



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. N. v. Minister of Employment and Social Development*, 2017 SSTGDIS 115

Tribunal File Number: GP-15-3774

BETWEEN:

C. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: George Tsakalis

HEARD ON: August 15, 2017

DATE OF DECISION: August 18, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on March 17, 2015. The Appellant claimed that she was disabled because of mastocytosis, depression, migraine headaches, irritable bowel syndrome, high blood pressure, and chronic neck and back pain. 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, 2015.

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

- The Appellant will be the only party attending the hearing;
- There are gaps in the information in the file and/or a need for clarification; and
- 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 person 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.

EVIDENCE

Background, Education and Work Experience

[6] The Appellant was born in 1962. She stated in her Questionnaire for Disability Benefits that she has a Grade 12 education. She also obtained a secretarial diploma at the community

college level. She stopped working as a cashier at a grocery store in March 2014 because she was having trouble with odors in the laundry and bread aisle. The Appellant stated in her Questionnaire for Disability Benefits that she started her own business as a marriage commissioner in May 2014, but she stopped working in this business in December 2014. She listed the reasons for her stopping work in the business as extreme fatigue, and an inability to stand for the length of a wedding, which she indicated was 20 minutes long. She also had problem with odors in the halls, flowers, perfumes and colognes, and body odor. She indicated that she still owns the business, but she could not perform weddings. The Appellant stated that she worked at a community newspaper from September 2009 to July 2010. She also worked at a gas station from March 2011 to June 2013.

[7] The Appellant's Record of Earnings showed earnings above the Year's Basic Exemption from 2005 to 2013, but zero earnings in all years after 2014.

[8] In addition to the jobs outlined in the Questionnaire for Disability Benefits, the Records of Employment contained in the file before the Tribunal indicates that the Appellant worked at a gas station from March 2005 to August 2005 before quitting. She worked at hotel from August 2005 to June 2006. She worked at a motel from August 2006 to February 2007 until she was dismissed. The Appellant also worked at a clothing store from July 2007 to June 2008, before she quit. She then worked in a retail store from July to August 2008 before quitting. She worked at a restaurant from June 2009 to August 2009 before she was fired.

[9] The Appellant testified that she had previous experience working as a cashier, a chamber maid at hotel, a gas station attendant, and in customer service at a retail setting. The Appellant testified at her hearing that writing was her passion. She wrote for a community newspaper on a full-time basis. She also had a short story published in an anthology. She has a blog, and runs a Facebook page dedicated to mastocytosis. She also testified that she is still a marriage commissioner, but works sporadically performing one wedding service every 2 weeks during the peak wedding season. She is paid \$250.00 per wedding. She spends an average of 4 to 5 hours preparing for and performing weddings. She earns a nominal income as a wedding commissioner. She has made \$1,600.00 thus far in 2017.

Medical and Treatment Evidence

[10] The Appellant's family physician, Dr. Allison Theman drafted a Medical Report for Service Canada that was date stamped on May 17, 2015. Dr. Theman diagnosed the Appellant with mastocytosis, migraine headaches, irritable bowel syndrome, hypertension, depression, and obesity. She stated that the Appellant might experience a reaction to a scent or to food. Unfortunately, the Appellant kept reacting to new things. The Appellant might experience facial and mouth swelling or have cramping abdominal pain and diarrhea despite taking daily anti-histamines. Dr. Theman stated that the Appellant suffered from a constant and itchy pinpoint rash on her thighs, arms, and trunk. The Appellant was sensitive to many odors where she would have sudden swelling of her lips and tongue. The Appellant would cough and have difficulty breathing, or she would have abdominal pain, bloating and cramping. The Appellant was taking Symbicort, Reactine, Cromolyn, Benadryl, Epipen if needed, Atarox, and Nasonex. Dr. Theman hoped that the Appellant's condition would be controllable with various medications.

[11] A lumbar spine x-ray taken on November 17, 2011, showed very minimal anterolisthesis of L4 on L5, which was likely secondary to degenerative changes. Mild disc space narrowing was noted at L3-L4 and L4-L5 with small anterior osteophytes at multiple other levels.

[12] Dr. Melody Cheung-Lee, Dermatologist diagnosed the Appellant with mastocytosis in a consultation report dated July 24, 2013. The Appellant was then relatively healthy other than arthritis in her back for which she took Naproxen. Dr. Cheung-Lee described mastocytosis as a potentially serious condition, and she recommended careful monitoring of this condition. Dr. Cheung-Lee attached medical literature which stated that patients with mastocytosis "can be exquisitely sensitive to even small amounts of chemicals."

[13] Dr. Cheung-Lee in a consultation report dated September 11, 2014, stated that the Appellant felt that her mastocytosis symptoms were worsening. The Appellant had an increased number of cutaneous lesions, as well as increased allergic reactions to smoke, fragrances, and certain fumes. The Appellant reported respiratory congestion, shortness of breath, and frequent loose stools and diarrhea. She referred the Appellant to a hematologist as a precaution.

[14] Dr. Kyriaki Sideri, Allergist/Immunologist in a consultation report dated November 7, 2014, stated that the Appellant had been suffering from maculopapular rash on her lower extremities for about four years. The Appellant had been diagnosed with cutaneous mastocytosis in July 2013 after she underwent a skin biopsy. The Appellant presented with severe itching on her skin when she wore tight clothing. The Appellant had undergone physiotherapy after a car accident. The Appellant reported severe abdominal pain and diarrhea associated with the consumption of specific foods. Dr. Sideri opined that the Appellant had systemic mastocytosis. Dr. Sideri stated that individuals with indolent systemic mastocytosis have normal life expectancies and receive treatment for symptomatic relief. Mastocytosis is associated with an increased risk of osteoporosis. Dr. Sideri prescribed the Appellant sodium cromoglycate to treat her symptoms. She also suggested that the Appellant try a second generation antihistamine, and recommended that the Appellant always carry an EpiPen with her. She also advised the Appellant to avoid foods that cause her symptoms.

[15] Dr. Minakshi Taparia, Hematologist in a consultation report dated December 2, 2014, noted that the Appellant had a previous medical history of anxiety, depression, migraines, hypertension and gastroesophageal reflux disease (GERD). Dr. Taparia noted that the Appellant had allergic side effects to a number of different foods and medications. She noted that the Appellant had a skin biopsy in July 2013 that was confirmed to be mastocytosis. Dr. Taparia opined that it was likely that the Appellant had systemic mastocytosis, and she arranged another biopsy to confirm this diagnosis. She referred the Appellant to a gastroenterologist because of her intolerance to different foods.

[16] A bone densitometry baseline study taken on January 15, 2015, showed that the Appellant had osteopenia.

[17] Dr. J.H. Jhamandas, Neurologist in a consultation report dated March 18, 2015, stated that the Appellant was left hand dominant and had suffering from bilateral hand numbness after a July 2014 car accident. The Appellant had physiotherapy after the accident, but she had dizziness, nausea and difficulty walking. The Appellant underwent electrodiagnostic studies which abnormalities consistent with a mild median neuropathy, worse on the left than the right.

The Appellant was diagnosed with a left-sided De Quervain's tenosynovitis, which Dr. Jhamandas recommended treatment with a steroid injection or a topical anti-inflammatory cream.

[18] Dr. L.A. Dieleman, Gastroenterologist in a consultation report dated June 17, 2015, stated that the Appellant underwent a gastroscopy and colonoscopy which were normal. However, the Appellant had gastritis and her medications were adjusted. Biopsies showed nodular lymphoid hyperplasia. Dr. Dieleman noted that nodular lymphoid hyperplasia generally presented as an asymptomatic disease, but it may cause gastrointestinal symptoms such as abdominal pain, chronic diarrhea, bleeding or intestinal obstruction. The Appellant was noted to have anxiety, and she was going to discuss a psychiatric referral to her family physician.

[19] A bone scan dated January 15, 2016, noted that the Appellant had a history of an L1 and L3 fracture, and the Appellant still had marked pain and decreased spinal mobility. The bone scan showed subacute L1 and L3 compression fractures.

[20] A bone densitometry test taken on February 16, 2016, indicated that the Appellant's fracture risk was low based only on bone density data, but this had been changed to a moderate risk because of a history of fragility fractures.

[21] The Appellant in correspondence to the Tribunal dated November 24, 2016, stated that she had been diagnosed with fibromyalgia, osteopenia/osteoporosis, multiple chemical sensitivities, and d'Quevain's tenosynovitis in her left and dominant hand.

[22] Dr. Nagmeh Toofaninejad, Psychiatrist in a consultation report dated January 20, 2017, stated that the Appellant worked as marriage commissioner. Dr. Toofaninejad diagnosed the Appellant depressive disorder following a diagnosis of mastocytosis, anxiety disorder and narcissistic personality disorder. The Appellant did not want to take any extra medication, but was open to the idea of increasing her dosage of Pristiq.

[23] Dr. Skeith, Rheumatologist in a consultation report dated February 14, 2017, stated that the Appellant was injured in a high-speed motor vehicle accident in July 2014. The Appellant did not sustain fractures in the motor vehicle accident, but developed neck, shoulder, hand, low back, and left hip pain that had continued. The Appellant also had a compression fracture of L1-L3.

Dr. Skeith diagnosed the Appellant with post-traumatic fibromyalgia. He suggested regular exercise.

[24] The Appellant testified that she was diagnosed with mastocytosis in June 2013, after undergoing a skin biopsy. She stated that mastocytosis has a pain element, an allergy element, and a cognitive element. The Appellant stated that she suffered from headaches, neck pain that radiated into her shoulder, pain down her spine, hip, and numbness in her feet and hands on or before December 31, 2015. The pain was always with her. The only that varied was the severity of the pain. She cannot predict what her pain levels were on any given day prior to her MQP date. Her health has worsened over time. The allergic element of her mastocytosis led to food allergies prior to her MQP date. Her stomach cramped up, and she had serious chemical sensitivity to odors, perfume, and deodorants prior to her MQP date. The Appellant has been treated by Dr. Dieleman for her stomach ailments, which are related to mastocytosis. She suffered from diarrhea, abdominal pain, and constipation prior to her MQP, and continues to suffer from these ailments. She began wearing a surgical mask to alleviate her allergic reactions in 2014 or 2015. The Appellant also suffers from cognitive impairments because of mastocytosis. She had problems with memory and concentration prior to her MQP date. Her health has worsened with time, and she is currently on approximately 30 different medications. She reported that her cutaneous mastocytosis will never go away. She has severe rashes on her feet, calves, thighs, torso, and arms.

[25] The Appellant had a history of depression prior to her MQP date. She left a job at a grocery store in 2006 because of her mother and mother in law passed away. Dr. Theman prescribed her Pristiq for depression. The Appellant reported passive suicidal thoughts prior to her MQP. The Appellant is not comfortable with psychiatric treatment because of the negative experiences involving family members who have been in psychiatric care. She denied that she had a narcissistic personality disorder. She testified that she has suffered from anxiety all her life.

[26] The Appellant testified at her hearing that she was injured in a July 2014 car accident. She was taken to the hospital, but did not sustain fractures. She began physiotherapy, but she experienced migraines from the use a Tens unit. The Appellant slipped and fell on her tailbone on October 5, 2015, and sustained a fracture to her lumbar spine.

Ability to Function at Work and in Activities of Daily Living

[27] The Appellant stated in her Questionnaire for Disability Benefits that the illness and impairments that prevent her from working were mastocytosis, depression, migraines, irritable bowel syndrome, high blood pressure, and chronic back and neck pain. She stated that she could not sit or stand for more than 20 minutes at a time. She reported having tremendous reactions to odors, which cause respiratory distress, nausea, vomiting, dizziness, light-headedness, and blurred vision. Her mastocytosis can be triggered by anything on any given day, and can give her stomach problems. She reported being a member of the local legion, but having to leave events because of a mixture of odor from foods and body products. She reported difficulties with playing and lifting her grandchildren. She reported problems with her bowel and bladder habits. When she has a reaction, she can urinate up to every 10 minutes.

[28] The Appellant saw Dr. Jeremy Beach, Occupational and Environment Medicine on May 28, 2014. The Appellant was seen for her mastocytosis, severe scent sensitivity, and concerns about disability and work. The Appellant was on medical leave from her cashier position at a grocery store. The Appellant had symptoms arising from fragrances, body odors, cigarette smoke, marijuana smoke, and laundry detergents that included difficulty breathing, coughing, runny nose, difficulty concentrating, and chest and back pain that radiated into her arms. The Appellant also experienced diarrhea and abdominal pain, and she had back pain which allowed her to stand or sit for one hour before taking a rest. The Appellant was then in the process of training to become a marriage commissioner. The Appellant was noted to have both a secretarial and floral design diploma. This report stated that mastocytosis typically causes an increase in sensitivity to a range of environmental triggers with the mast cells degranulating in unpredictable ways. Dr. Beach opined that the Appellant could not work as a cashier at a grocery store due to her scent sensitivity, standing and sitting restrictions, and frequent bouts of diarrhea. The Appellant's planned work as a marriage commissioner would allow her to control her environment more closely, and the Appellant felt this would help control her symptoms. Dr. Beach though that this was probably correct. Dr. Beach recommended a pulmonary function test to determine if the Appellant had asthma.

[29] The Appellant in correspondence to the Respondent dated July 9, 2015, stated that mastocytosis is rare disease. She had also been diagnosed with fibromyalgia. She had suffered from irritable bowel syndrome and chronic migraines for many years. She stated that triggers and reactions were fluid and unpredictable. She stated that full-time employment was impossible because of fatigue and constant pain. She could not stand or walk for more than five to 10 minutes without her back, hips and legs going into painful spasms. She cannot predict which days she will wake up with a migraine. She stated that her work history is in customer service, and she cannot predict who will come near her and who has worn perform or scented products. She had started to wear a mask to avoid smells and odors that trigger reaction. She also cannot predict her reaction to the foods that she eats.

[30] Dr. Theman in a report to the Tribunal dated March 13, 2017, stated that the Appellant had post-traumatic myofascial pain syndrome that was confirmed by Dr. Skeith. The Appellant also suffered from depression and reduced cognitive abilities, which were not present prior to a major motor vehicle accident on July 18, 2014. The Appellant was using many medications to keep her systemic mastocytosis under control, but these medications had a sedating impact on the Appellant.

[31] Dr. Taparia in a consultation report dated May 4, 2017, stated that a cytogenetic abnormality was seen on the bone marrow. The Appellant was noted to be taking 28 different medications and vitamins. Her medications included Pristiq, Ativan, Butrans patch, Topiramate, Tramacet, Clonazepam, and Maxalt, in addition to numerous allergy medications. The Appellant was noted to have approximately 30 different allergies. She also suffered a lumbar spine compression fracture in October 2015, after a fall. Dr. Taparia stated that the Appellant's mastocytosis was significant, and was causing the Appellant problems with body aches and pains. Dr. Taparia stated that the Appellant had osteoporosis. Dr. Taparia noted that the Appellant had problems with brain fog and cognitive symptoms, which impacted her memory. The Appellant had ongoing issues with short-term memory as soon as she was exposed to certain chemicals, perfumes or other substances. The Appellant found it difficult to work with people because of reactions to strong perfumes or chemicals. Dr. Taparia suggested putting the Appellant on interferon to decrease the mast cell burden and hopefully improve some of her symptoms, but the Appellant was not keen to try interferon or chemotherapy at that time. Dr.

Taparia provided the Appellant with a prescription for Cromolyn and advised her to take a higher dose.

[32] The Appellant testified that she still works as a marriage commissioner, but her hours of work and income are minimal. Walking and standing restrictions are a significant impairment to her working more hours as a marriage commissioner. The Appellant stated that she enjoys performing weddings. She stated that becoming a marriage commissioner was not a strenuous process. It involved filling out an application explaining why she wanted to be a commissioner, and meeting requirements such as being able to work well with public. When she began working as a wedding commissioner in May 2014, she was performing two to three weddings a weekend. However, this was too much for the Appellant. It would take her days to recover after performing this many weddings. She stopped performing weddings for an eight month period starting in later 2014. She resumed performing weddings, but she only performs one wedding every two weekends during peak wedding season. She stated that standing in one place puts pressure on her hips. She also has extremely sensitive reactions to odors emanating from flowers, perfumes, and deodorant. The Appellant testified that she loves performing weddings, but can only work on a very casual basis.

[33] The Appellant testified that she became incapable of working on a regular basis when she left her cashier job at the grocery store in March 2014. The Appellant testified that she began working at the grocery store in July 2013. She was working three to four, eight hour shifts per week. However, this job was a struggle. The Appellant stated that she was diagnosed with left hip osteoarthritis in 2002, which impacted her standing tolerance. The Appellant stated that she was grateful when her shift was completed because of her pain levels. She used orthotics which helped, but she began having severe allergies because of exposed to odors from so many customers. She requested that she be moved to a different shift where she would be exposed to fewer customers, but her request was denied. She called in sick on several occasions, but her absences were not tolerated. The Appellant took a medical leave in March 2014, and never returned to the grocery store. She was terminated from her employment later that year.

[34] The Appellant stated that when her eyes would water, her head and ears would clog, and her nose would run when she had an allergic reaction. She would sneeze, cough, stutter, and lose

her train of thought. She would fail to remember things. The Appellant has allergies prior to her mastocytosis diagnosis, and working at the grocery store. She worked at a gas station from 2011 to 2013. Gas fumes bothered her at the gas station. She also had problems with standing tolerance, but she was accommodated. She was allowed to sit on a stool. She had a dispute with her employer, and was asked to leave.

[35] The Appellant worked at a community newspaper as a writer on a full-time basis from 2009 to 2010. She chased down stories, and interviewed people. She enjoyed this job. She had her own office. She could rotate between sitting and standing, which alleviated her discomfort. She testified that she left this job because she moved. The Appellant was asked if she could perform a job like the one she had at the newspaper, where she could rotate between sitting and standing. Also, having her own office might be advantageous given her chemical sensitivities arising from her mastocytosis. The Appellant responded that she did not think that she could do such a job. She stated that it takes her much longer to write. Her memory and concentration is significantly impaired because of mastocytosis, and all the medications she takes. She started a blog in or around 2009. She blogs about her opinions on many topics, but she had not blogged for several months prior to her hearing. She blogged more frequently prior to her MQP date. She testified that keyboarding was problematic prior to her MQP date because of left hand numbness. She thinks she was provided with hand splints prior to her MQP date. She does not think she can work from home because of difficulty keyboarding. She does not believe that she could handle working on telephone because of fatigue, which impacts her ability to hold her train of thought. She stated that her cognitive abilities were severe prior to her MQP date, and have worsened with time. She testified that she suffered from brain fog prior to her MQP date. She was unable to concentrate, and writing became more difficult for her. Her allergies impair her concentration. She does not believe she can work in a public setting because of her medical condition. She also testified that the lumbar fractures that she sustained in her slip and fall in 2015 have worsened her standing and walking tolerance. The Appellant reported that driving is problematic because of lower back, hip, and leg pain.

[36] The Appellant testified that her medical conditions impact her activities of daily living. She does not do heavy grocery shopping because of her allergic reactions. She cannot stand up to do dishes. She has been able to secure housekeeping assistance since early 2015 though the

Department of Veterans Affairs because of her husband's employment. The Appellant has to have her home vacuumed regularly to avoid excessive dust, and all the cleaning and personal products she uses are scent free. She has not looked for other regular work. She tried to work as a marriage commissioner after leaving the grocery store in March 2014, but she could not and cannot dedicate many hours to this job.

SUBMISSIONS

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

- a) She cannot work because of her numerous chemical and food sensitivities. Mastocytosis has left her with hives, severe itching, severe body pain, and cognitive symptoms.
- b) There is no cure for mastocytosis. Her triggers and reactions are fluid and variable. She is not capable of working on a consistent and reliable basis.

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

- a) The medical evidence does not support a finding that the Appellant has a severe disability. The Appellant still has work capacity, and she responded adequately to her mastocytosis treatment.

ANALYSIS

Test for a Disability Pension

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

[40] 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.

[41] 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

[42] The Tribunal finds that the Appellant had a severe disability that rendered her incapable regularly of pursuing any substantially gainful occupation on or before her MQP date of December 31, 2015

[43] 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.

[44] In applying *Villani* to the facts of this appeal, the Tribunal finds that the Appellant is incapable regularly of pursuing any substantial gainful occupation in a "real world" context. The Appellant was 53 years old at the time of her MQP. She has a Grade 12 education, and obtained a secretarial diploma. She has experience working as a cashier, she has worked in a retail setting, and she has experience writing for a community newspaper. Despite the Appellant's age and education, and apparent transferable skills, the Tribunal is satisfied that the Appellant has a severe disability. The Appellant reported suffering from numerous impairments because of mastocytosis and the injuries she sustained in her October 2015 fall in the areas of sitting, standing, walking, memory, and concentration that makes her incapable of maintaining any activity for a sustained period of time. The Appellant's medical condition precludes her working on a consistent and predictable basis.

[45] The Appellant's hearing evidence is supported by the medical evidence. Dr. Theman in her Medical Report to Service date stamped on May 17, 2015, referenced the Appellant's mastocytosis diagnosis, and depression. Dr. Theman noted that the Appellant was sensitive to

many odors where she would have sudden, swelling of her lips and tongue. Dr. Theman in a subsequent report dated March 13, 2017 stated that the Appellant suffered from depression and reduced cognitive abilities that were not present prior to a July 18, 2014 motor vehicle accident. The Appellant was using medications to keep her mastocytosis under control, but according to Dr. Theman, these medications sedated the Appellant. Dr. Cheung-Lee diagnosed the Appellant with mastocytosis in July 2013. Dr. Cheung-Lee stated that mastocytosis was a potentially serious condition, and that sufferers of that disease can be sensitive to even small amounts of chemicals. Dr. Cheung-Lee noted worsening mastocytosis symptoms in her report of September 11, 2014. The Appellant had increased allergic reactions to smoke, fragrances, and fumes. The Appellant was also suffering from an increased number of lesions, respiratory congestion, shortness and breath, looseness of stools, and diarrhea. Dr. Cheung decided to refer the Appellant to a Dr. Taparia, Hematologist as a precaution. Dr. Taparia in consultation report dated December 2, 2014, referred the Appellant to a gastroenterologist because of her food intolerance. Dr. Dieleman, Gastroenterologist in consultation report dated June 17, 2015, noted that the Appellant had nodular lymphoid hyperplasia, which could lead to gastrointestinal symptoms such as abdominal pain. The Appellant also suffers from bilateral hand numbness, which was confirmed in Dr. Jhamandas consultation report of March 18, 2015. Dr. Skeith in his report dated February 14, 2017, confirmed that the Appellant sustained injuries in a July 2014 motor vehicle accident. Dr. Skeith stated that the Appellant developed neck, shoulder, hand, low back, and left hip that has continued since that accident. He also referenced the compression fractures that the Appellant sustained to her lumbar spine. Dr. Toofaninejad confirmed that the Appellant suffers from depression, and Dr. Theman has prescribed anti-depressant medication for the Appellant.

[46] The Tribunal notes that two reports in particular were of significant assistance in outlining the Appellant's medical condition, and work capacity: Dr. Beach's report dated May 28, 2014, and Dr. Taparia's report dated May 4, 2017. Dr. Taparia's May 4, 2017 report stated that the Appellant's mastocytosis was significant, and caused body aches and pains. Dr. Taparia noted that the Appellant had problems with brain fog and cognitive symptoms, which impacted her memory. The Appellant had short-term memory problems upon exposure to certain chemicals, perfumes or other substances. The Appellant had difficulty working with people because of reactions to strong perfumes or chemicals.

[47] Dr. Beach's May 28, 2014 report noted that the Appellant was on medical leave at that time from her cashier position at a grocery store. The Appellant had symptoms arising from fragrances, body odors, smoke and laundry detergents that led to difficulty breathing, coughing, runny nose, difficulty concentrating, and chest and back pain that radiated into her arms. The Appellant had diarrhea and abdominal pain, and her back pain led to standing and sitting restrictions. Dr. Beach noted that the mastocytosis typically caused increased sensitivity to environmental triggers. Dr. Beach stated that the Appellant could not work as a cashier at a grocery store because of her scent sensitivity, standing and sitting restrictions, and frequent bouts of diarrhea. He endorsed the Appellant working as a marriage commissioner because it would allow her to control her environment, and help the Appellant control her symptoms.

[48] Dr. Taparia and Dr. Beach's reports rule out the Appellant working in a public setting. However, Dr. Beach's report seems to endorse the Appellant working in a setting where she could control her environment in such a manner that she would reduce triggers resulting from the Appellant's chemical sensitivities. If that were the case, the Appellant would not have a severe disability under the CPP because 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).

[49] The Tribunal finds that the Appellant cannot work in any substantially gainful occupation. The Appellant to her credit attempted to work as a marriage commissioner. This job offered the promise of not being constantly exposed to chemicals, odors, and body fragrances. However, the Appellant failed to work at this job in a substantially gainful manner. The Appellant testified that she now performs one wedding every two weeks during the busy wedding season. She spends four to five hours preparing for and performing weddings. The reason why she cannot perform weddings is that standing is problematic because of hip pain, and she is also extremely sensitive to odors emanating from flowers, perfumes, and deodorant.

[50] The Appellant testified that writing is her passion. She enjoyed working for a local community newspaper. She has a blog, and also helps run a Facebook page dedicated to assisting

sufferers of mastocytosis. She stated that working at the newspaper from 2009 to 2010, was a good environment for her because she was able to rotate between sitting and standing. In addition, since she had her own office it was possible that she could manager her own environment in such manner that she could reduce her reactions to odors. The Appellant testified that she could not work at a similar job such as the newspaper because of her mastocytosis, and she has not been able to work regularly since she left her cashier job in March 2014. The Appellant has significant cognitive difficulties prior to her MQP, which were confirmed by Dr. Theman in her May 17, 2015 Medical Report. She cannot write with the same frequency. She takes numerous medications for her mastocytosis, which leave her extremely fatigue. Her sitting ability has also been impacted by the October 2015 compression fracture to the spine. Her keyboarding ability has been significantly impacted because of her hand numbness. The Appellant has maintained her own personal blog since 2009, but she blogs infrequently. The Tribunal finds that the Appellant is incapable regularly of working in any substantially gainful occupation because of the impacts arising from mastocytosis that has left her with significant cognitive problems. The Appellant at her hearing displayed these cognitive difficulties. She had difficulty remembering at her hearing, and sometimes veered off topic when asked questions. She was also severely fatigued during the hearing.

[51] The Tribunal finds that the Appellant has managed her medical conditions appropriately. In addition to being followed by her family physician, she has seen a dermatologist, gastroenterologist, hematologist, rheumatologist, and neurologist. She has taken numerous medications, which offer no hope for a cure for mastocytosis. The Appellant is at the stage where her physicians are managing a chronic medical condition. The Appellant tried physiotherapy after her motor vehicle accident, but did not obtain a good result. She expressed reluctance to pursue psychiatric help. The Tribunal does not find this to be unreasonable. The evidence showed that the Appellant's impairments are related mostly to mastocytosis, as opposed to mental health difficulties.

[52] 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 is satisfied after reviewing the medical, documentary, and hearing evidence that the Appellant lacked the capacity to pursue any

form of substantially gainful occupation on or before her MQP after taking into account her multiple disabling conditions. The Tribunal finds that the Appellant earning approximately \$1,600.00 as a marriage commissioner is not evidence of substantially gainful employment, and performing only one wedding every two weeks during the peak wedding season is not evidence that the Appellant is working in a substantially gainful occupation. The Tribunal also finds that occasional blog posts and Facebook posting on a mastocytosis page is not evidence of an ability on the part of the Appellant to regularly pursue substantially gainful employment.

[53] 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 has severe impairments with sitting, standing, and walking. The Appellant suffers from mastocytosis, which is a serious medical condition. She has extreme reactions to chemicals, and has to take a multitude of medications to control that condition as best as possible. However, these medications have a sedating impact on her, and as a result, her memory and concentration is significantly impaired. The Appellant's impairments are such that she was incapable regularly of pursuing any substantially gainful employment on or before her MQP date.

[54] The Tribunal therefore finds that the Appellant has established on a balance of probabilities that she had severe disability on or before December 31, 2015, commencing in March 2014, when she left her job as a grocery store cashier because of chemical sensitivities arising from mastocytosis.

Prolonged

[55] The Tribunal finds that the Appellant's disability is likely to be long continued and of indefinite duration.

[56] Dr. Taparia in a consultation report dated May 5, 2017, stated that the Appellant's mastocytosis was significant, and was causing body aches and pains, as well as cognitive difficulties.

[57] The Appellant disability is long continued, and there is no reasonable prospect of improvement in the foreseeable future.

CONCLUSION

[58] The Tribunal finds that the Appellant had a severe and prolonged disability in March 2014, when she left her position as a cashier at a grocery store, as explained above. According to section 69 of the CPP, payments start four months after the date of disability. Payments start as of July 2014.

[59] The appeal is allowed.

George Tsakalis
Member, General Division - Income Security