



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. M. v. Minister of Employment and Social Development*, 2016 SSTGDIS 79

Tribunal File Number: GP-15-1065

BETWEEN:

N. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Jeffrey Steinberg

HEARD ON: October 5, 2016

DATE OF DECISION: October 5, 2016

REASONS AND DECISION

PRELIMINARY ISSUES

[1] The hearing of this appeal was scheduled to be heard by way of videoconference for the reasons given in the Notice of Hearing (the “Notice”). The Tribunal records confirm that the Notice was received and signed for by the Appellant. The Tribunal records also show that the Appellant contacted the Tribunal Case Management Officer assigned to the file by telephone in September 2016 and asked her what would happen if he decided not to attend the hearing. She explained the various outcomes, one of which included the Tribunal Member proceeding to make a decision on the basis of the documents filed with the Tribunal.

[2] Notwithstanding receipt of the Notice, the Appellant did not appear before the Tribunal at the appointed time. The Tribunal Member waited for one-half hour past the appointed time for the start of the hearing, however the Appellant did not appear.

[3] Subsection 12(2) of the Social Security Tribunal Regulations (the “Regulations”) provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party’s absence if the Tribunal is satisfied that the party received the Notice. In this case, the Tribunal is satisfied the Appellant received the Notice and was aware of the hearing date, location and time of hearing.

[4] Accordingly, the Tribunal decided to proceed in the Appellant’s absence and make its determination on the basis of the documents and submissions contained in the hearing file.

INTRODUCTION

[5] The Appellant’s application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on July 10, 2014. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

THE LAW

[6] 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).

[7] 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.

[8] 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

[9] The Tribunal finds that the MQP date is December 31, 2013.

[10] 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

Documentary Evidence

[11] On June 3, 2014, the Appellant completed the Questionnaire in support of his application. He stated he completed Grade 13. He obtained a police college certificate in 1990

and 1994 in Enforcement. He worked full time between August 21, 1989 and April 28, 2010 for the City of X as a by-law officer. He stopped working due to illness (mental). He received Employment Insurance Benefits for 15 weeks between July 25, 2010 and November 24, 2010. He states he could no longer work due to his medical condition as of April 28, 2010. Mental illness has prevented him from working. He states he finds it very hard to cope with his illness and the stress of the job. His panic attacks and feeling down most of the time prevent him from working the way he used to. He no longer has motivation to participate in former hobbies such as pick up hockey with friends or working out at the gym. He receives counselling on a weekly basis.

[12] In his Reconsideration letter dated October 28, 2014, the Appellant states he has had a long history of chronic generalized anxiety disorder, ego dysfunction and other medical conditions. This has been going on for a long time. His medical condition has been deteriorating over this period and it continues to do so. He continues to receive treatment for his conditions. He believes he suffers from a severe and prolonged condition.

[13] In his CPP Medical Report dated March 20, 2014, Dr. Mallia, psychiatrist, reported he knew the Appellant for greater than 8 years and started treating him for his main medical condition in May 2006. He diagnosed anxiety disorder, generalized type, depressive illness, recurrent, moderate form. The Appellant is prescribed Paxil, Rivotril and attends a meditation group. The prognosis consists of a chronic course with remissions and exacerbations.

[14] On February 9, 2015, Dr. Mallia reported he had initial contact with the Appellant in September 2002. He was referred for anxiety problems. He has been distressed by recurrent anxiety and panic attacks, particularly when confronted by his supervisor at work. He felt he had major problems with authority figures. According to Dr. Mallia, this reflected the conflicted relationship the Appellant had with his authoritarian and emotionally controlling father. He had been working for the City of X for 18 years. He married at age 25 and terminated the relationship 15 years later. He presently shared a house with his elderly parents. In his last assessment dating back to January 15, 2015, the Appellant elaborated on his mother's terminal illness and father's lung problems. He was worried and fairly anxious about them. His mood was dysthymic and his affect was worried. There were no major psychiatric disturbances. The

Appellant further elaborated on his anxiety, particularly when confronted by authority figures. Dr. Mallia set out the following diagnosis: Axis 1. Anxiety Disorder, panic attacks residual symptoms; Axis 4. Psychological stressor rated moderate to severe due to parents' illness and loss of employment; and Axis 5. GAF of 65. According to Dr. Mallia, the prognosis remained guarded due to the traumatic relationship the Appellant had with his father. He was attending a meditation group and psychiatric treatment. His psychiatric condition was chronic with episodes of remission and exacerbation.

SUBMISSIONS

[15] The Appellant did not provide written submissions. As he did not attend the hearing, he also did not make oral submissions.

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

a) The medical reports submitted by Dr. Mallia, psychiatrist, indicate the Appellant has diagnoses of recurrent generalized anxiety disorder with panic attacks and a recurrent depressive illness of moderate severity. Notably, he does not have any major medical or psychological disturbances. His depression and anxiety are treated conservatively with Paxil and Rivotril in addition to meditation and counselling. Although he is noted to experience moderate to severe psychological stress related to his parent's illness, Dr. Mallia assigned him a GAF of 65 indicative of only mild symptoms. Additional medical information inclusive of clinic notes dating back to his MQP was requested but not submitted for review. Without information to indicate the frequency of psychiatric visits, co-morbid treatment modalities, medication trials and responses, it is difficult to conclude his mental health issues were of such severity to have precluded all work at the MQP and continuously thereafter. Also, while the psychiatrist opines the Appellant will continue to experience remissions and exacerbations, he would not be precluded from all work inclusive of part-time and/or seasonal work.

b) While he feels unable to work due to his mental illness, the evidence does not support a medical condition of such severity to preclude all work at the MQP and continuously thereafter.

ANALYSIS

[17] The Appellant must prove on a balance of probabilities that he had a severe and prolonged disability on or before the MQP.

Severe

[18] The Tribunal has insufficient evidence before it to satisfy itself that the Appellant's disability was severe on or before the MQP.

[19] Although the Appellant has been diagnosed with anxiety disorder, of significance, in his February 9, 2015 report, Dr. Mallia, psychiatrist, reported that the Appellant had been distressed by recurrent anxiety and panic attacks, particularly when confronted by his supervisor at work. This information leaves the Tribunal with the unanswered question whether the Appellant would be capable regularly of pursuing work in a different setting where he was not confronted by his workplace supervisor and whether he ever attempted to pursue alternative work to see how he would function in a workplace absent such confrontation.

[20] The Tribunal also notes that in the same report, Dr. Mallia stated the Appellant's condition was chronic with episodes of remission and exacerbation. Absent further medical elaboration including testimony from the Appellant as to the frequency of remissions and exacerbations, and the average length (if there is one) of remissions and exacerbations, the Tribunal cannot be satisfied that the Appellant is incapable regularly of pursuing any substantially gainful occupation in a non-confrontational work environment. For example, if an average remission is lengthy and an average exacerbation is short in duration, then arguably, the Appellant would retain capacity regularly to attend the workplace. However, absent such information, the Tribunal is unable to arrive at an informed determination.

[21] Also, given the fact that Dr. Mallia stated in his February 2015 report that the Appellant did not suffer from any major psychiatric disturbances and had a GAF of 65 which signifies some mild symptoms, absent further evidence from the Appellant as to how his overall symptomatology would render him incapable regularly of pursuing any substantially gainful occupation including work in a non-confrontational setting, the Tribunal is unable to conclude, on balance, that the Appellant's disability was severe as defined in the CPP on or before the MQP.

Prolonged

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

CONCLUSION

[23] The appeal is dismissed.

Jeffrey Steinberg
Member, General Division - Income Security