



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. R. v. Minister of Employment and Social Development*, 2016 SSTADIS 395

Tribunal File Number: AD-15-1005

BETWEEN:

M. R.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: October 12, 2016

REASONS AND DECISION

OVERVIEW

[1] This is an appeal of the decision of the General Division dated June 16, 2015, in respect of the Appellant's claim for a Canada Pension Plan disability pension. The General Division determined that the Appellant was not eligible for a disability pension, as it found that her disability was not "severe" by the end of her minimum qualifying period of December 31, 2013.

[2] The Appellant sought leave to appeal the decision of the General Division on the ground that the General Division failed to apprehend the significance of or give any weight to the opinion of a psychiatrist. Had it simply been an issue of the assignment of weight, I would have readily dismissed the application for leave to appeal. However, I noted from the decision of the General Division that it did not mention the psychiatrist's diagnosis or her assessment on the Appellant's global assessment of functioning. While a diagnosis alone does not establish the severity of a condition, there was little, if any, analysis by the General Division regarding the Appellant's mental state in relation to the diagnosis. I granted leave on the basis that the General Division may have misconstrued evidence critical to the Appellant's claim, or that it may have failed to appreciate the significance of the psychiatrist's opinion regarding the Appellant's mental health diagnoses and the impact of her disabilities on her overall capacity.

[3] Upon reviewing the submissions received from both parties, I have determined that no further hearing is required, pursuant to subsection 43(a) of the *Social Security Tribunal Regulations*.

ISSUES

[4] The sole issues before me are whether the General Division misconstrued any important evidence, and if so, what is the appropriate disposition of this matter.

MEDICAL REPORT OF DR. COOPER

[5] The Appellant argues that the medical report dated October 23, 2013 of Dr. Jerry J.I. Cooper, a psychiatrist (GT6-3 to GT6-7), sets out the factors “which the [General Division] must have regard in making its decision”. The Appellant claims that the General Division referred to the report “only in passing” at paragraph 66 of its decision.

[6] The Appellant alleges that she has various medical conditions, including depression. There was little in the way of documentary evidence of her depression, though her family physician briefly referred to it in the CPP Medical Reports dated October 12, 2004 (GT1-86) and August 26, 2011 (GT1-52). Apart from the medical report of Dr. Cooper, there were no medical reports or records from any other psychiatrists, psychologists or mental health caregivers. Dr. Cooper indicates that he first saw the Appellant on June 11, 2012. He saw her again on August 28, 2013 and on October 17, 2013.

[7] Dr. Cooper wrote, in part, the following:

Her affect was still depressed even though she was put on Cipralelex 20 mgs once a day, when I saw her on August 28, 2013.

She continued to be pain focused and had problems sleeping because of the pain.

She was tired and exhausted. She had no energy.

She was told that she had some kind of problem in her mouth, and was fearful of having cancer, and had to see a dentist, but could not afford the dentist, and I suggest she attend the University of Toronto Dental School.

There is very little that I can do but offer pain management and her pains get worse during the cold damp weather and whenever the weather changes.

Cipralelex, as any medication, is only an adjunct to therapy. The DSM I V TR diagnosis –

Axis 1. Chronic pain syndrome, major depressive disorder – reactive depression, and there are aspects of a generalized anxiety disorder, and she is going through a chronic adjustment disorder.

Axis 2. Indicates that she is not a personality disorder,

Axis 3. Soft tissue injuries as a result of the slip and fall on November 3, 2011, caused a pain syndrome which has now become a chronic pain syndrome.

Axis 4. Socio-economic problems and sexual dysfunction.

Axis 5. GAF functioning between 40-50%.

[8] The General Division indicated that the Appellant testified that she sees Dr. Cooper every six weeks and that she has discussed how her pain and stress affect her sleep. She also complained that she was unable to concentrate. She pointed out that her family physician and the psychiatrist have provided her with samples of Cymbalta, which helps calm her and enables her to sleep “a little”. The Appellant also claimed that she reported having frequent panic attacks, though this was not documented by Dr. Cooper in his medical report. She stated that she finds his advice helps with the panic attacks.

[9] The General Division summarized Dr. Cooper’s report at paragraph 48. The member wrote:

He describes her as still depressed and ingesting Ciprolex (*sic*) 20 mgs per day. He points out that she is tired, exhausted, continues to be pain focused and had problems sleeping because of the pain. He also points out that “her pains get worse during the cold damp weather and whenever the weather changes.

[10] Although the Appellant suggests that the General Division member referred to Dr. Cooper’s medical opinion “only in passing” in the analysis, at paragraph 66, I find that the General Division member in fact also referred to Dr. Cooper’s opinion at paragraphs 58 and 61. The member also discussed the Appellant’s mental health issues within these paragraphs, as well as at paragraph 60.

[11] The Appellant submits that the General Division was required to address “the factors” set out in Dr. Cooper’s report, although does not identify what those factors might be. However, a decision-maker is not required to refer to all of the evidence before him or her, as there is a general presumption that he or she has considered all of the evidence: *Simpson v. Canada (Attorney General)*, 2012 FCA 82. This presumption can be rebutted, if an applicant can establish that the evidence was of such probative value that the decision-maker ought to have analyzed it. Here, the Appellant did not particularize the factors nor explain the probative value any factors allegedly overlooked by the General Division might have had.

[12] Setting aside the issue that the General Division did not refer to the specific diagnoses made by Dr. Cooper, I do not see that the General Division overlooked or failed to address the primary components of Dr. Cooper’s medical opinion. As the Respondent points out, the Federal Court of Appeal has held that it is the capacity to work, and not the diagnosis of his disease that determines the severity of the disability under the *Canada Pension Plan: Klabouch v. Canada (Minister of Social Development)*, 2008 FCA 33 at para. 14. Although the General Division did not refer to the diagnoses, the member discussed the Appellant’s various symptoms, her medical history and the impact of her disabilities on her.

[13] The General Division addressed the fact that Dr. Cooper was of the opinion that the Appellant is pain focused and has problems with her sleep because of her pain. The General Division noted the Appellant’s testimony that she takes non-prescription extra- strength pain relief medication three times a week for her pain, and that she also sits down and meditates. These methods apparently help manage the pain. The General Division found that these actions suggest that the pain is manageable and not severe.

[14] The General Division also addressed the fact that Dr. Cooper provides the Appellant Cymbalta for her panic attacks, stress-related issues and depression. The General Division found that the Appellant responded favourably to Cymbalta, as it “calms her down a little” and enables her to sleep “a little”. The General Division found that the dosage had not changed over time, and that the Appellant had not been hospitalized for her

psychological issues. The General Division found that this suggested that the Appellant's panic attacks, stress-related issues and depression were manageable in their current state.

[15] The Appellant contends that the General Division based its findings of fact that she has a residual capacity to work without regard for Dr. Cooper's report, in part, because it failed to "quote from the psychiatrist's opinion in any depth". I note, however, that the Supreme Court of Canada has determined that it is unnecessary for a decision-maker to write exhaustive reasons addressing all the issues before it. In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, the Supreme Court of Canada remarked that:

Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion (*Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, 1973 CanLII 191 (SCC), [1975] 1 S.C.R. 382, at p. 391).

[16] It is clear that the General Division came to its findings based on a consideration of the evidence before it, including the opinion of Dr. Cooper. As I have noted above, the General Division referred to Dr. Cooper's report in both the evidence and analysis sections. While Dr. Cooper is of the opinion that the Appellant has been adversely affected vocationally, domestically and socially, he does not offer any opinion on her overall functionality. Hence, it was open to the General Division to come to its own findings. Indeed, the General Division acknowledged that the Appellant had some limitations at the end of her minimum qualifying period, due to both physical and psychological considerations.

[17] Given the nature of the Appellant's complaints to Dr. Cooper and her testimony before the General Division, the member's reference to Dr. Cooper's opinion and the analysis, I am not persuaded that the General Division failed to apprehend the significance of Dr. Cooper's opinion regarding the Appellant's diagnoses and the impact of her disabilities on her overall capacity.

CONCLUSION

[18] The appeal is dismissed.

Janet Lew
Member, Appeal Division