



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. C. v. Minister of Employment and Social Development*, 2017 SSTGDIS 106

Tribunal File Number: GP-16-2434

BETWEEN:

A. C.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: George Tsakalis

HEARD ON: May 9, 2017

DATE OF DECISION: August 4, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on November 19, 2015. The Appellant claimed that he was disabled because of depression and cancer. 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 to be December 31, 2008.

[3] The appeal was heard by teleconference for the following reasons:

- The issues under appeal are not complex.
- There are gaps in the information in the file and/or a need for clarification.
- 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 Appellant was the only party who attended the hearing.

[5] The Tribunal has decided that the Appellant is eligible for a CPP disability pension for the reasons set out below.

PRELIMINARY ISSUES

[6] The Appeal of this matter proceeded on May 9, 2017. It appeared that the clinical notes and records of the Appellant's family physician, Dr. A. Friesner would assist the Tribunal in

determining the issue of whether the Appellant has a severe and prolonged disability as defined in paragraph 42(2)(a) of the CPP.

[7] The Appellant advised at his hearing that he was treated by Dr. Sam Ozersky, Psychiatrist prior to his MQP date of December 31, 2008. He attempted to obtain Dr. Ozersky's records, but he was advised by Dr. Ozersky's office that they did not have any records available. The self-represented Appellant did not check to see if Dr. Friesner had any of Dr. Ozersky's records.

[8] The Appellant agreed to request Dr. Friesner's clinical notes and records and consultation reports as far back as 2005, if they were available. He was under the impression that Dr. Friesner kept his records for as far back as ten years, which would take us back to 2007.

[9] The Tribunal therefore, administratively adjourned the hearing on the following terms:

1. The Appellant shall have until June 23, 2017 to request the clinical notes and records and all consultation reports from Dr. Friesner from 2005 to the present. If Dr. Friesner only has records dating back to 2007, the Appellant shall provide Dr. Friesner's clinical notes and records and consultation reports from 2007 to the present. The Appellant can also make written submissions about Dr. Friesner's clinical notes and consultation reports if he wishes to do so.
2. The Respondent shall have until July 14, 2017 to file additional written submissions relating to the clinical notes and records of Dr. Friesner and consultation reports.
3. The parties in their written submissions can address the issue of whether they wish to have an oral hearing on the issue of Dr. Friesner's clinical notes and records and consultation reports.
4. If the Tribunal determines that no further oral hearing is required, it will deliver its reasons for a decision.

[10] The Tribunal received a copy of Dr. Friesner's clinical notes and records from 2003 to 2017 from the Appellant on June 15, 2017. The Appellant also provided the Tribunal with a copy of a printout of prescription drug claims from his wife's group insurer from 2008 to 2010. The Appellant also provided the Appellant with further written submissions on June 15, 2017.

[11] The Respondent did not make any further submissions to the Tribunal despite being afforded an opportunity to do so by July 14, 2017.

[12] The Tribunal is satisfied that a further oral hearing is not required on the issues arising out of the documentation and written submissions that it received from the Appellant on June 15, 2017. The Tribunal has decided to deliver its reasons for a decision.

EVIDENCE

Age, Education and Work History

[13] The Appellant in his Application for Disability Benefits stated that he was born in 1956. He was born in Malta and arrived in Canada in 1979.

[14] The Appellant indicated in his Notice of Appeal that he used to work at a factory. He stated that he went on sick leave at the factory in January 2005, until the plant closed in May 2005. He did not work again until he started his business in 2009. He earned \$845.18 in net business earnings in 2009, \$2,515.50 in 2010, and \$57.89 in 2011. He stopped working in September 2011 after his diagnosis of mantle cell lymphoma. He did not make much money because he could only handle smaller jobs and could not work continuously because of his depression.

[15] The Appellant's Record of Earnings (ROE) showed earnings above the Year's Basic Exemption from 1980 to 1983 and from 1985 to 2005, but the ROE showed no income whatsoever in any year after 2005.

[16] The Appellant in his Questionnaire for Disability Benefits, which was stamped by the Respondent, on November 19, 2015, stated that he had a Grade 12 education and Home Inspection Certificate from Humber College. He worked from September 2009 to August 2011 as a sole proprietor in a drywall and tile installation business. He also performed general handyman services. He stopped working to undergo cancer treatment that included chemotherapy, radiation and a stem cell transplant.

Medical Condition and Treatment

[17] The Appellant in his Questionnaire for Disability Benefits listed depression and cancer as the illness and impairments that prevented him from working. He had been taking medication for depression since 2004 which worsened after his cancer diagnosis. The Appellant was taking Citalopram, Mylan-Bupropion, Quetiapine, and Lorazepam. He noted that he has undergoing psychiatric treatment and was being checked by Dr. Roger Tiedemann, Oncologist at Princess Margaret Hospital. The Appellant underwent chemotherapy at Princess Margaret Hospital from October to February 2012.

[18] The Appellant's family physician, Dr. A. Friesner completed a Medical Report for Service Canada that was date stamped on November 19, 2015. Dr. Friesner diagnosed the Appellant with mantle cell cancer and depression. The Appellant was being followed by Dr. Tiedemann. The Appellant was noted to have poor spirit, depression and an inability to cope. The Appellant was noted to have a guarded prognosis.

[19] The Appellant's treating psychiatrist, Dr. Jakline Yousef also completed a Medical Report for Service Canada that is date stamped November 19, 2015. She diagnosed the Appellant with a major depressive disorder that was recurrent. She mentioned that the Appellant had lymphoma that was in partial remission. The Appellant was taking Wellbutrin and Citalopram. She noted that the Appellant had a fair response to treatment and she provided him with a good prognosis.

[20] A report dictated on behalf of Dr. Tiedemann on March 13, 2013 indicated that the Appellant was diagnosed in August 2011 with mantle cell lymphoma, stage IV.

[21] Dr. Tiedemann in a report dated August 14, 2014 noted that the Appellant had no symptoms of recurrent lymphoma but he had been experiencing recurrent depression and anxiety. The Appellant was having daily panic attacks. Dr. Tiedemann referred the Appellant to the Psychiatry Service of Princess Margaret Hospital.

[22] Dr. Kimberly Miller, Psychiatrist at Princess Margaret Hospital in a report dated September 10, 2014 stated that the Appellant had been unable to work since his cancer diagnosis in 2011 mostly because of a history of depression. He had his own renovation

business for the past 10 years. The Appellant was having daily panic attacks or episodes of dark thoughts, stress, anxiety and anhedonia. The Appellant had stopped his anti-depressants the previous March. The Appellant had been prescribed Ativan by his family physician and he did not connect well with a community psychiatrist. The Appellant had a long history of depression dating back to the age of 22. She noted that it was unclear when the Appellant's last episode of depression began, but he admitted that he was struggling prior to his cancer diagnosis. The Appellant felt that he coped better than expected through the cancer diagnosis and treatment. He was encouraged by his treatment response and coped by focusing on home renovation projects. The Appellant tolerated chemotherapy but his stem cell transplant took him down. By June 2012, the Appellant became much more depressed. The Appellant had a triplex rental property. The Appellant's medications at that time were Lorazepam and Clonazepam. He had also recently started taking Cipralelex. He had recently gone moose hunting. He noted that he felt overwhelmed. He had a tendency to want to stay in bed in the morning and he felt overwhelmed with a home renovation project which was to finish his upstairs floor. He had no active suicidal ideation. Dr. Miller recommended that the Appellant adjust his medications. She was pleased that the Appellant had been referred to a community psychiatrist.

[23] Dr. Jakline Yousef in a Mental Health Consultation report dated October 23, 2014 noted that the Appellant with his wife and two children. She noted that the Appellant had tried several antidepressants over the previous years including Remeron, Pristiq, Venlafaxine and Cipralelex. The Appellant was diagnosed with stage IV lymphoma in 2011. He received six chemotherapy sessions. He received a stem cell transplant in 2012. He had also been in remission since 2012. Dr. Yousef stated that the Appellant presented with major depressive disorder, recurrent, moderate in severity. There was no safety concern with Appellant. He was being followed by Dr. Miller and attending group therapy as well. Dr. Yousef suggested adding Quetiapine to his Cipralelex, which would enhance his sleep and augment the antidepressant effect of Cipralelex. Since the Appellant was being monitored by Dr. Miller, Dr. Yousef would not see him in follow-up until he finished his program with Dr. Miller at Princess Margaret Hospital. Dr. Yousef was willing to monitor the Appellant down the road if necessary.

[24] A report dictated on behalf of Dr. Tiedemann on November 24, 2014 stated that the Appellant remained in good remission. The Appellant's depression was being managed by Dr. Miller under the Psychosocial Oncology Group at Princess Margaret Hospital.

[25] Dr. Miller in a report dated December 19, 2014 stated that the Appellant reported appreciating that he had "come out of that dark hole". His mood remained stable and he continued to be much more productive and engaged in life. He admitted that he felt more down and anxious a few times a week. He was getting six to seven hours of uninterrupted sleep. He had recently completed a home renovation project, redoing his hard wood floors. He had been ice fishing. Dr. Miller noted that the Appellant's mood was stable and he had no suicidal ideation. The Appellant was to continue with Cipralex plus Clonazepam. Dr. Miller recommended that the Appellant continue to be followed with a community psychiatrist. Dr. Miller was happy to assist the Appellant in the future if anything should change in the future relating to the Appellant's cancer diagnosis which resulted in increased emotional distress.

[26] Dr. Tiedemann in a report dated March 4, 2015 referenced the Appellant's recurrent depression and anxiety which was then being actively managed and significantly improved. The Appellant was being followed by a community psychiatrist. The Appellant remained in clinical remission from his lymphoma.

[27] Dr. Tiedemann in a report dated June 9, 2015 stated that the Appellant continued to do well from a lymphoma perspective. He referenced the Appellant's previous recurrent depression and anxiety which was noted to be significantly improved.

[28] Dr. Tiedemann in report dated September 9, 2015 noted that the Appellant continued to do well and remained in a good remission from his lymphoma. He mentioned that the Appellant had previous recurrent depression and anxiety that was significantly improved.

Work Capacity

[29] The Appellant in his Questionnaire for Disability Benefits noted that he tired easily and had a weakened immune system. He reported restrictions with memory, concentration and sleeping. He did not have physical impairments.

[30] Dr. Friesner in his Medical Report to Service Canada date stamped on November 19, 2015, opined that the Appellant was not able to work.

[31] The Appellant in correspondence that was date stamped February 10, 2016, indicated that he had been diagnosed with depression before the factory closed in 2005. He had been referred to Dr. Ozersky, Psychiatrist in 2004 by a company doctor. The Tribunal does not have a copy of Dr. Ozersky's clinical notes and records. He was placed on extended sick leave on three occasions at the factory due to his condition. He was on sick leave for about 8 months before the factory closed. The Appellant, around the time of the factory closure, had been referred to another psychiatrist by his family physician, Dr. Friesner. The Appellant tried different anti-depressants such as Effexor, Remeron and Pristiq. The Appellant stated that it took him about two years to try to work after the factory closed and taking anti-depressant medications. He took an online home inspection course through Humber College with some in class courses. He started a small business in home renovations and handyman services, working mostly for family and friends and earning minimal income. The Appellant was diagnosed with cancer in 2011. The Appellant underwent full body radiation and a bone marrow/stem cell transplant which worsened his depression. He struggled with low energy and a weakened immune system. He still went to Princess Margaret Hospital and saw his oncologist, Dr. Roger Tiedemann every three months. He was referred to Dr. Miller. The Appellant in his February 10, 2016 correspondence stated his depression improved with medication and treatment that he has received from Dr. Mary Elliot, Psychiatrist, Dr. Miller, both from Princess Margaret Hospital and his current psychiatrist, Dr. Jakline Yousef of Humber River Hospital. However, he still cannot work. In addition to depression, he tires easily and has a weakened immune system. He is easily overwhelmed and has difficulty concentrating.

[32] The Appellant at his hearing stated that he worked at the factory for more than 20 years in different capacities, including working in a warehouse and also as a machine operator. He suffered from depression since he was a young man but his condition worsened in around 2002 or 2003. His parents were ill, as well as his aunt who helped raise him. He was upset because they were in Malta, and he could not really assist them. He had other extended leaves of absences from the factory, including a 5 or 6 month period in 2002 or 2003. He would break

down and cry in the washroom or would leave work frequently because of depression while working at factory.

[33] He stated at his hearing that he cannot work on a consistent basis because of his depression. He gets stressed and anxious very easily.

[34] After the factory closed in 2005, the Appellant did not work until 2009. He stated at his hearing that he took a home inspection course at Humber College in about 2005. The program lasted a year. He took online courses and completed the program but he was depressed. He did not bother to obtain a diploma even though he was eligible for one. He joined the Ontario Association of Home Inspectors but stopped paying his dues. He decided not to pursue a career in home inspection because of depression.

[35] He stated at his hearing that he had not worked on a regular basis since 2005. He was under psychiatric care from 2005-2009 and was taking anti-depressants. He was being treated by Dr. Ozersky. Dr. Friesner also prescribed him anti-depressants. He took Effexor and Pristiq. He indicated that he could not work from 2005 to 2009. He would not want to get up in the morning. He had suicidal thoughts but he would not kill himself because of his wife and kids. He felt lonely and useless. He would have sleepless nights and was fatigued. He gave up all of his hobbies but his friends pushed him to try moose hunting on one occasion. He did not enjoy this moose hunting experience. He had to take anti-anxiety medications to get by. The Appellant enjoyed hunting prior to suffering from depression.

[36] The Appellant stated that he was quite handy when he was healthy. He worked on numerous home renovation projects, including finishing the basement. He did the outdoor work and would assist his wife indoor housecleaning. However, he did little around the house from 2005 to his MQP date. He would sometimes drive his kids to school and would burst into tears when he got home.

[37] The Appellant stated that he tried to start a home renovation business in 2009 because he thought work would help him with his depression, but he could not work consistently. He worked few hours. He stated that he used to enjoy doing home renovations when he was healthy and he thought he would try to start a business in this area. The Appellant started a home

renovation business in 2009 that he worked at until 2011. He stated at his hearing that he worked very sporadically. He would get easily overwhelmed. He felt like a loser and would turn down jobs because he was too stressed to complete them. He stated that he did not enjoy this job and was still taking medication to control his depression from 2009 to 2011. His family doctor sent him to a psychiatrist during this time period but he could not establish a connection with this specialist.

[38] The Appellant stated that he suffers from severe depression to this day, and cannot work. He is taking Citalopram, Bupropion, Quetiapine and Lorazepam. He is no longer under Dr. Miller's care, as she deals with cancer patients and his cancer is now in remission. He stated he is still under the care of Dr. Yousef and his cancer is in remission.

Post Hearing Evidence

[39] The Appellant provided the Tribunal with a copy of Dr. Friesner's clinical notes and records from 2003 to 2017 on June 15, 2017, as well as a copy of a prescription print-out from Great West Life from 2008 to 2010. Great West Life was his wife's group health insurer.

[40] The Tribunal notes that the Appellant saw Dr. Friesner on approximately 65 occasions from January 1, 2003 to December 31, 2008. The Appellant saw Dr. Friesner on approximately 25 occasions from January 1, 2009 to the time of his cancer diagnosis in August 2011. He has seen Dr. Friesner on approximately 30 occasions from the date of his cancer diagnosis to the present.

[41] Dr. Friesner's clinical notes and records are largely illegible. In reviewing the clinical notes that are decipherable, the Tribunal notes numerous references to depression. The first clinical note provided that is dated January 27, 2003, states that the Appellant suffered from depression and Dr. Friesner prescribed Effexor. A clinical note dated February 12, 2004, indicates that the Appellant was seeing a doctor provided to him by his then employer. A clinical note dated March 22, 2004, makes further reference to depression and a prescription for Remeron. A clinical note dated December 17, 2004, stated that the factory was closing and the Appellant that nobody "cared anymore." There were at least 10 references to depression that the Tribunal could decipher in 2005, seven in 2006, four in 2007, and five in 2008. The last clinical

note prior to the Appellant's MQP date was dated on October 20, 2008, and it referred to depression. Dr. Friesner's post-MQP clinical notes indicate that the Appellant's problems with depression continued. For example, a clinical note dated March 29, 2010, stated that the Appellant felt helpless. He continued to complain of depression with the last reference to depression that the Tribunal could decipher was on June 1, 2016.

[42] The printout from Great West life showed that the Appellant was taking Clonazepam, Remeron, and Lorazepam in 2008. He continued to take those medications in 2009 and 2010.

SUBMISSIONS

[43] The Appellant submitted that he qualifies for a disability pension because:

- a) He had a good work history prior to leaving going on leave from his factory job in 2005 because of depression. He tried to return to the workforce. He took some home inspection classes, but he did not pursue this career because of his depression. He tried to work in his own home renovation business but never earned any real income.
- b) His cancer diagnosis in 2011 worsened his depression.
- c) He has not been able to work in any real capacity since going on sick leave at the factory in January 2005.

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

- a) The Appellant stopped working in August 2011 after his MQP date because of depression and cancer
- b) While the Appellant did not post any earnings or contributions after 2005, it remains that he was the sole owner of his own drywall and tile installation business from September 2009 to August 2011, the date of his diagnosis and claim date for disability. Owning a business in which there are no other employees is indicative of a claimant having capacity to work. The Appellant stopped working not because of pre-existing depression, but because of his post-MQP cancer diagnosis.

- c) The Appellant has failed to establish a severe and prolonged disability as of December 31, 2008. It is irrelevant that the Appellant's condition deteriorated after his MQP date.

ANALYSIS

Test for a Disability Pension

[45] The Appellant must prove on a balance of probabilities, or that it is more likely than not, that he was disabled as defined in the CPP on or before the end of the MQP.

[46] 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.

[47] 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.

Severe

[48] The Tribunal finds that the Appellant had a severe disability that rendered him incapable regularly of pursuing any substantially gainful occupation on or before his MQP date of December 31, 2008.

[49] 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.

[50] In applying Villani to the facts of this appeal, the Tribunal finds that the Appellant is incapable regularly of pursuing any substantially gainful employment in a “real world” context. The Appellant was 52 years old at the time of his MQP. He had some post-secondary education in that he took a home inspection course at Humber College. The bulk of his pre-MQP history consisted of manual factory work. Although English is his second language, the Appellant had a good understanding of English. Despite having knowledge of the English language, and some post-secondary education, the Tribunal is satisfied that the Appellant cannot work in a substantially gainful capacity, and has not been able to do so since going on sick leave in January 2005. The Appellant has had significant depression for many years that impacts his memory and concentration, as well as sleep. The Appellant’s depression overwhelms him. It impacts his desire to work and complete any activity of daily living. He does not handle stress well and suffers from anxiety. His depression has rendered him incapable of maintaining work on a consistent and predictable basis.

[51] The Appellant in his Questionnaire for Disability Benefits stated that he stopped working at his business in August 2011 because of depression and cancer. The Respondent in its pre-hearing submissions noted that this event took place after the Appellant’s MQP date, and as such, the Appellant failed to establish a severe disability on or before December 31, 2008. The Tribunal agrees with the Respondent that the cancer diagnosis in 2011 was a post-MQP event, and the Appellant does not have a severe disability because of his cancer, which fortunately, is in remission. However, the depression is a different. The Appellant’s depression that rendered him incapable regularly of pursuing any substantially gainful occupation was not something that took place after his MQP. The Appellant was clear at his hearing that he has suffered from depression for many years, and he stated in his Questionnaire for Disability Benefits that he had been treated for depression since 2004, which worsened after this 2011 cancer diagnosis.

[52] The Appellant’s hearing evidence about work incapacity on or before his MQP date is supported by the medical evidence, and in particular, by the clinical notes and records of Dr. Friesen. The Appellant saw Dr. Friesen on many occasions prior to his MQP date. Dr. Friesen prescribed Effexor on January 28, 2003. Dr. Friesen referenced the Appellant seeing a company doctor, which corroborates the Appellant’s hearing evidence. The factory closure is noted. The mention of depression in the clinical notes and records was consistent and frequent up to the

MQP date. The printout of prescription drug claims from Great West Life from 2008 to 2010 confirms was taking Clonazepam, Remeron, and Lorazepam right up to his MQP date. It is unfortunate that the Appellant was not able to obtain the reports of his treating pre-MQP psychiatrist, Dr. Ozersky. However, Dr. Friesen's clinical notes confirm that the Appellant suffered from serious depression prior to his MQP date. His current psychiatrist, Dr. Yousef provided a Medical Report to the Respondent dated November 19, 2015, which confirmed that the Appellant had a good prognosis. However, the Appellant is still being treated by Dr. Yousef. He also still took Citalopram, Quetiapine, and Bupropion for depression at the time of his hearing, as well as Lorazepam for anxiety.

[53] Where there is evidence of work capacity, a person must show that effort at obtaining and maintaining employment has been unsuccessful by reason of the person's health condition (*Inclima v. Canada (A.G.)*, 2003 FCA 117). The Tribunal finds that the Appellant has not had the capacity to perform any type of substantially gainfully work in any occupation since going on sick leave because of depression in January 2005.

[54] The Appellant ran his own drywall and tile instillation business from 2009 to 2011. He did not have any employees. He worked on his own. He thought he would like to earn a living in home renovations because he enjoyed doing them as a hobby prior to his depression. However, he worked minimal hours. He would turn jobs down because of depression. He would go for three weeks at a time where he could not work at all because of depression prior to his 2011 cancer diagnosis. His ROE showed no income whatsoever after 2005. He stated at his hearing that he mostly worked for family and friends. In his Notice of Appeal and in his hearing testimony, the Appellant stated that he earned \$845.18 in net business earnings in 2009, \$2,515.50 in 2010, and \$57.89 in 2011. The Tribunal finds that earning such a nominal income over a three year period does not constitute someone being capable regularly of pursuing a substantially gainful occupation. The Tribunal therefore rejects the submissions of the Respondent that the Appellant had capacity to work after his MQP based on his ownership of a business.

[55] The Appellant was a credible witness. He was courteous, but a sad witness. It was evidence that he was uncomfortable speaking about his longstanding mental health issues that

have had such a tremendous impact on his work life and family life. The Tribunal accepts his evidence that his depression limited his activities of daily living. There is some evidence after his MQP that he tried some home renovation projects, and made an effort at work, but there is no evidence about an ability to work on a predictable and regular, and substantially gainful basis. Some of his treating physicians make comments about his depression improving. The Tribunal is satisfied that the Appellant's depression reached its peak after his cancer diagnosis and did improve, but it has not improved to the point where he can return to work in a substantially gainful occupation.

[56] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether his or her disability prevents him or her from earning a living. The determination of the severity of the disability is not premised upon a person's inability to perform his or her regular job, but rather on his or her inability to perform any work (*Klabouch v. Canada (Social Development)*, 2008 FCA 33). The Tribunal is satisfied that the Appellant is unable to perform any work. In addition, to his failed work as a business owner, the Appellant attempted to take a home inspection course, but he did not pursue a career in home inspection because of his depression.

[57] A claimant's condition is to be assessed in its totality. All of the possible impairments are to be considered, not just the biggest impairments or the main impairment (*Bungay v. Canada (Attorney General)*, 2011 FCA 47). The Tribunal finds that the Appellant's depression is severe. It impacts his desire and ability to work, and also impacts his memory and concentration. His impairments are such that he was incapable regularly or pursuing any substantially gainful occupation on or before December 31, 2008. Dr. Friesen's clinical notes and records confirm that the Appellant's depression has been ongoing and continuous since 2003. This is not a situation of the Appellant recovering from his depression and returning to work in 2009 before cancer overwhelmed him. The depression has always been there, and his effort to work in his own business was not a substantially gainful occupation.

[58] The Tribunal finds that the Appellant has established on a balance of probabilities that he has a severe disability commencing in January 2005, when he went on sick leave at the factory.

[59] The Tribunal in reaching its decision notes that the Respondent did not respond to the Appellant's written submissions of June 15, 2017, and did not provide any comment upon the additional documentation provided by the Appellant despite being afforded an opportunity to do so by July 14, 2017.

Prolonged

[60] The Tribunal is satisfied that the Appellant's condition is likely to be long continued and of indefinite direction.

[61] The Appellant continues to take medication for depression and anxiety, including Citalopram, Quetiapine, Bupropion, and Lorazepam.

[62] The Appellant also continues to be followed by Dr. Yousef, Psychiatrist for depression.

CONCLUSION

[63] The Tribunal finds that the Appellant had a severe and prolonged disability in January 2005, when he went on sick leave at the factory, as explained above. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) of the CPP). The application was received in November 2015; therefore the Appellant is deemed disabled in August 2014. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of December 2014.

[64] The appeal is allowed.

George Tsakalis
Member, General Division - Income Security