with migraine features; and mood disorder with general medical condition (chronic pain) and severe depression and mild anxiety. Since these impairments have been present for three years, they are probably permanent and there is likely to be little improvement in the near

future. In Dr. Gale's opinion, these injuries prevented the Appellant from returning to work because she is unable to tolerate prolonged standing and sitting, or walking for a long distance, and she is unable to bend and lift principally because of the back injury. She is therefore unable to return to the labour market either full or part-time.

[29] Dr. S. E. Scherer, rehabilitation / vocational psychologist and employability specialist, prepared a report on December 18, 2013 indicating the Appellant was seen for a psychovocational rehabilitation assessment on September 23 and October 1, 2013. He found that the Appellant had low levels of literacy but it was likely that pre-accident, her cognitive functioning and achievement levels were somewhat higher. He noted that the Appellant is coping reasonably well with his assessment of chronic pain exacerbated by depression. Dr. Scherer's opined that people with persistent pain and ongoing fatigue as reported by the Appellant are noted to have to reduce their work schedule over time, are unable to continue in the labour market for as long as their able-bodied counterparts. Forced early retirement is a very common occurrence in such cases usually several years to as much as a decade earlier than usual. He noted that decreased activity can lead to increased pain and continued treatment might result in maintenance of or improvement of her level of physical function. Dr. Scherer recommended a pharmaco-therapeutic review since the Appellant was not medicated for management of pain or mood and he theorized that nerve block may provide significant relief and facilitate treatment for mobility limitations, activation and reconditioning. He also recommended exercises, cognitive behavioural pain management program, a sleep study, and appropriate medication and counselling.

[30] Dr. Fern submitted an addendum to his report dated August 25, 2014 regarding imaging studies of the Appellant's back. After reviewing the records, he concluded that they did not change his opinion as previously stated in his reports.

## **SUBMISSIONS**

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

- a) She has been continuously prevented from doing any work since February 2011 by chronic pain symptoms which developed when she injured her back in a MVA in September 2010. This pain is exacerbated by depression.
- b) The medical evidence indicates that her injuries are permanent and the prognosis is extremely poor. Full recovery is unlikely and no significant improvement is expected in the future.
- c) She did not graduate from high school and evaluation by Dr. Scherer indicates she is below average in most measures. This leaves only laboring work available to her but, with inability to stand or sit for prolonged periods, she is unemployable.

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

- a) The Appellant has not established a severe and prolonged disability within the meaning of the CPP on or prior to her MQP of December 31, 2018, and continuously thereafter.
- b) While the Appellant bases her disability claim on severe back, left-sided shoulder and knee pain, the evidence does not show any serious pathology or impairment that would prevent her from finding suitable work within her limitations.
- c) After a motor vehicle accident in which she was rear-ended, an MRI revealed an annular tear and degenerative disc which was not causing much compression to the adjacent neural structures. Physical examination did not reveal any significant neurological deficits and conservative treatment of physiotherapy and weight loss were recommended.
- d) While her family physician, Dr. Rowan relayed that the Appellant sustained injuries to her cervical spine in the motor vehicle accident, the available medical evidence does not reveal significant pathology or deficits which would preclude the Appellant from

undertaking all types of work, including light or modified employment. She has not been referred to a multidisciplinary pain program which provides the necessary skills, medical intervention and direction to effectively cope with pain.

- e) It is the capacity to work and not the diagnosis or the disease description that determines the severity of the disability. The Appellant was involved in an MVA in September 2010 but she was able to return to work after the MVA until February 2011. There is no evidence of severe pathology and only conservative treatment has been recommended.
- f) The severity of the disability is not based upon a claimant's inability to perform his or her regular job but rather any substantially gainful occupation.
- g) She was 35 years of age at the date of application and there is no indication she has attempted to return to any type of work, including light or modified work. Retraining would also be considered reasonable option for a person of this age.

## **ANALYSIS**

[33] Since the Appellant has an MQP of December 31, 2018, she must prove on a balance of probabilities that she had a severe and prolonged disability on or before the date of this hearing, March 8, 2016.

### **Severe**

#### ***Guiding Principles***

[34] The severe criterion must be assessed in a real world context (*Villani v. Canada (A.G.)*, 2001 FCA 248). This means that when deciding whether a person's disability is severe, the Tribunal must keep in mind factors such as age, level of education, language proficiency, and past work and life experience.

[35] Although the evidence proved that the applicant had chronic pain, it still must be established that the pain prevented him from regularly pursuing any substantially gainful occupation (*Klabouch v. Canada (MSD)*, 2008 FCA 33).

[36] It will not be sufficient for chronic pain to be found to exist; the pain must be such as to prevent the sufferer from regularly pursuing a substantially gainful occupation. It is incumbent upon a person who has applied for benefits to show that treatment has been sought and efforts were made to cope with the pain (*MNHW v. Densmore* (June 2, 1993), CP 2389 (PAB)).

[37] To establish severe disability, Appellants must not only show a serious health problem, but where there is evidence of work capacity, a person must show that effort at obtaining and maintaining employment has been unsuccessful by reason of that health condition (*Inclima v. Canada (A.G.)*, 2003 FCA 117).

### *Application of the Guiding Principles*

[38] In assessing the severe criterion in a real world context as required by *Villani*, the Tribunal takes into consideration that at the time of the hearing, the Appellant was 38 years of age. Although she has born in Iraq and immigrated to Canada at the age of 16, she did not appear to have any problems with the English language and did not require an interpreter to testify at the hearing. She received English as a Second Language training upon immigration and her last four or five years of school was in Canada. She left school to start working one month before completing Grade 12. She worked in shipping and receiving and quality control from 1999 until February 2011. She had a motor vehicle accident on September 30, 2010, was off work for five days, and continued to work until February 2011. At the time of the accident, she was pregnant and her daughter was born in April 2011. It is the Appellant's evidence that she intended to take a one-year maternity leave and return to work in March or April 2012. The Appellant never returned to any type of work, she claims, because of back, left shoulder and left knee pain which limited her ability to sit, stand, lift, carry and bend.

[39] The Appellant's evidence that she suffers from pain in her left shoulder and left knee has been supported by the medical evidence. Although the medical evidence confirms tenderness around the left shoulder along the anterior and superior aspects, it does not show any serious pathology or impairment in the left knee and shoulder. Dr. Fern noted there was no swelling, warmth or erythema and pain with the patellar compression, and her left knee was grossly ligamentously stable. In his view her left leg symptomatology was more in keeping with referred pain rather being due to an active left L5 radiculopathy. Dr. Rowan also indicated she

had persistent pain in the neck since the accident and the sciatica in her left leg with reduction in range of movement and ability to lift or bend. However, there is no indication the Appellant has ever received specific treatment for her left shoulder or knee. During the hearing when the Appellant was directed to address the problem with her knee and shoulder, her only response was that her shoulder and knee were giving her problems but her back was the worst. Based on the evidence, the Tribunal finds that, although she may have problems with her left shoulder and knee, these are not severe within the meaning of the CPP.

[40] She testified that her back pain is the worst of the three. The Tribunal notes that even though the Appellant reports difficulty standing, sitting and walking, Dr. Fern reported in 2012 that she was reasonably comfortable in the seated position but had discomfort moving from one sitting to supine and back to sitting. Her only treatment had been physiotherapy which she was no longer doing and her medication was Advil. Although his prognosis was that her back problems were serious, he did not recommend surgical intervention and recommended continuation of conservative treatment and referral to a chronic pain management program. In April 2013, Dr. Muller found that the Appellant's range of motion of her back was a bit limited in that she could only flex down to touch her knees but was otherwise quite alright. He also did not recommend surgical treatment. Instead, he recommended physiotherapy with attention to lumbar mobilization and weight loss. In July 2013, Dr. Rowan, her family doctor, indicated that the Appellant's medications were Tylenol #2 and Advil and she needed an intensive back rehab program with exercises plus core strengthening. By November 2013, Dr. Gale noted that her medication was Advil and her sitting posture was normal, gait was normal and she could walk heel to toe, and stand on one leg. By December 2013, Dr. Scherer pointed out that decreased activity can lead to increased pain and continued treatment might result in maintenance or improvement of the Appellant's physical function. Dr. Scherer too recommended exercises, pain management program and appropriate medication and counselling. Even with the recommendations of all the doctors, the Appellant indicates that, since her initial sessions in 2012, she has not attended physiotherapy because it does not help and she feels worse the day after. It is also significant that the Appellant testified that she gets temporary relief from Motrin. The Tribunal finds that the very conservative treatment of the Appellant's back pain is not in keeping with serious pathology that renders her incapable regularly of pursuing any substantially gainful occupation.

[41] While the Appellant may suffer from chronic pain, in applying for disability benefits, it is incumbent upon her to show that treatment has been sought and efforts have been made to cope with the pain. In this appeal, the Tribunal finds that the Appellant has not made efforts to cope with her pain and she has not followed the reasonable treatments recommended by all the doctors, including her family doctor, whose reports she has produced to support her application.

[42] The Appellant has indicated that she has been diagnosed with depression from stress. Significantly, this is not mentioned in her application for disability nor is it mentioned in Dr. Rowan's medical report which accompanied the application. The only mention of depression is in the medical reports of Dr. Scherer who indicated that her mood was depressed, although he candidly pointed out that this is not his area of expertise. The Appellant also testified that she has not seen a psychologist or sought other treatment for depression. If the Appellant's depression was severely disabling, she would have sought out mental health treatment. She has not done so. The Tribunal finds that the Appellant's depression is not severe within the meaning of the CPP criteria.

[43] The Appellant submits that, based on her disabilities and limitations, she is unemployable because she is unable to stand or sit for prolonged periods of time. She indicates that her last job was physical requiring her to stand up and bend down. She testified that her former employer asked her to return to work but she did not think they had any job she could do. She testified she cannot work at a computer because of her shoulder; she could not do office work part-time because she could not go in every other day; and because no one is going to give her a job. In the end, the Appellant testified that she did not try to find another type of work, she had not looked for work and she did not explore retraining. She does not see herself doing any job.

[44] A disability is "severe" if a person is incapable regularly of pursuing any substantially gainful occupation. It is not enough that the Appellant may not be able to do her usual job; she must be unable to do any job she might be reasonably expected to do. In this case, the Tribunal finds that the Appellant has not attempted to pursue her usual job and she has not attempted to find other employment suitable to any limitation she may have.



[45] Having considered all the evidence and the cumulative effect of the Appellant's medical conditions, the Tribunal is not satisfied on a balance of probabilities that the Appellant suffers from a severe disability in accordance with the CPP criteria.

**Prolonged**

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

**CONCLUSION**

[47] The appeal is dismissed.

Verlyn Francis  
Member, General Division - Income Security