



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. P. v. Minister of Employment and Social Development*, 2017 SSTGDIS 94

Tribunal File Number: GP-15-3562

BETWEEN:

A. P.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Pierre Vanderhout

HEARD ON: July 10, 2017

DATE OF DECISION: July 20, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* ("CPP") disability pension on March 17, 2014. The Appellant claimed that she was disabled because of post-concussion syndrome with headaches, migraines, dizziness, and sensitivity to light and sound. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal ("Tribunal").

[2] To be eligible for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period ("MQP"). The calculation of the MQP is based on the Appellant's contributions to the CPP. The Tribunal finds the Appellant's MQP date to be December 31, 2016.

[3] This appeal was scheduled to be heard by Teleconference for the following reasons:

- a) The Appellant will be the only party attending the hearing.
- b) The issues under appeal are complex.
- 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.

[4] The Tribunal has decided that the Appellant is not eligible for a CPP disability pension for the reasons set out below.

PRELIMINARY ISSUE

[5] This matter was originally scheduled to be heard by videoconference on February 8, 2017. However, the Appellant was late because she had difficulty locating the Service Canada Centre. She did not have a copy of the Tribunal file with her: this had implications for the hearing as the Tribunal Member would have had questions about certain documents in the Tribunal file. She also indicated that she wanted to file new documents but had been unable to

do so because her condition interfered with her ability to file documents. She also suggested that she was not completely aware of which documents had actually been filed with the Tribunal. In the circumstances, the Tribunal Member determined it would be appropriate to adjourn the matter so that the Appellant would be properly prepared for the hearing and had an opportunity to forward relevant evidence for potential consideration by the Tribunal.

[6] The hearing was then adjourned to May 8, 2017: once again, it was to take place by videoconference. No new documents were filed by the hearing date. The Appellant did not attend and did not contact the Tribunal to advise of any issues with her attendance. However, a Tribunal staff member contacted the Appellant at her home and was told that she could not participate in the hearing that date due to illness.

[7] Given the Appellant's prior difficulty in locating the hearing site, the Tribunal Member changed the method of proceeding to teleconference and the hearing was rescheduled for July 10, 2017. On May 12, 2017, the Appellant acknowledged receipt of the Notice of Hearing. A Tribunal staff member also left a voicemail message for her on June 26, 2017, reminding her of the upcoming hearing and providing the Tribunal's toll-free number in the event of any concerns. The Appellant did not attend the July 10, 2017 teleconference, nor did she contact the Tribunal to advise of any issues with her attendance. As of the date of this decision, she still has not communicated with the Tribunal to explain her absence from the teleconference hearing or request an adjournment. She also has not filed any new documents.

[8] The Tribunal is satisfied that the Appellant received notice of the hearing. As the hearing had been adjourned on two previous occasions and she did not attend the July 10, 2017 teleconference or provide an explanation for her absence, the Tribunal has elected to proceed with rendering a decision on the merits of the case rather than adjourn the hearing for a third time. All evidence in the Tribunal file will be considered, although only the most relevant evidence will be specifically referenced in the following summary.

EVIDENCE

[9] The Appellant is 31 years old and lives in X, Ontario. She completed Grade 12 as well as a 2-year paramedic diploma and a 1-year pre-service firefighting diploma. She has also been

a peer tutor at Humber College. She competed in cross-country running for Team Ontario and placed 3rd nationally at the college level. Her most recent employment was as a full-time paramedic with Toronto Emergency Medical Services. This lasted from May 20, 2009 until December 14, 2012. She stated that she was no longer able to work on December 21, 2012, as she suffered a concussion that day. She subsequently suffered further concussions on May 20, 2013 and October 15, 2013. There is also evidence in the file to suggest that she may have suffered additional undocumented concussions prior to December 21, 2012.

[10] The Appellant stated in her February 20, 2014 Questionnaire that she was no longer able to work on December 21, 2012 because her paramedic job was very demanding. Many times each day, she was required to lift equipment bags, stretchers, stair chairs, and patients. However, any heart rate or blood pressure increase caused headaches and additional pressure on her head. She needed to be able to concentrate fully, as she had to drive for several hours per day in addition to operating devices such as the radio, CPS, and emergency sirens. She was unable to look at a screen for more than 30 minutes, to read more than 10 pages in a book, to concentrate, or to remember what she had read. She said that she was otherwise healthy.

[11] Dr. Wes Clayden's letter of October 18, 2013 is the first medical documentation in the file. Dr. Clayden wrote that the Appellant remained symptomatic from the December 2012 concussion, consistent with a diagnosis of post-concussion syndrome. She was unable to return to work at that time. While complete resolution of her persistent symptoms and a return to full duties remained the goal, he was unable to provide a specific timeline. However, he found it encouraging that she continued to make progress.

[12] Dr. Golberg Araghi (Family Physician) completed a Medical Report for the Appellant on January 30, 2014. Dr. Araghi's diagnoses were concussion, post-concussion syndrome, and a history of migraine headaches. In addition to her headaches, she had neck pain, inability to tolerate sustained physical exertion, and difficulties with focus and concentration. She was addressing the neck pain and stiffness with massage and physiotherapy. She was also being seen at a sports medicine clinic for her post-concussion syndrome. Nortriptyline did not significantly address her headaches. She was to continue her current regimen of physiotherapy, massage, acupuncture and sports medicine. While Dr. Araghi was unable to provide a prognosis

and hoped that the Appellant would improve over time, there had been minimal improvement so far.

[13] The Appellant listed many functional limitations in her February 20, 2014 Questionnaire. These included driving for more than 45 minutes, significant light sensitivity that forced her to wear sunglasses outside, noise sensitivity, lifting, carrying, and sleep interruption. However, she had no limitations with sitting, standing, speaking and reaching. She had stopped all sporting and social activities after her concussion on December 21, 2012.

[14] The Appellant told Dr. Araghi on September 26, 2014 that she wanted to see a concussion specialist. She also reported symptoms of depression. An initial assessment was conducted by Dr. Shannon Bauman (Family Physician, with a concussion focus) on October 17, 2014: the diagnoses included concussion with features of post-traumatic migraine, fatigue, anxiety, and depression. Dr. Bauman's plan was vestibular rehabilitation, an optometry referral for gaze stability, and a prescription for Zoloft. Dr. Bauman stated that the Appellant was not ready to return to work at that time.

[15] On her own initiative, the Appellant also attended the Carrick Brain Centre ("Carrick") in October 2014. This appears to be a private treatment centre located in Marietta, Georgia (U.S.A.) specializing in post-concussion care. On November 4, Dr. Diana Albertin (Chiropractic Neurologist at Carrick) reported that the Appellant made good improvements while there but her symptoms remained. She was unable to work due to those symptoms: Dr. Albertin recommended that she focus on the brain-based therapies given to her at Carrick instead of returning to employment. The November 11, 2014 letter from Dr. James Duffy (Chiropractic Neurologist at Carrick) gave a diagnosis of post-concussive syndrome with centrally maintained vestibulopathy. Home exercises were provided and re-evaluation in three months was recommended.

[16] The Respondent contacted the Appellant by telephone on December 2, 2014. She said her brain injury was improving. She also reported neurological deficits, left-sided weaknesses, a left hand tremor, and memory and problem-solving limitations. Dr. Bauman's January 17, 2015 letter also referenced improvements, although she recently had flaring headaches. Her current concussion features were post-traumatic migraine and headaches, fatigue, vision difficulties, vestibular issues, and cognitive issues. It does not appear that she ever started taking Zoloft.

[17] On January 19, 2015, the Appellant provided a very long letter outlining her condition and requesting a reconsideration of the Respondent's initial denial decision. She believed her disability was severe because, even without working, it prevented her from living a normal and functional day-to-day life. While she admitted getting better, she had no idea when she would be able to function normally again. She said that in addition to the three concussions suffered between December 2012 and October 2013, she had two prior head injuries resulting in a loss of consciousness as well as two other concussive injuries for which she did not lose consciousness. She also explained her negative experiences with Nortriptyline and how she had obtained much better results herself through meditation and mindfulness.

[18] The Appellant described her current symptoms as daily migraine headaches (exacerbated by using a computer, reading, concentrating, interacting with people, driving more than 20 minutes, and conversations with multiple people), constant head pressure (exacerbated by any physical exertion), blurred vision (aggravated by screens or reading), tinnitus, nausea, dizziness, sensitivity to light and noise, emotional issues (such as irritability and anxiety), difficulty concentrating, fatigue (sleeps 12 hours per night plus two hours during the day), and autonomic nervous system dysregulation. Her functional limitations included walking (10 minutes), watching television (10 minutes per day), texting on a phone, and being in places with lots of people and/or noise. She provided a comprehensive list of the various specialists she has seen and treatments she has tried, including a number that she had pursued herself.

[19] The Appellant also explained that she used to work 12-hour shifts, plus overtime, in addition to driving one hour each way to work. She also competed in triathlons and trained 3-5 times per week in the three triathlon disciplines. She played guitar, went on canoeing expeditions, read, and travelled. However, she had to move back home to her parents' house so that they could help take care of her and drive her to appointments. She missed her job and wanted to return to work but also felt that pushing past her limits would hurt her recovery.

[20] Dr. Bauman wrote on February 16, 2015 that there was a slow but positive trend with the Appellant continuing to note improvements in her current symptoms. She felt less foggy, her exercise capacity was improving, and she was able to drive short distances without symptoms. Dr. Bauman considered her currently unable to return to work and perform the

duties of a paramedic. Dr. Bauman wrote that her ability to return to work would be reassessed when she became symptom-free in the future.

[21] A significant change occurred in May 2015, when the Appellant was bitten by a tick that was carrying Lyme disease. In the initial stages, she was primarily seen by Dr. Araghi for this. The Respondent contacted the Appellant by telephone on May 27, 2015 and was advised of the treatment for Lyme disease and Babesia. She said that she continued to see Dr. Bauman on a monthly basis and had seen Dr. Duffy (at Carrick) for one week in March 2015. She corresponded weekly by e-mail with Dr. Duffy and was awaiting a new report from him.

[22] Dr. Bauman reported on June 8, 2015 that the Appellant was improving overall but had been feeling an increase in symptoms because of Lyme disease and other co-existing infections (including babesia, bartonella, and anaplasmosis) from a tick bite. During her visit to Carrick in March, she made improvements in light sensitivity and handling social settings: she started to feel more like her old self. However, the tick bite resulted in blurry vision, migraines, vomiting and weight loss.

[23] On June 9, 2015, the Appellant saw Dr. Shahzad Qureshi (Medicine Hospitalist) with respect to her Lyme disease and related symptoms. The Appellant said that her overall concussion situation had been improving but she had new and significant symptoms since the tick bite. Dr. Qureshi wondered whether her rash and worsening symptoms in the past couple of days were related to a drug reaction. Dr. Qureshi later referred her to Dr. Lingley (Infectious Disease Specialist).

[24] Dr. Bauman provided a detailed letter to the Respondent on July 19, 2015. Dr. Bauman affirmed the diagnosis of post-concussion syndrome and noted that the Appellant had sought out the Carrick treatment on her own; she was also independently pursuing mindfulness therapy. She was motivated to recover and had actively participated in all the recommended treatments. Her headaches were less severe, she had less fogginess, and she had some improvements in her ability to socialize and complete activities of daily living. She also had improvements in objective testing at Carrick. Although the improvements were slow and in small increments, these were still described as “promising”. However, she was not ready to return to work, as she was still experiencing symptoms and signs on a daily basis with routine activities of daily living.

[25] Dr. Bauman also commented on the recent complicating infection, noting that it had caused subjective and objective regression in concussion signs and symptoms. Dr. Bauman believed that, once the infection had been managed, the Appellant would return to her previous level of concussion recovery and hopefully continue a slow and positive recovery from there. It was not currently possible to determine an end recovery date. The July 22, 2015 telephone call from the Respondent to Dr. Bauman confirmed that there had been improvement and that the Appellant could return to rehabilitation once the infection was gone. After clearance had been given, she could return to a progressive stepwise return-to-work plan.

[26] Dr. Araghi provided additional information in a letter dated July 29, 2015. Dr. Araghi said that, despite prolonged and extensive investigations, the Appellant failed to respond completely and never really reached her baseline level of functioning. She also developed depression and received treatment in the form of counseling. Her response had not been enough to allow her to return to work and function at her baseline level. Her symptoms had become chronic and it was difficult to say if she would ever return to her baseline level of functioning. In addition, it appears that the symptoms related to her recent tick bite had seemingly become chronic as well and she continued to be followed by infectious disease specialists.

[27] On September 15, 2015, Dr. Maureen McShane (Unknown Specialty), a doctor in Plattsburgh, New York (U.S.A.) provided a long letter that, in addition to treatment with antibiotics and other medications, seemed to advocate a more natural and holistic approach to the Appellant's Lyme disease and associated concerns. There was a particular emphasis on diet. There was no prognosis and the long list of dietary and treatment recommendations often appeared to be generic rather than specifically tailored to the Appellant herself. While her concussion history was noted, the actual problem list recorded by Dr. McShane only listed anaplasmosis, chronic Lyme disease, babesiosis, and bartonella. This is the last objective medical documentation in the Tribunal file.

[28] On October 19, 2015, the Appellant provided a very long letter outlining her condition and requesting an appeal at the Tribunal. She said that the tick bite had aggravated her concussion symptoms. The aggressive treatment for the tick-related issues had also made her very sick. She was still unable to drive long distances, use a computer screen for more than 5

minutes, concentrate, or be exposed to multiple stimuli. She still could not perform normal exercise (such as walking), do normal everyday activities, or socialize normally with her friends. Although she admitted making improvements, it had still been almost three years since the triggering concussion occurred. She had been seeing more doctors and specialists in an attempt to get on top of her new and worsening symptoms. She also suffered a small bump to the head about one month previously, which aggravated all of her concussion symptoms again and left her bedridden for a week. She had been extremely tired, frustrated, depressed, and anxious.

[29] The Appellant wrote that her health had been declining since May, with symptoms such as chest pains, shortness of breath, difficulty ambulating, bouts of extreme vision blurriness, panic attacks, hopelessness, and numbness and tingling in her extremities. Sometimes she even lost the neurological use of her arms and legs. Lyme disease had aggravated her concussion symptoms and made them much worse than they previously were. On most days, it was hard for her to get out of bed because she was so tired. She wished that she could enjoy a walk with her dog without pain, fatigue, and impaired brain function. She wanted to be able to accomplish more in a day than just vacuuming her house.

[30] The Appellant could not think of any job that she would be able to do. She said driving to a job would be a problem, as she lived in the country. Any work involving reading, computer screens, noise, or bright light would not be possible, even if she were not in extreme pain at the time. She could not talk to anyone and her body did not function the way it used to. She also could not focus or concentrate. She concluded by stating that she was ashamed to be asking for disability benefits but was nonetheless thankful that it was available as an option. She was going to see more doctors and would provide their documentation once she attended.

SUBMISSIONS

[31] The Appellant did not make any submissions at the hearing, as she did not attend it. However, in the past, she submitted that she qualifies for a disability pension because:

- a) She has extreme migraines and cannot think, read, look at a screen, drive, talk to anyone, or function the way she used to;

- b) She does not know how she could hold any kind of job: in addition to being unreliable, her health would decline as any kind of activity (even a family dinner) results in extreme exhaustion the next day;
- c) Her condition has been complicated by Lyme disease and other infectious diseases, as well as the treatments necessary to fight those diseases; and
- d) She has done everything in her power to get better, including the expensive and self-directed pursuit of specialist medical treatment in the United States.

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

- a) The medical evidence does not show any serious pathology of impairment that would leave her disabled and unemployable in all occupations indefinitely: in fact, steady improvement has been noted by various assessors and the Appellant herself;
- b) While she may not be able to perform her usual job due to her medical condition, she has not attempted to return to any alternate, lighter or sedentary work;
- c) She takes no headache medication and has not been evaluated by any neurology, psychiatry, pain management or physiatry specialists, nor has she undergone any formal cognitive testing or a functional capacity evaluation; and
- d) Although a diagnosis of Lyme disease has interfered with her progress, this is temporary as resolution is expected in the short term with antibiotics.

ANALYSIS

Test for a Disability Pension

[33] The Appellant must prove on a balance of probabilities that she was disabled as defined in the CPP on or before the end of the MQP.

[34] 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 MQP.

[35] 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.

Preliminary Discussion of Severity

[36] 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. In this case, the Appellant is very young, well-educated, speaks English fluently, has worked in a demanding high-pressure role, and has participated extensively in leisure and athletic pursuits. Before considering her symptoms and limitations, she would appear to be well positioned for a long career of substantially gainful employment.

[37] The Tribunal entirely accepts that the Appellant was a very active and energetic person before her series of concussions. She derived considerable satisfaction and worth from both her work and leisure activities. The Tribunal also accepts that, up to at least October 19, 2015, she remained driven to improve her condition and appeared to be doing everything possible within her limitations. Indeed, the Appellant's pursuit of multiple treatments in the United States demonstrated a remarkable resolve to get better. The Tribunal also accepts that the Appellant would not have been able to perform her paramedic job at any point between December 21, 2012 and October 19, 2015.

[38] However, CPP disability benefits are premised on not being regularly able to pursue any substantially gainful occupation. Being unable to pursue one's previous job is not determinative. The Appellant's own evidence up to October 19, 2015 is supportive of such a

disability. It is less clear that her medical providers believed this to be true: their focus was on her paramedic job or, in other cases, they were unclear whether their conclusions about being unable to work applied to any substantially gainful occupation. This makes a conclusion about severity somewhat difficult to reach.

[39] Even more important, however, is the fact that there has been no objective medical documentation since Dr. McShane's September 15, 2015 letter and no evidence whatsoever since the Appellant's October 19, 2015 letter. Furthermore, Dr. McShane's letter appears to be concerned almost entirely with medical conditions flowing from the tick bite earlier that year. Dr. McShane's list of diagnoses does not even mention the Appellant's concussion. The Appellant indicated on more than one occasion that additional documentation was forthcoming, but no further documentation was ever submitted to the Tribunal.

[40] The Tribunal would need to find that a severe disability existed on or before December 31, 2016 and continued through the hearing date. It would be challenging to conclude that the Appellant's symptoms continued to disable her for a period of nearly two years after the last documentary evidence. As she did not attend the hearing, there is not even any recent oral evidence upon which the Tribunal could rely. While the Appellant may well have been severely disabled by October 19, 2015, the Tribunal is less confident that this would have continued through to the hearing date.

[41] However, it is not strictly necessary for the Tribunal to reach a conclusion on severity. As the CPP test for disability has two components, the Tribunal does not need to make a finding on severity if it finds that the Appellant's disability is not prolonged.

Is the Appellant's Disability Prolonged?

[42] A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. However, there is no suggestion that the Appellant's conditions are likely to result in her death. Her disability would therefore only be prolonged if it is likely to be long continued and of indefinite duration.

[43] Until she acquired Lyme disease, the Appellant's recovery from her multiple concussions was consistently progressing. References to improvement during this period are

frequent: Dr. Clayden's letter of October 18, 2013, Dr. Diana Albertin's letter of November 4, 2014, the Respondent's December 2, 2014 telephone call to the Appellant, Dr. Bauman's January 17, 2015 letter, the Appellant's January 19, 2015 letter, and Dr. Bauman's February 16, 2015 letter all indicate that the Appellant was improving. Furthermore, Dr. Bauman reported that her March 2015 visit to Carrick saw her make improvements in light sensitivity and handling social settings: she started to feel more like her old self. From 2013 until early 2015, only Dr. Araghi (on January 30, 2014) suggested that there had been only minimal improvement. Given the Appellant's own endorsement of improvement, the Tribunal finds it likely that her condition continued to slowly improve until approximately May 2015 and may even have begun to improve more significantly in March 2015.

[44] There is also evidence that the Appellant's gradual recovery was considerably set back by the tick bite in the spring of 2015. Dr. Bauman said on June 8, 2015 that she was improving overall but had been feeling an increase in symptoms because of Lyme disease and other co-existing infections. The Appellant told Dr. Qureshi on June 9, 2015 that her overall concussion situation had been improving but she had new and significant symptoms since the tick bite.

[45] Dr. Bauman's July 19, 2015 letter noted additional improvements to the Appellant's headaches, fogginess, socializing, and activities of daily living. Although the improvements were small and slow, they were still described as "promising". Turning to the tick bite complications, Dr. Bauman affirmed that it had caused subjective and objective regression in her concussion symptoms. However, Dr. Bauman believed that, once the infection had been managed, the Appellant would return to her previous level of concussion recovery and hopefully continue a slow and positive recovery. The Respondent's July 22, 2015 call to Dr. Bauman confirmed that there had been improvement and the Appellant could return to rehabilitation once the infection was gone. Once cleared, she could embark on a progressive return-to-work plan.

[46] The July 19, 2015 letter from Dr. Bauman is very important. Dr. Bauman had treated the Appellant for a considerable period of time and specialized in concussion treatment: of the various professionals who had treated the Appellant, Dr. Bauman may well have been the best-positioned to assess her progress and prognosis. The Tribunal accords considerable weight to Dr. Bauman's evidence and accepts that the Appellant's gradual concussion recovery would

resume once the infection had resolved and that a gradual return to work would eventually be forthcoming. All of this was further affirmed in a July 22, 2015 telephone call with Dr. Bauman. This evidence, together with her prior gradual improvement, does not suggest that the Appellant's disability would be long continued and of indefinite duration.

[47] There were only two subsequent pieces of objective medical documentation. Just one week later, Dr. Araghi said that the Appellant failed to respond completely and never really reached her baseline level of functioning. However, for CPP purposes, a failure to return to a baseline level of functioning is not determinative: a claimant is only entitled to CPP disability benefits if she is incapable regularly of pursuing a substantially gainful occupation. While the possibility of chronic Lyme disease was also raised by Dr. Araghi, there is no other objective evidence to support a diagnosis of chronic Lyme disease. The Tribunal finds that Dr. Araghi's letter does not bring Dr. Bauman's prognosis into serious question.

[48] The last medical evidence is Dr. McShane's letter of September 15, 2015. Dr. McShane's specialty is unknown, although her diagnoses suggest that she was completely focused on the Appellant's infection rather than her concussion symptoms. This was also only an initial consultation and Dr. McShane made no prognostic statements for either the concussion or infection symptoms. The Tribunal finds that Dr. McShane's letter does not bring Dr. Bauman's prognosis into question either.

[49] Finally, we are left with the Appellant's lengthy letter of October 19, 2015. This letter also focuses on the recent intensification of symptoms following the tick bite earlier in the year, as well as the significant side effects from the associated treatment. She said her health had been declining since May and a recent small bump to the head also aggravated all of her concussion symptoms again. In the absence of any recent documentation or any oral evidence from her, the Tribunal finds that a significant part of her October 19, 2015 condition was likely attributable to a temporary spike in symptomatology from the tick bite and associated infection. On a balance of probabilities, the Appellant's condition would likely have returned to its March 2015 level and gradually improved further once the infection was successfully treated.

[50] The burden of proof in this matter is on the Appellant. Given the likely future improvement from her March 2015 condition, which already saw her starting to feel like her old

self again, the Tribunal is not persuaded that any severe disability suffered by the Appellant would have been long continued and of indefinite duration. Accordingly, the Tribunal finds that the Appellant's disability is not prolonged and she cannot succeed in her appeal.

[51] The Tribunal acknowledges that some evidence, particularly from Dr. Araghi, is supportive of a severe disability. However, the Appellant's improvements (especially in early 2015) make it impossible to reasonably conclude on a balance of probabilities that any disability would also have been prolonged. The most recent objective evidence in this matter was prepared only about four months after Lyme disease first became apparent. In fact, the most recent evidence of any kind was prepared only about five months after the appearance of Lyme disease. Given Dr. Bauman's evidence from July 2015 about the likelihood of ongoing improvement after resolution of the infection, other 2015 evidence is simply not persuasive enough to support a "prolonged" finding in July of 2017. Given this finding, it is also not necessary to make a finding on whether the Appellant's disability was severe.

[52] The Tribunal also acknowledges the Appellant's extensive submissions: it considered the submissions listed above as well as the many other submissions found in her letters of January 19 and October 19, 2015. While some of those have already been explicitly addressed by the above analysis, the remainder of those submissions ultimately do not persuade the Tribunal because of the lack of evidence since 2015. Given the significant and likely temporary spike in symptomatology after the tick bite, the Tribunal simply cannot rely heavily on evidence and submissions made at that time without more recent corroborating evidence. Similarly, the relevance of submissions and evidence from January 2015 is affected by subsequent evidence of improvement.

CONCLUSION

[53] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security