



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. P. v. Minister of Employment and Social Development*, 2017 SSTGDIS 143

Tribunal File Number: GP-15-4229

BETWEEN:

**V. 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: Anne S. Clark

DATE OF DECISION: September 30, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on September 18, 2014. The Appellant claimed that he was disabled because his mental health and other health conditions made him incapable of working. 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. I find the end of the Appellant's MQP is December 31, 2012.

[3] In July 2016 a Tribunal Member granted the Appellant an extension of time to file his appeal from a reconsideration decision dated September 22, 2015. The parties made submissions and by August 2017 the appeal was ready to proceed. A hearing was scheduled for August 14, 2017.

[4] In July 2017 the Appellant wrote to the Tribunal and, in part, requested that the Tribunal stop the appeal proceeding. The Tribunal asked the Appellant to clarify if he wanted to delay his appeal and advised how he could request an adjournment. On August 4, 2017 the Tribunal received documents from the Appellant including a Hearing Information form where he advised that he could only participate if the appeal proceeded by written questions and answers.

[5] The Respondent also requested that the appeal proceed on the record and did not raise any issues that would require the Appellant to give oral testimony. On August 13, 2017 the appeal was scheduled to proceed by written questions and answers. Questions were sent to the Appellant with a deadline of September 15, 2017. The Appellant filed his submission and answers to the questions on September 12, 2017. The Respondent filed submissions to confirm the position that the Appellant's appeal should be denied.

[6] For the reasons set out below I decided that the Appellant is eligible for a CPP disability pension.

## **EVIDENCE**

[7] This appeal involved a number of submissions and requests that were not relevant to the appeal. This decision will only address the question on appeal, specifically whether the Appellant proved, on a balance of probabilities that he has a disability as defined by the CPP. The decision will not address the Appellant's complaints and concerns about the adjudication process at the Ministry unless it is relevant to the question on appeal. It will not address the Appellant's complaints and submissions about the government's review of the Tribunal process. For clarity I will only review and respond to submissions that are relevant to the appeal.

[8] The Appellant was 53 years old when he last worked and 55 at the end of his MQP. He was a case worker at a men's shelter for approximately 14 years and experienced extremely disturbing events at work that caused him to have an "emotional breakdown". The Appellant stopped work as of September 1, 2010 and has not worked in any capacity since then.

[9] I posed the following questions to the Appellant.

1. Please describe all health conditions that affected your ability to work as of December 31, 2012. Please provide details of your symptoms and how they affected your ability to work.
2. Have your conditions improved, deteriorated or stayed the same since December 31, 2012?
3. Please describe your ongoing medical care including all treatment and medication. Has this treatment remained the same or changed since December 31, 2012? If any treatment changed please explain.
4. Did you decline to follow any recommended treatment? If yes, please explain why.
5. Please provide your work history and include a list of your job duties and training.
6. What steps have you taken (if any) to look for alternate work?
7. If you did not attempt to return to any work, what prevented you from looking for work that is suitable to your limitations?
8. Have you done any volunteer work since September 2010? If so, please provide details including your duties, when you started, when you stopped, how many hours per day/days per week you did volunteer work.

[10] The Appellant experienced what he described as multi-level harassment at work that caused his mental health to deteriorate. His symptoms at that time and since include fear, anxiety, stress, brain fog, cognitive impairment, mood swings, bouts of crying, depression, feelings of impending doom, fatigue, diarrhea, poor sleep, poor physical condition and compromised immune system.

[11] In 2012 an Independent Psychiatric Evaluation described the Appellant's condition as Major Depressive disorder (MDD) with moderate workplace stressors. Dr. Lee Rasmussen, Psychiatrist concluded that the Appellant's symptoms impaired his ability to perform any work. He felt the symptoms were not likely permanent but he did not expect recovery before February 2013. Dr. Rasmussen recommended 15 to 20 sessions of cognitive behavioural therapy.

[12] The Appellant attended therapy sessions including individual therapy with psychologist Neil Smith. As the Respondent noted in submissions Dr. Smith refused to give the Appellant a letter of support for his disability claim. Dr. Smith documented that he felt the Appellant's application for benefits demonstrated "unhelpful thinking" (GD2-116). Dr. Smith's progress notes appear to indicate that he felt the Appellant should focus on other, more positive, things and not on the stressors that contribute to his depression and anxiety. Dr. Smith also suggested the Appellant could attempt to work as a volunteer for two to four hours per week indicating that he likely felt the Appellant's ability to function in a volunteer position would be limited to those hours (GD2-121).

[13] The Appellant's family physician, Dr. D. Leitner submitted copies of his visit notes (GD2- 138 to 143 and 188 to 190) that document the Appellant's care and confirm the Appellant's ongoing symptoms of anxiety and depression. In 2014 and 2015 Dr. Leitner confirm his continuing opinion that the Appellant is disabled by his mental health conditions including depression and anxiety. Dr. Leitner confirmed the Appellant followed recommended treatment and his prognosis was poor (GD2-19). He described the Appellant as clinically disabled suffering daily in a severe manner (GD2-153). His opinion was that the Appellant would not be able to return to work for the foreseeable future (GD2-153 and 214).

[14] The Appellant submitted that these conditions affect his sleep. He uses a CPAP machine to help his symptoms of Sleep Apnea but he still feels very tired from poor sleep and that affects his ability to function throughout the daytime. Idiopathic Hypersomnia causes him to feel sleepy and fall asleep often throughout the day affecting his ability to function.

[15] The evidence on file confirms the diagnosis of severe Sleep Apnea and Idiopathic Hypersomnia (GD2-231). Both conditions are controlled and the Appellant is monitored annually.

[16] The Appellant submitted that he continues to experience pain from injuries caused by an incident in 2012. Diagnostic testing confirmed a likely disc herniation and quite advanced osteoarthritis at C5-C6 (GD2-246). The Appellant was also diagnosed with diverticular disease that was quite advanced at the sigmoid level (GD2-247). The Appellant described these symptoms as persistent and painful diarrhea. His poor vision was confirmed by his eye surgeon Dr. C. Peters who recommended corrective glasses and follow up as necessary (GD2-249).

[17] The Appellant explained that the symptoms caused by his emotional breakdown have remained “much the same”. When he has improvement it is temporary and often offset by aggravation of his other conditions. His physical health is deteriorating which is aggravating his anxiety. He worries about different or increased symptoms and fears more serious diagnoses if he seeks medical help.

[18] The Appellant reported that he has ongoing visits with his family physician who monitors his symptoms, makes referrals, and changes his medication as needed. He previously reported that he attended counselling as recommended and provided. His counselling sessions included private and group counselling. He sees Kveta Jasek who provides emotion therapy, craniosacral therapy and Reiki (GD2-16). The Appellant does not attend ongoing cognitive therapy. He is unable to pay for sessions. He sees his family physician regularly and he assesses his mental health.

[19] The Appellant confirmed that he followed all recommended treatment and continues to do so. Even so, he has never recovered to the point of being able to consider returning to work in any capacity.

[20] The Appellant worked full-time as a case worker in a homeless shelter. His job duties included "...intake, reports, housing, food, hygiene, clothing, medications, referrals, counselling/spiritual encouragement." He has a bachelor's degree and training in counselling, food safety, first aid and advocacy. He had to stop working toward a master's degree because of his health condition.

[21] The Appellant made no efforts to obtain alternate employment because of his medical conditions. He submitted that his medical conditions make him incapable of any work including volunteer work.

[22] The Appellant worked as a volunteer for a local musical venue. P. H. confirmed the Appellant volunteered for his group and others in the community (GD2-17). The Appellant explained that he was unable to continue with music venue as they closed. He volunteered at other organizations and his efforts were minimal due to exhaustion and concentration issues.

## **SUBMISSIONS**

[23] The Appellant submitted that qualifies for a disability pension because his mental health combined with other health conditions have made him unable to work since September 2010.

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

- a) he has not attempted alternate work;
- b) the medical evidence does not demonstrate that his health conditions make him unable to work; and
- c) there is no evidence to document the effect his conditions such as obstructive sleep apnea, neck injury and diverticular disease have on his ability to work.

## ANALYSIS

### Test for a Disability Pension

[25] 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, December 31, 2012.

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

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

[27] 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

[28] To be successful in his appeal the Appellant must prove it is more likely than not that he suffered a disability that was both severe and prolonged on or before the end of the MQP. The severe criterion must be assessed in a real world context (*Villani v. Canada (Attorney General)*, 2001 FCA 248). This means that when deciding whether the Appellant has a severe disability, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience.

[29] The Appellant was 55 years old at the end of the MQP. He completed a bachelor's degree and was working on a master's. There was no evidence of any language or learning impediments. I find there are no factors such as those considered in *Villani* that would restrict the Appellant's ability to find work in the competitive workforce. However, the *Villani* decision also

states that a claimant is not required to satisfy the Tribunal that he is unable to do any conceivable job, but any realistic job in the competitive workforce given his limitations.

[30] 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 the Appellant’s inability to perform his regular job, but rather on his inability to perform any work, i.e. any substantially gainful occupation (*Klabouch v. Canada (Social Development)*, 2008 FCA 33). Before the end of his MQP the Appellant experienced significant symptoms related to stressors in his personal and work life. By September 2010 he stopped work due to, primarily, his mental health conditions. At that time his symptoms were considered severe. Since 2010 the Appellant continues to experience symptoms that limit his ability to engage in any work.

[31] The Appellant’s description of the impact that his mental health has on his functional ability is consistent with the reports on file particularly with those of his treating physician, Dr. Leitner. The Appellant was treated and assessed by psychiatrists, psychologists, and rehabilitation consultant. The reports were largely optimistic about the Appellant being able to recover sufficiently to return to work in a controlled or graduated manner. Unfortunately, the treatment and counselling was not as effective as hoped in the first few years after he stopped work. The Appellant’s mental health did not respond well to treatment and, as explained by Dr. Leitner he remains disabled by his depression and anxiety. I am reasonably satisfied the Appellant’s mental health conditions impact his abilities to the point where he is unable to work in any capacity.

[32] 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). Considering the Appellant’s symptoms since he left work in 2010, I find he has no realistic capacity for work. Therefore he is not required to demonstrate employment efforts that were unsuccessful by reason of his health condition.



[33] 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 Appellant's main disabling condition is his mental health. The evidence reasonably supports his position that he has a disability as defined by the CPP. There is also evidence of other conditions that affect or aggravate his ongoing symptoms. His severe sleep apnea was diagnosed in 2010 and is monitored annually. This condition contributes to his fatigue and anxiety even with treatment. An injury to his spine in April 2012 left him with ongoing pain and functional limitations.

[34] I find the Appellant proved, on a balance of probabilities that he has a severe disability as defined by the CPP.

### **Prolonged**

[35] Paragraph 42(2)(a) of the CPP requires a disability to be both severe and prolonged. Having found the Appellant has a severe disability I must now consider whether it is also prolonged. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

[36] I am satisfied that the Appellant's disability is prolonged. His symptoms first made him unable to work in 2010. He underwent extensive and varied treatment without recovering sufficiently to return to any form of work. There is no indication that the Appellant's condition is likely to resolve or improve in the future.

## **CONCLUSION**

[37] I find that the Appellant had a severe and prolonged disability in September 2010, when he could no longer work as a result of his mental health conditions. 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 September 2014; therefore the Appellant is deemed disabled in June 2013. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of October 2013.

[38] The appeal is allowed.

Anne S. Clark  
Member, General Division - Income Security