



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. G. v. Minister of Employment and Social Development*, 2016 SSTGDIS 46

Tribunal File Number: GP-15-4259

BETWEEN:

J. G.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Jackie Laidlaw

HEARD ON: June 13, 2016

DATE OF DECISION: June 27, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

J. G., Appellant

R. G., Witness

INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on June 16, 2015. 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) More than one party will attend the hearing.
- b) The method of proceeding is most appropriate to allow for multiple participants.
- c) The method of proceeding provides for the accommodations required by the parties or participants.
- d) Videoconferencing is available within a reasonable distance of the area where the Appellant lives
- e) The issues under appeal are complex.
- f) There are no gaps in the information in the file or need for clarification.
- g) 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.

[6] Subsection 66.1(1.1) of the CPP states that an applicant can cancel the retirement pension in favour of the disability benefit only if the applicant is deemed to have become disabled before the month the retirement pension became payable.

[7] Subsection 66.1(1.1) of the CPP must be read with paragraph 42(2)(b) of the CPP, which states that the earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Respondent.

[8] Subsection 60(9) of the CPP provides that an application may be deemed to have been made at an earlier date where the person had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made, and that the application was made within a period after the incapacity ceased and that comprises the

same number of days, not exceeding twelve months, as the period of incapacity. According to subsection 60(10) of the CPP the period of incapacity must be a continuous period.

ISSUE

[9] There was no issue regarding the MQP because the parties agree and the Tribunal finds that the MQP date is December 31, 2013.

[10] The preliminary issue in this case is if the Appellant was incapable of forming or expressing an intention to make an application for a CPP disability benefit between March 22, 2013, the date she applied for a CPP retirement benefit and June 16, 2015, the date she applied for a CPP disability benefit.

[11] If the Tribunal is satisfied the Appellant meets the preliminary issue, the Tribunal must then determine if the Appellant is allowed to cancel her CPP retirement pension in favour of a CPP disability benefit pursuant to subsection 66.1(1.1) and paragraph 42(2)(b) of the CPP.

[12] If the Tribunal is satisfied the Appellant meets both the preliminary issue and can cancel her retirement pension in favour of a CPP disability benefit, then the Tribunal must determine if the Appellant had a severe and prolonged disability on or before her MQP of December 31, 2013.

EVIDENCE

Oral Testimony: Appellant

[13] The Appellant struggled to remember specific dates and sequence of events. The Appellant has lived with depression most of her life. She stated she attempted suicide in 1985 and again her second attempt was in November or December 2013. She drove herself to the hospital with suicidal thoughts in November or December 2015 and was hospitalized for a month.

[14] Over the years she only saw her family doctor for her depression until the medications were not helping at all. Her family doctor referred her to a psychiatrist as she, the doctor, was

incapable of prescribing the right medications. The Appellant saw psychiatrist Dr. Tahir in 2010 for a few years until she began seeing another psychiatrist, Dr. Doucet.

[15] In 2011 she was engaged to "J. I." She was off work already when he became ill. She was looking after him, preparing his food and doing his laundry. He passed away within five weeks in March 2011. After that she let everything go and did not look after her own affairs. She had difficult times and could not go back to work. She went on LTD, which was cut off after a year. She tried to go back to work. She went to social services who told her to take out her CPP. She did not know that the CPP disability benefit existed.

[16] In January 2012 the insurance company sent her to a psychologist, Dr. Allison, for cognitive behavioural therapy. During that time she also went for one week of psychological treatment. She was also seeing Dr. Tahir once every six months for 15 minutes in order for him to monitor her medications.

[17] On May 2, 2012 she applied for a CPP disability benefit by herself, without help from her brother. She received the reconsideration denial dated September 24, 2012.

[18] She stated that after J. I. died, she was not even going to her own doctor's appointments. All her mail was thrown in a drawer and she was not dealing with anything.

[19] She stated that she received all her medical coverage from social services sometime between 2012 and 2013. She handled all of this herself.

[20] Her financial matters were all set up on an automatic monthly payment, such as mortgage and bill payments. She stated she set this all up when she moved to X in 1999. However, she would also do any online banking transactions or paying with a credit card herself.

[21] In March 2013 she applied for the CPP retirement pension herself, without help from anyone. She stated she was capable of applying for the retirement pension herself, but does not remember doing it.

[22] After she got her CPP retirement pension, financially every cheque goes straight to her account and all her payments are automatically made.

[23] The Appellant suffers from vertigo as well as depression and knew she could not work at any job that would require a good memory. Social services paid for her to take a first aid course.

[24] She posted an ad on Kijiji to be a caregiver. She stated the ad was put on in 2013 and was active for a year until 2014. Her first experience caregiving was with an elderly lady who had Alzheimer's. The job lasted for four or five nights in total in 2013.

[25] From October 1, 2013 until June 1, 2014 (and not 2013 as stated on her application), she worked at a job she found on Kijiji. She worked for a young woman with cerebral palsy. The woman was in a mechanical chair and accompanied by a social worker. The Appellant was hired at \$15.00 per hour to attend a class on the environment and a healthy earth at the community college. She was required to write the notes from the class for the woman. She would then put them on a computer and send them to the woman. The class was for 1.5 hours two or three days a week. Basically the Appellant attended school with her. She stated the course interested her very much. She was paid by social services on behalf of the woman.

[26] In November or December 2013 she took 60 pills, mostly Zopiclone. This was her second attempt at suicide. She woke up 24 hours later and she called Dr. Doucet, her then psychiatrist, to ask for a pill refill as she had taken all her pills. When the receptionist realized she had taken them altogether, the Appellant was put on the phone with Dr. Doucet. He told her to go to the hospital but she did not feel she needed to as she had had a good sleep. She eventually saw Dr. Doucet three weeks later, who said he heard she had a "bad spell". He changed her medication in that she is now not allowed to automatically renew her anti-depressants.

[27] After the job with the school attendee ended in June 2014, she worked one day for another elderly woman around the end of June 2014. The woman was way beyond her capability as a caregiver so she stopped.

[28] Through her ad in Kijiji she found another job with a woman who wanted her to take care of her mother with early stage Alzheimer's. She was paid \$14.00 per hour to work three hours a day for two to three days per week. She worked for the woman from September 2014

until January 2015. The daughter wanted her work to include cleaning, cooking, laundry and caregiving, all of which was too much for the Appellant. She also suffered from vertigo so she quit.

[29] She did not do any job between January 2015 and June 2015, when she applied again for a CPP disability benefit, as she had vertigo and could not do anything. She was capable of feeding herself and managing to grocery shop, but that would be the extent of her day.

[30] The Appellant stated the application for the CPP disability benefit was very detailed and she did it herself without help. When she finished these applications she was “at her wits end”. They would take more than a day to do and were very long and drawn out. She stated she did apply both times for the CPP disability benefit and the one time for her CPP retirement benefit by herself.

[31] Again, in November, 2015 she felt suicidal and drove herself to the hospital to be admitted. She remained there for about a month. She is not currently receiving any psychological treatment. She continues to see Dr. Doucet every six months for 15 minutes for a medication review.

Oral Testimony: R. G.

[32] R. G. is the Appellant’s brother who lives two hours away in X. He and the Appellant do not see each other much, usually in the summer, but they do talk on the phone. He is the “one on the other end of the line” when the Appellant has a problem. He is always there for her. It depends upon her needs how often they will talk.

[33] The witness stated that life had not been gentle to the Appellant and her problems started 30 years ago with an abusive husband. She has not requested help and has tried to determine her own destiny. However, some things she cannot handle or grasp. She cannot remember dates and obligations or control or understand what is required of her. Aging makes it worse.

[34] He stated her financial affairs are a mess.

[35] When she gets legal documents or deadlines she cannot do it as she does not think in a linear fashion. She will forget about it and put it in a drawer. When she got the reconsideration

letter from the first application she was incapable of understanding what she was receiving and her requirements of what she needed to do. She could not get her head around it. She was incapable of what was being asked.

[36] He did not help her with the CPP retirement application and did not help or fill out any of the CPP disability applications.

[37] He thinks weight should be given to the psychiatrist's recent letter of 2016 in determining eligibility for the disability benefit.

[38] The witness stated he worked in bureaucracy for years and thinks the 15 month rule can be waived, and that logic should prevail.

[39] The Appellant has no benefits and has been deprived of it all and is asking for hope and help.

Documentary Evidence

[40] The CPP disability benefit application dated June 16, 2015 signed by the Appellant indicates she completed high school and 2.5 years of college without a diploma. She took a telemarketing course from September to June 1988 and obtained a telemarketing certificate. She worked as a caregiver from September 22, 2014 until January 25, 2015. She stopped as the job included a lot of housework and she got sick with influenza, lung infection, and another infection for months. Previous work includes: Caregiver 2-3 hours per day 3 days a week during summer from June 1, 2014 until August 1, 2014. She also worked 2-3 hours a day two days a week taking notes on the computer for a student with Cerebral Palsy from October 1, 2013 to June 1, 2013 (sic). She cannot work at any job that requires memory retention. Fatigue or vertigo or shortness of breath sets in.

[41] The application continued. She notes she started her CPP at age 60 and has been living on a line of credit, owing \$60,000 and her RRSP's are all gone. She is living below welfare level and owns a small house as collateral. Her illnesses are: clinical depression and has been on various related meds for almost 30 years; vertigo; respiratory infections with influenza this winter, lung infection followed by URTI from January to May, and still horse; and Arthritis in

feet, hands, wrists, lower back. The depression prevents her from working due to lack of memory retention, very difficult to concentrate, fatigue, fatigue and pain all over. Normal activities such as food prep or doing errands may take 400% energy. Vertigo prevents her from working due to nausea and throwing up, spinning so she falls down. Totally dysfunctional during her episodes. Longest episode was for 14 months. At the start she went to the hospital for intravenous Gravol since she had non-stop vomiting. She is legally blind in her right eye. Her vision impairment from extreme dry eyes; cannot drive in the dark. Can only focus on reading for minutes. Hearing is reduced by 50% with any background noise, which she discovered when she was tested for Meniere's syndrome where she had all the signs but the whistling in the ears. She used to be a member of the Mall Walking Club but arthritis in the lower back and her toes is too painful since 2011. She was an avid reader and gardening enthusiast, stopped in 2014. Absolutely cannot skate, downhill ski, walk on a sandy beach since 2010. No more ball room dancing since 2006. She tried aquafit but it made her very nauseous. Functional limitations are: standing 1-2 hours, sitting 3-4 hours; walking 1 hour; grasping is weak; legally blind in right eye (2 operations years ago, very dry eyes caused by meds); 90% loss of memory, retention caused by depression and related meds; concentration; taking sleeping pills for the past 28 years permanently; short of breath since end of January 2015; driving only 30 minutes. Personal needs are do-able at a 400% more energy and time required than the average person. Household maintenance is do-able for an hour, then gets nauseous or breathless and needs to lie down in car before returning home.

[42] The Application continued. Sharon Northorp has been her family physician since 1986 for various conditions but predominantly depression and related issues. Stress problems caused by work pressures. Yearly flu and lung infections. Yearly pap-tests, blood work and various tests over 29 years including arthritis pain and vertigo episodes. Dr. Jerome Doucet has been her psychiatrist since December 2010; last time she visited was May 2015, for continuous depression. Needs his expertise, knowledge for combining psychiatric medications and judging and analyzing her state of mind. Dr. Allanach is the orthopaedic surgeon she saw in April 2013 for arthritis in her feet. He recommended surgery at the first MTP joint fusion in the right foot. The left foot is now in the same condition. She notes twice referring to the letter form Dr. Allanach's office. Dr. Todd Clayton, chiropractor has helped with Vertigo. Dianne Thompson Keystone Physiotherapy has been very helpful. Medications are listed as: Trintellix 10 mg once

daily; Act-Zopiclone 7.5 mg 2 at bedtime; Pramipexole .5 mg one at bedtime; Ramipril 5 mg once daily; Tecta (sic) 40 mg once daily. Treatment is physiotherapy which helps with the vertigo. Sees the psychiatrist every 3-4 months. Counselling would help but she's living below the poverty level as it is. Future treatments are waiting for a date of next lung test from Dr. Habib. Dr. Allanach want to perform joint fusion on the large toe but she hesitates as she can still move it a bit. She does not think she could handle vocational rehabilitation assessment either physically or mentally. In 2011 for six weeks she attended an Occupational Concepts sent by Katherine Allison, Psychologist through Great West Life insurance, her then employer.

[43] The medical report signed May 28, 2015 received June 5, 2015 from Dr. Jerome Doucet, Psychiatrist, indicated he has known the Appellant since December 2010 and diagnoses her with chronic severe major depressive disorder and panic disorder without agoraphobia. He notes having completed the form on April 28, 2012. The Appellant has had bouts of depression throughout her life. The most recent episode has persisted since 2009 and she has significant symptoms over the past two years with suicidal ideation. She has not been hospitalized in the past two years. Physical findings: appears concerned, pensive. She has problems finding words, depressed mood, and comprehension affected and worse when anxiety is heightened. Functional limitations: unable to focus, concentrate or multitask as she would have done in the past. No further consultations are planned. Medication is listed as: Pramipexole .05 mg at bedtime; Zopiclone 15 mg at bedtime; Trintellix 10 mg daily (sample card); and Ativan 1 mg as needed. Treatment is listed as medications and no other treatment currently. The prognosis is poor based on persistence of symptoms for five years. Prognosis for return to work in the foreseeable future is poor. In his April 28, 2012 report he had described her prognosis as fair to good. With three years of follow-up since he is of the opinion that it is poor.

[44] The medical report signed on June 15, 2013 by Dr. Sharon Northorp, family physician since 1988, diagnosis major depressive disorder, chronic and depression. The Appellant has not been admitted to hospital in two years. Relevant physical findings are flat affect and cognitive impairment with slow speech and cannot concentrate due to severity. No further medical investigations or consultations are planned. Medications are listed as currently on (indecipherable) 10 mg are not work working at a maximum of 20 mg. Tried more than 10 SNRI and SSRI and anti-psychotics. Treatment is psychotherapy tried decreased anxiety but no

benefit. She followed a psychiatrist for less than five years with no big change. The prognosis is terrible for over 10 years already. Cannot find a job. Was very well educated but cognitively impaired severely. Tried back to work, several attempts, unsuccessfully.

[45] A medical report dated May 2, 2012 from Dr. Northorp, family physician, diagnosed major depressive disorder for 27 years and Generalized Anxiety Disorder more than 5 years. She is employed intermittently but jobs lost repeatedly because of recurrent depression. She has not been hospitalized in the past 2 years. Her PHQ score is still very high at 22. Her GAD is high at 15. These have not improved greatly in the last 5 years. Only major change is a decrease in suicide ideation. No further consultations are planned. Medications are: Zopiclone 7.5 mg, Cymbalta 50 mg; Lorazepam; Wellbutrin XL. Treatment is: 1. Psychological recent cognitive behaviour therapy with some improvement but not enough to function at workplace; 2. Great West Life rehabilitation; 3. Psychiatrist Dr. Doucet making modifications in meds over the last few years. She has tried every class of psychological medications. Prognosis is very poor regarding depression over more than 5 years. Poor response to all meds, only (indecipherable). She has never been in remission. Dr. Doucet primary treating physician for last two years. Dr. Northorp treated her for over 24 years and gave up after many allergies. She cannot focus or concentrate to carry out her activities of daily living without great difficulty.

[46] A medical report dated May 8, 2012 from Dr. Doucet, Psychiatrist since December 2010 diagnoses major depressive disorder, chronic and pain disorder without agoraphobia. She has bouts of depression in her life, recent episodes dates to the fall of 2009. Off work in April 2010. Symptoms of low mood, poor interest, inactivity, low concentration. Had panic attacks and went to the emergency room. Her symptoms have fluctuated over time but she continues to report feeling depressed. She has not been admitted to the hospital in the past two years. Her physical findings were calm, reactive affect, good concentration for the interview, spoke with normal rate, rhythm and volume. Thoughts normal form and content. Reports feeling depressed. Functional limitations requires more time than in the past to accomplish her activities. No further consultations are planned. Medication is listed as; Deltasone 120 mg daily; Bupropion SL 150 mgs daily; Zopiclone 10 mg; Pramipexole .5 mg. Treatment is listed as medications plus prior trails of Adderall (current episode) and Fluoxetine in the past. Physiotherapy and vocational rehabilitation. Prognosis is fair to good as the symptoms present for two years but

has responded in the past. She has struggled with working while feeling depressed for most of her adult life.

[47] A phone call summary with the Tribunal dated September 6, 2012 indicates the Appellant has been procrastinating in completing the application form. She has not seen Dr. Allison for psychotherapy since December 2011 due to no insurance. She is looking for work as a receptionist and had an interview this week. Her family physician is not supporting her disability application. She lost all previous jobs due to symptoms of depression; jobs lasted from 1 to 5 years in length. Medication is Cymbalta, Zopiclone, Ramipril, and Pramipexole for restless leg syndrome.

[48] A Benefits record from Service Canada shows the Appellant applied for a CPP retirement pension on March 22, 2013 and the benefit started April 1, 2013.

[49] A letter dated June 28, 2013 and received July 4, 2013 signed by the Appellant notes she previously applied for CPP disability in 2012 and would like to receive a copy of the disability denial letter. She added her S.I.N. , D.O.B. and the date the denial letter was received on September 24, 2012.

[50] The Appellant applied for a CPP disability benefit on June 16, 2015 and signed the application herself on June 10, 2015.

[51] A letter signed by the Appellant dated July 3, 2015 outlines her applications and disabilities. She applied in April 2012 and was denied because her psychiatrist, who was new to her, was optimistic that her situation could be improved. She was unable to get him to understand her situation. Her family physician did not have a good appreciation of her situation at the time and was also hopeful her mental state would improve. She feels "I have become a victim for not being able to get these two professionals to fully understand my situation". She applied again in June 2015. She notes that she tried to work as a receptionist for 46 hours in September, 2013 and had to leave work, falling into the same cycle of depression. She made enough to contribute \$13.03 to CPP. She feels she should be eligible for the disability benefit as she was eligible in 2012.

[52] A letter dated December 7, 2015 from Dr. Doucet, Psychiatrist notes he has regularly seen the Appellant since December 10, 2010. By 2015 her condition had severely deteriorated. She applied for a CPP disability benefit first on April 30, 2012 and sent the second application via regular mail on June 1, 2015. She is suffering from a severe and persistent disabling condition of major depressive disorder, severe. She required hospitalization at the Moncton Hospital between November 4, 2015 and December 2, 2015. Her GAF is 45. She is unable to work due to severe limitations and restrictions as a result of her medical illness, and Dr. Doucet opines she is unable to work and does not expect his opinion to change.

SUBMISSIONS

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

- a) She has had a severe and prolonged disability for many years making her incapable of working.
- b) She was in mourning for a long period and incapable of applying for the CPP disability benefit.

[54] The Respondent did not make submission on the Appellant's incapacity to apply for a CPP disability benefit.

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

- a) The Appellant started receiving a retirement CPP pension in April 2013, more than 15 months prior to the application for a CPP disability benefit dated June 15, 2015. She cannot cancel her CPP retirement pension in favour of a CPP disability benefit.

ANALYSIS

Incapacity to form or express and intention to apply for a CPP disability benefit

[56] The Appellant must prove on a balance of probabilities that she was incapable of forming or expressing an intention to make an application for a CPP disability benefit before June 16, 2015.

[57] The Appellant had a difficult time remembering dates and the linear sequence of events. The Tribunal is relying upon the reasonableness of the dates of events as testified, and the medical and documentary evidence on file.

[58] The Appellant's main medical condition is a psychological disability. The Tribunal explained the difference between the Appellant's medical condition and the legal test of incapacity to express or form an intention to apply for the CPP disability benefit.

[59] The Appellant claimed her incapacity started when her fiancé got sick and died five weeks later in 2011. She did not give a date when the incapacity ended, but agreed she did make the May 2, 2012 application for a CPP disability benefit on her own. She did not apply for an appeal of the reconsideration decision on the application of May 2, 2012. She testified that she was incapable of managing her affairs due to the death of her fiancé for years after his death. Her brother testified she is constantly incapable of understanding what is required of her, and managing her own affairs, and that this has not changed.

[60] In *Baines v. Canada (HRSD)*, 2011 FCA 158, leave to appeal to SCC refused, 2012 CanLII 22038 (SCC), it is noted that "subsection 60(9) applies only to applications for benefits, not to appeals from the rejection of applications."

[61] Therefore, the Tribunal is only considering the capacity to form or express an intention to apply for the second application dated June 16, 2015.

[62] On March 22, 2013 the Appellant applied for a CPP retirement pension on her own, as testified. The benefit started April 1, 2013.

[63] On June 28, 2013 the Appellant wrote a letter to Service Canada requesting a copy of the September 24, 2012 denial on the first application, demonstrating an intention to further her initial application for a CPP disability benefit.

[64] In *Sedrak v. Canada (Social Development)*, 2008 FCA 86, the Federal Court of Appeal stated that the “capacity to form the intention to apply for benefits is not different in kind from the capacity to form an intention with respect to other choices which present themselves to an applicant.” The Court further held that “nothing in this scheme requires us to give to the word “capacity” a meaning other than its ordinary meaning”.

[65] In 2013 the Appellant posted an ad for work on Kijiji herself. She worked as a caregiver for four or five nights at some point prior to October 1, 2013, when she began an eight month job attending a college class with a disabled student. Her job required a capable level of cognitive functioning. After that job ended she worked from September 2014 until January 2015 and has not worked since. She stated she stopped work due to a physical condition of vertigo.

[66] She stated she was capable of managing her grocery shopping, and feeding herself throughout the period from March 2013 and June 2015.

[67] Medically, between March 2013 and June 2015 she was under minimal supervision with Dr. Doucet, 15 minutes every six months mainly to monitor her medications. She was neither hospitalized at all during that period nor receiving any counselling or psychological treatments. The medical information on file shows the Appellant was suffering from major depressive disorder, severe, but does not indicate that the Appellant was unable to manage her own affairs, or was unable to formulate or express intentions in the course of her daily life.

[68] She applied again for the CPP disability benefit on June 16, 2015. She stated, as did the witness, that she did apply on her own and that it was quite a detailed application, but she managed to do it herself.

[69] The Appellant has demonstrated she was able to manage her own affairs, and formulate or express intentions in the course of her daily life. She stated she was incapable of working

after January 2015 due to her physical condition, notwithstanding her major depressive disorder.

[70] The Tribunal is not satisfied, on a balance of probabilities, that the Appellant had been incapable of forming or expressing an intention to make an application for a CPP disability benefit before June 16, 2015, the date on which the application was actually made.

Cancellation of a CPP retirement pension in favour of a CPP disability benefit

[71] The Appellant has not been found to have been incapable of forming or expressing an intention to apply for the CPP disability benefit prior to the application dated June 16, 2015. Therefore the date the CPP disability benefit application was received is found to be June 16, 2015.

[72] In order for the Appellant to cancel her retirement pension in favour of a disability benefit, she would have to be deemed to have become disabled before the month her retirement pension started to be paid. In other words, the Appellant would have to be deemed to have become disabled by March 31, 2013.

[73] The Appellant started receiving a CPP retirement pension on April 1, 2013. She applied for a CPP disability benefit on June 16, 2015. Fifteen months prior to June 2015 is March 2014, one year after the date she would have to be deemed to have become disabled.

[74] The Tribunal finds according to subsection 66.1(1.1) and paragraph 42(2)(b) of the CPP that the Appellant is ineligible to cancel her CPP retirement pension in favour of a CPP disability benefit.

Severe and prolonged disability before the MQP of December 31, 2013

[75] As the Appellant has been found ineligible to cancel her retirement pension in favour of a CPP disability benefit, the Tribunal does not have to determine a severe and prolonged disability.

CONCLUSION

[76] The appeal is dismissed.

Jackie Laidlaw
Member, General Division - Income Security