



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. P. v. Minister of Employment and Social Development*, 2017 SSTGDIS 142

Tribunal File Number: GP-16-1799

BETWEEN:

**J. P.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Raymond Raphael

HEARD ON: September 28, 2017

DATE OF DECISION: September 29, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on November 27, 2014. The Appellant claimed that she was disabled because of multiple conditions including severe headaches, Crohn's disease, irritable bowel syndrome, anxiety, depression, and obsessive compulsive disorder. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on May 25, 2016.

[2] This is the Appellant's fifth application for CPP disability. Her first application was withdrawn and her other three prior applications were dismissed by the Respondent either initially or on reconsideration.

[3] 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.

[4] The Tribunal finds that having regard to the Appellant's history of CPP contributions and the applicable Child Rearing Dropout Provisions her MQP is December 31, 2014. [GD7-14 and GD2-29]

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

- a) The Appellant will be the only party attending the hearing.
- b) There are gaps in the information in the file and/or a need for clarification.
- 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.
- d) The Appellant has indicated that she does not want to proceed by in person or videoconference because of travel issues.

[6] The following people attended the hearing:

J. P.: Appellant

Steven Sacco: Appellant's representative

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

## **ORAL EVIDENCE**

### ***Background***

[8] The Appellant was 42 years old on the December 31, 2014 MQP date; she is now 45 years old. After completing grade 13 she worked as a personal trainer and completed a six months private investigation course. She then joined the Durham Regional Police as a police cadet and in 1994 after completing the internal training she became a police constable. She has not worked since November 2011 and is receiving Long Term Disability (LTD) benefits from Great-West Life.

### ***Disabling Conditions***

[9] In her oral evidence the Appellant reviewed in detail the history of her numerous disabling conditions. She stated that she has always suffered from migraines and stomach problems. In 1996 her stomach problems became severe and in July 1997 she was diagnosed with Crohn's disease and underwent emergency bowel resection surgery. The disability questionnaire in support of her initial disability application indicates that she stopped working on July 1, 1997 and that she claimed to be disabled as of July 8, 1997 because of Crohn's disease, digestive problems, pain, nausea, weakness, severe diarrhea, stomach pain, cramping, headaches, lack of concentration, constipation, as well as back and joint pain. [GD2-535 to 537]

### ***Return to Work Attempts***

[10] She underwent further surgery in January 1998 because of a fistula in her small intestine. She returned to work after her first daughter was born could only do desk duties. In November 2004 she stopped working because of headaches, bowel problems, IBS, Crohn's disease, tinnitus

(ringing in her ears), and visual spots (visual snow). Her youngest daughter was born in April 2005 and after her maternity and sick leave she went on LTD benefits.

[11] She attempted to return to work in 2010 in a “low capacity position” which involved taking reports over the phone and preparing computer notes of the reports. She initially returned on modified hours (2-3 days a week, four hours per day) and gradually increased to 40 hours per week. She was involved in a motor vehicle accident in August 2010 which exacerbated her back pain and headaches.

[12] She described this return to work attempt as “horrible” and stated that she had to stop working in November 2011 because her bowels were very bad, she had constant severe headaches, her vision was disturbed ( she constantly saw snow), back pain, depression, anxiety, and obsessive compulsive disorder. Because of her obsessive compulsive disorder she was spending too long on reports, she couldn’t concentrate, she had a problem touching things, and she had an obsession with even numbers (everything had to be even).

[13] A memorandum from Durham Regional Police Service, Human Resources, to CPP disability dated March 13, 2012 attaches the Appellant’s fourth disability application. The memorandum states that she was on LTD from 2006 to 2010; that her attempt to return to work has been unsuccessful; and that her symptoms have not subsided and do not allow her to work. [GD2-244]

### ***Post November 2011***

[14] She sees Dr. Hsieh, her family doctor, every three months who prescribes quetiapine for her obsessive compulsive disorder (the prescription was initiated by Dr. Hunter, her psychiatrist.) Dr. Fu sent her to a specialist in Toronto for a second opinion who advised her to take a diuretic. She has been going to Dr. Avila, at a chronic pain clinic in Toronto, who gives injections to her back, head and neck. She sees Dr. Finkelstein every three months and he prescribes Effexor for anxiety and back pain. She hasn’t seen Dr. Hunter since he prescribed quetiapine and she hasn’t seen Dr. Fitzsimmons for psychotherapy for about 1 ½ years: she practices the tools such as cognitive behavioural therapy and mindfulness that Dr. Fitzsimmons taught her and she is arranging a further session with Dr. Fitzsimmons.

[15] She has not worked since November 2011. She stated that her conditions have worsened: she now has headaches 24 hours a day; the visual snow spot and ringing in her ears are always there; her concentration and loose bowels are worse – the conditions never go away. When asked why she is unable to pursue any type of work she stated that she has difficulty functioning and managing with her home and personal life without making mistakes; her concentration is “brutal”; she suffers constant back pain and headaches as well as abdominal pain when she has bowel blockage; she has difficulty reading or working on a computer because of constant visual disturbance and ringing in her ears; and she can’t stand for more than five minutes because of her back pain.

### **MEDICAL AND DOCUMENTARY EVIDENCE**

[16] The Tribunal has carefully reviewed all of the medical and documentary evidence in the hearing file. Set out below are those excerpts the Tribunal considers most pertinent.

#### ***Disability Questionnaire***

[17] In her disability questionnaire, signed on October 28, 2014, the Appellant indicated that she has a grade 13 education as well as three months of Police College. She stated that she last worked as a police officer from September 22, 1992 to November 23, 2011. She claimed to be disabled as of November 23, 2011 and stated that the illnesses or impairments that prevent her from working include severe headaches, visual disturbance, ringing in the ears, back pain, IBS, Crohn’s disease, depression, anxiety disorder, and obsessive compulsive disorder. [Disability Questionnaire: GD2-135 to 137]

#### ***Limitations***

[18] She described difficulties/functional limitations with sitting/standing, walking, lifting/carrying, and bending; uncontrolled bowel movements; having to do household maintenance at her own pace; hearing and seeing difficulties; difficulties with concentration and sleeping; and driving limitations. [GD2-138]

*Mental Health Conditions*

[19] On December 14, 2016 Dr. Hunter, psychiatrist, opined that the Appellant clearly has episodes of both generalized anxiety and panic disorder. [GD2-232]

[20] On November 25, 2009 Dr. Hunter reported that the Appellant is struggling markedly with anxiety and obsessionality. When describing the Appellant's anxiety and obsessive symptoms he stated:

The focus of her re-presentation to me, however, has to do with her anxiety. She states that this occurs "out of the blue" and she will get scared with a "clamping" in her chest, some increase in shortness of breath, a sense of sweatiness, pins and needles, and significant experience of fear. This will last anywhere from 10 minutes to hours in length and occurs sufficiently frequently that she experiences it as being almost continuous sometimes...

J. P. is clear about having a number of other significant anxiety symptoms as well. She describes unproductive ruminations that she refers to as "stupid". These are thoughts that might take the form of "what if?" questions or re-examining decisions or action earlier in the day. Perhaps more striking is a number of obsessional behaviors as well. She told me about wiping the kitchen counter and about how she will lose time if she becomes obsessed with doing it properly. Other examples include feeling that everything has been done in even numbers, such as taking even numbers of pieces of popcorn from her daughter. She feels unable to step on a crack and will count stairs. When packing her children's lunch bags, she will line everything up at the front or make sure that items on a table are placed evenly in the center... [GD2-321]

[21] On February 28, 2013 Dr. Fitzsimmons, psychologist, stated that she has been meeting with the Appellant for weekly psychotherapy since August 2012 and that despite their efforts the Appellant is still feeling quite depressed and reporting significant obsessive compulsive disorder symptoms. [GD2-117]

[22] On May 29, 2013 Dr. Hunter stated the Appellant is "profoundly well-motivated" and that she would benefit from an extensive focus on her current symptoms. He recommended quetiapine. [GD5-8]

[23] On April 22, 2014 Dr. Fitzsimmons reported to Great-West Life that she has been seeing the Appellant for one hour weekly sessions. She described her functional limitations and restrictions preventing her from returning to gainful employment as follows: she cannot

concentrate, follow instructions, or make decisions; she has a poor working memory; she cannot retain what she reads and makes simple mistakes; and she cannot look at a computer screen because it causes headaches. She indicated that the Appellant's physical limitations remain and continue to significantly impede her life. The prognosis was guarded: her anxiety and depression will likely improve but her cognitive abilities (concentration, higher order of functioning) probably will not improve. [GD2-63]

### *Physical Conditions*

[24] There are numerous reports from Dr. Fu, gastroenterologist, commencing in April 2017. On October 24, 2017 he stated that the Appellant's Crohn's disease has been in remission and that the main issue is her constipation predominant IBS. [GD5-3]

[25] On March 5, 2008 [GD2-227] Dr. Tai, neurologist, assessed the Appellant for her "interesting" syndrome consisting of persistent visual aura and headaches. Dr. Tai saw the Appellant in follow up on November 2, 2008 [GD2-222] and March 26, 2009 [GD2-363] when he extricated himself from the Appellant's ongoing care because he did not feel that he as much to contribute as someone like Dr. Lay.

[26] There are reports from Dr. Lay, neurologist, starting in December 5, 2008. On May 26, 2010 Dr. Lay completed the initial medical report in support of the Appellant's third disability application. She diagnosed chronic daily headache, chronic visual complaints, depression, and Crohn's disease. In her prognosis Dr. Lay stated that the Appellant needs support and cognitive therapy for depression and that she has other medical conditions which limit her functioning [GD2-298]. In a follow up note faxed on October 8, 2012 Dr. Lay indicated that the Appellant can't work. [GD2-200]

[27] On December 29, 2008 Dr. Carette, rheumatologist, opined that the Appellant's symptoms were in keeping with fibromyalgia symptomology and that her headaches are part of the same symptomatology. [GD2-220]

[28] On June 1, 2011 Dr. Isnes, neuro-ophthalmologist, reported that the Appellant has a history of chronic hemicrania with visual phenomenon and that she has had progressive visual symptoms since January 2011. [GD2-194]

[29] On June 6, 2012 Dr. Gershon, internist, reported that the Appellant has a “busy” medical history: in 1996 her Crohn’s disease was treated with two surgeries to correct fistulas; she is presently undergoing investigation for intussusception; that she has a six-year history of low back and bilateral buttock pain; that she has a one-year history of pain involving her neck and lower spine; that she suffers from headaches; and that she was diagnosed with visual snow in 2004. He also reported that she has mechanical low back pain with subjective complaints of radicular pain [GD5-13].

[30] On December 18, 2012 Dr. Finkelstein, pain management specialist, assessed the Appellant for her chronic headaches. He suggested a trial of nerve blocks [GD2-99]. On June 12, 2014 Dr. Finkelstein reported to Great-West Life that the Appellant suffers from chronic daily headaches with intractable pain affecting her daily functioning at home and her ability to concentrate and perform at work. He also reported that she has failed multiple treatment modalities and medications [GD2-125].

[31] On January 16, 2013 Dr. Hsieh, the Appellant’s family doctor completed the initial medical report in support of the Appellants fourth disability application. He diagnosed chronic headache with visual disturbance; Crohn’s disease with complications; anxiety disorder; mechanical backache; IBS; and ileocolonic anastomosis with perineal fistula. His prognosis was guarded. [GD2-185]

[32] On July 30, 2013 Dr. Majl, neurologist, assessed the Appellant for back pain. His impression was that she has ongoing back pain radiating to her left foot. [G5-7]

## **SUBMISSIONS**

[33] Mr. Sacco submitted that the Appellant qualifies for a disability pension because:

- a) The combination of her multiple physical and mental conditions renders her unemployable;



- b) She has made unsuccessful return to work attempts and has pursued extensive treatment;
- c) She satisfies the severe and prolonged test with a date of onset of November 2011.

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

- a) The evidence does not show any severe pathology or impairment which would have prevented the Appellant from performing suitable work within her functional limitations on or prior to the MQP and continuously thereafter;
- b) There is no medical information in the file after October 2014;
- c) She does not meet the legislative criteria for severe and prolonged.

## **ANALYSIS**

### **Test for a Disability Pension**

[35] 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.

[36] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

- a) be under 65 years of age;
- b) not be in receipt of the CPP retirement pension;
- c) be disabled; and
- d) have made valid contributions to the CPP for not less than the minimum qualifying period (MQP).

[37] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[38] The Tribunal has found that the MQP date is December 31, 2014.

### **Severe**

[39] The statutory requirements to support a disability claim are defined in subsection 42(2) of the CPP Act which essentially says that, to be disabled, one must have a disability that is "severe" and "prolonged". A disability is "severe" if a person is incapable regularly of pursuing any substantially gainful occupation. A person must not only be unable to do their usual job, but also unable to do any job they might reasonably be expected to do. A disability is "prolonged" if it is likely to be long continued and of indefinite duration or likely to result in death.

[40] The burden of proof lies upon the Appellant to establish on the balance of probabilities that on or before December 31, 2014 she was disabled within the definition. The severity requirement must be assessed in a "real world" context (*Villani* 2001 FCA 248). The Tribunal must consider factors such as a person's age, education level, language proficiency, and past work and life experiences when determining the "employability" of the person with regards to his or her disability.

[41] Remedial legislation like the Canada Pension Plan should be given a liberal construction consistent with its remedial objectives and each word in the subparagraph 42(2)(a)(i) of the CPP must be given meaning and effect, and when read in that way, the subparagraph indicates that Parliament viewed as severe any disability which renders an applicant incapable of pursuing with consistent frequency any truly remunerative occupation (*Villani* 2001 FCA 248).

[42] In light of the strong supporting medical evidence the Tribunal accepts the oral evidence concerning the Appellant's longstanding multiple conditions and how they have affected her life and capacity to work. She gave her evidence in a credible and straightforward manner, and her oral evidence was consistent with and supported by the extensive medical evidence in the hearing file. There is no suggestion in any of the medical reports that she is feigning or exaggerating her symptoms in any way.

[43] There are copious reports running from 2006 to through to 2014 from specialists who have been involved in the Appellant's treatment including Dr. Fu, gastroenterologist; Dr. Hunter, psychiatrist; Dr. Fitzsimmons, psychologist; Dr. Tai, neurologist; Dr. Carette, rheumatologist; Dr. Lay, the director of the Centre for Headaches at Women's College Hospital; Dr. Isnes, neuro-ophthalmologist; Dr. Gershon, internist; Dr. Finkelstein, pain management specialist; Dr. Majl, neurologist; Dr. Chang, urologist; and Dr. Jones, general surgeon. All of these reports confirm the Appellant's multiple diagnoses and that she has made extensive efforts to pursue treatment and manage her many conditions.

[44] 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* 2011 FCA 47). Although each of the Appellant's medical problems taken separately might not result in a severe disability, the collective effect of the various diseases may render the Appellant severely disabled: *Barata v MHRD* (January 17, 2001) CP 15058 (PAB).

[45] The Appellant's disabling physical conditions include chronic migraines, bowel and stomach problems, Crohn's disease, constant ringing in her ears, and visual impairment (snow spots), as well as constant back and joint pain: her disabling psychological conditions include anxiety, depression, and obsessive compulsive disorder. All of these conditions are well-documented by the medical evidence and were extant as of the MQP.

[46] The Tribunal recognizes that the Appellant is relatively young, well educated, and that she has significant transferrable skills: however, having regard to the cumulative effect of her numerous physical and psychological conditions she could not pursue with "with consistent frequency any truly remunerative occupation" (see *Villani*, above). She could not be a regular and reliable employee.

[47] This is confirmed by her several unsuccessful attempts to return to work after she has had stopped working in July 1997 and again in November 2004. After returning to work in 2010 she wasn't able to continue working even on modified very light duties which involved only taking telephone reports and making notes on a computer

[48] The Tribunal finds that the Appellant has established, on the balance of probabilities, a severe disability in accordance with the CPP criteria.

### **Prolonged**

[49] Having found that that the Appellant's disability is severe, the Tribunal must also make a determination on the prolonged criteria.

[50] The Appellant's disabling conditions have persisted for many years and despite extensive treatment there has been little or no improvement. If anything it would appear that her condition continues to deteriorate.

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

### **CONCLUSION**

[52] The Tribunal finds that the Appellant had a severe and prolonged disability in November 2011, when she last worked. 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) CPP). The application was received in November 2014; therefore, the Appellant is deemed disabled in August 2013. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of December 2013.

[53] The appeal is allowed.

Raymond Raphael  
Member, General Division - Income Security