



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. C. v. Minister of Employment and Social Development*, 2017 SSTGDIS 149

Tribunal File Number: GP-16-2264

BETWEEN:

R. 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: October 6, 2017

DATE OF DECISION: October 10, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on May 12, 2015. The Appellant claimed that she was disabled because of fibromyalgia, migraine triggered seizures, post-seizure confusion/postical confusion, cerebral concussion, chronic migraines and chronic depression. 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, 2014.

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

- The method of proceeding is the most appropriate to allow for multiple participants.
- Videoconferencing is available within a reasonable distance of the area where the Appellant lives.
- 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.
- The Appellant resides in X, Ontario. Her Legal Representative has offices in Moncton, New Brunswick. A three-way videoconference hearing with the Tribunal Member is appropriate in the circumstances of this case.

[4] The following people attended the hearing: R. C., Appellant; C. C., Spouse/Moral Support; and David Brannen, Legal Representative.

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

EVIDENCE

Age, Education and Work Experience

[6] The Appellant was born in 1977. She stated that she obtained a Grade 12 education and had two years of post-secondary education. She last worked in an administrative/reception capacity at a community health centre. She stopped working in August 2014 because of seizures, migraines, depression and bullying. The Appellant also worked in an administrative/medical secretary/IT capacity from 2006 to 2012. She stated that she was offered lighter or a different type of work but never followed through.

[7] An Employment Options form from Northern College indicated that the Appellant was looking for work as an administrative assistant from January to September 2012.

[8] The Appellant attended X College. Correspondence dated February 19, 2013 states that the Appellant received an entrance scholarship. A letter from the School of Business at X College dated February 4, 2014 stated that the Appellant achieved a GPA of 3.5 or greater in the fall 2013 term.

[9] There is a memo in the file dated May 27, 2014 regarding a conversation that the Appellant had indicating that the Appellant would not be receiving a medical secretary salary while working at the main reception desk.

[10] An exit form dated August 30, 2014 stated that the Appellant decided to resign because some her or co-workers indicated that she did not do enough to take care of herself. Her disability caused her co-workers a great deal of stress and the Appellant's supervisor asked her what she was going to do about that.

[11] The Appellant testified that she enrolled in the Human Resources Management Program at X College but could not complete the program. She also tried a photography and business management course that she did not complete.

[12] The Appellant testified that her work experience consisted of working as a bank teller. She eventually became a loan officer. She taught figure skating. She has worked at medical centres in an administrative capacity and also assisted a medical author with a book launch in 2012.

Medical Condition and Treatment

[13] The Appellant's family physician, Dr. K. Hota signed a Medical Report for Service Canada that was date stamped April 16, 2015. He diagnosed the Appellant with grand-mal seizures, absence seizures, and migraine headaches leading to grand-mal seizures and hemiplegia. Dr. Hota stated that the Appellant had concussions leading to seizures. Her last concussion was in 2010. Dr. Hota stated that the Appellant could not walk because of migraines. It took her longer to dress because of migraines and she was unable to perform functions due to migraines. Dr. Hota stated that the migraines were poorly controlled despite medication. He provided the Appellant with an unknown prognosis.

[14] The Appellant previously applied for CPP disability benefits in July 2013. Her then family physician, Dr. S. Jain prepared a Medical Report for Service Canada that was date stamped on July 15, 2013. Dr. Jain stated that the Appellant suffered from a seizure disorder. The Appellant had fibromyalgia that made her weak and sore all the time. The Appellant was suffering from depression and low mood. She lacked concentration and lacked motivation. Dr. Jain noted that the Appellant was hospitalized in July 2011 because of seizures. She stated that the Appellant had weakness in the left side of her body and had difficulty in standing, walking and sitting. The Appellant was unable to do any physical exertion and her depression made her unable to concentrate on any job. Dr. Jain provided the Appellant with an unknown prognosis.

[15] Dr. B.T. Foell, Neurologist in a consultation report dated May 20, 2010 stated that he did not feel that the Appellant's symptoms were related to seizures. He opined that her symptoms were consistent with migraines. He provided the Appellant with a prescription for Topamax and Maxalt.

[16] Dr. B.T. Foell, Neurologist in a consultation report dated September 1, 2010 stated that the Appellant was seen regarding her episodes of tremors, twitching, stuttering speech and

incapacitating left sided facial pain which can be followed by agitation and restlessness. Dr. Foell thought that migraines caused these episodes.

[17] Dr. I.G. Swayze, Psychiatrist in a report dated September 19, 2010 noted that the Appellant reported an onset of depression in 2007 that was successfully treated with Celexa. Dr. Swayze diagnosed the Appellant with major depressive disorder, presently in remission. Dr. Swayze noted that the Appellant had assistance with the Canadian Mental Health Association which she visited weekly since July 2010.

[18] The Appellant had a normal CT scan of her head on October 8, 2010.

[19] A note from X Hospital confirmed that the Appellant was admitted to hospital on July 15, 2011. The Appellant attended the ER with episodic shaking and went on to have two seizures in the ER.

[20] A CT scan of the brain taken on July 26, 2011 turned out to be a negative study. An EEG study taken on July 27, 2011 was a normal study.

[21] The Appellant was admitted to X Hospital on December 1, 2011 because of slow and slurred speech. Her gait was unsteady. The Appellant was noted to have had a seizure four days previously.

[22] Dr. S.T. Sears in a letter to Dr. Foell dated December 16, 2011 stated that the Appellant had developed an odd speech pattern.

[23] Dr. Swayze in a consultation report dated January 7, 2012 mentioned that the Appellant might have a conversion disorder.

[24] A brain MRI taken on February 15, 2012 did not find a specific diffusion to suggest the presence of an acute infarction.

[25] Dr. G. Roedde in a clinical note dated April 13, 2012 indicated that the Appellant went to hospital for seizures. The Appellant had three seizures in the office and had not regained consciousness between seizure events. The Appellant was still seizing when the ambulance arrived. Dr. Roedde witnessed this event.

[26] The Appellant underwent a normal EEG on May 24, 2012.

[27] Dr. E. Bui, Neurologist in a consultation report dated September 25, 2012 stated that the Appellant began having symptoms in October 2009. The Appellant developed shingles in the left eye. She eventually developed neuropathic pain and was treated with Lyrica. She then began having tremors and speech difficulties. The Appellant's episodes were witnessed by physicians at her place of employment. They prescribed the Appellant Clonazepam, Lorazepam and other benzodiazepines that provided minimal benefits. The Appellant was treated by Dr. Foell, Neurologist. She thought she had improved. However, she sustained a concussion in October 2010. In July 2011, she experienced an exacerbation of her symptoms and was hospitalized. Dr. Bui thought that these events were likely pseudo-seizure events. Dr. Bui stated that epilepsy can exist concurrently with non-epileptic events. Dr. Bui wanted to conduct more prolonged EEG testing to confirm a diagnosis.

[28] A CT scan of the head taken on February 26, 2013 was unremarkable.

[29] Dr. Bui in a consultation report dated April 19, 2013 stated that the Appellant had an event the previous week where she had a sudden burst of energy followed by being unable to responding lasting a few minutes, unable to walk for an hour and unable to move. The Appellant had similar episodes in the past. The Appellant was taking Topiramate, Cipralex and Trazodone at that time. Dr. Bui advised the Appellant that she had pseudo seizures that were best treated by a psychiatrist with expertise in pseudo-seizures.

[30] Dr. P. Burra, Psychiatrist in a consultation report dated January 7, 2014 stated that he was seeing the Appellant for depression and somatoform disorder. He noted that the Appellant was unemployed. She had started as a full-time student at X College. The Appellant had been denied disability benefits. She also applied for part-time employment in the hopes of obtaining work as a medical receptionist. Dr. Burra thought that the Appellant suffered from a generalized anxiety disorder.

[31] Dr. P. Burra, Psychiatrist in a consultation report dated March 5, 2014 stated that he had started the Appellant on Citalopram which improved her mood. However, the Appellant

reported fatigue. Dr. Burra noted that the Appellant suffered from migraine headaches, fibromyalgia, depression, nondiabetic hypoglycaemia and pseudo-seizures.

[32] Dr. Burra in a consultation report dated April 2, 2014 stated that the Appellant passed out after a fire alarm was triggered at work. Dr. Burra increased the Appellant's Wellbutrin and Citalopram dosage, and also prescribed her with Citalopram.

[33] Dr. Burra, Psychiatrist in a consultation report dated April 30, 2014 stated that he had started the Appellant on Wellbutrin which did not worsen the Appellant's pseudo-seizures. Dr. Burra noted that Wellbutrin increased the Appellant's mental energy and revised her desire to be with her children and play with them. He stated that the Appellant achieved a "happy state".

[34] Dr. Hota in a clinical note dated March 9, 2015 stated that the Appellant was only able to work two days out of the week. Her short-term memory was noted to be fading. She was using post-it notes and calendars as memory aids. The Appellant was seeing a counsellor in X at that time.

[35] The Appellant underwent a normal echocardiography examination on April 25, 2015.

[36] Dr. Hota in a clinical note dated June 23, 2015 stated that the Appellant had received the disability tax credit. She still had migraines, headaches and blackouts. Dr. Hota stated that being off worked helped the Appellant and the Appellant needed "to learn when to stop working."

[37] Dr. B. Frauscher, Neurologist in a February 3, 2016 consultation report stated that no evidence of epileptic seizures was found on EEG testing. The Appellant's neurological examination was normal.

[38] Dr. Hota in a clinical note dated February 25, 2016 stated that he did not believe that the Appellant's condition was due to depression or anxiety but rather, the Appellant's depression and anxiety resulted from the Appellant's physical limitations.

[39] The Appellant was admitted to hospital on February 28, 2016 for continuous EEG and video monitoring after being seen in the Epilepsy Clinic. Dr. M. Melanson, Neurologist in the discharge summary noted that the Appellant's Topiramate medication was tapered and discontinued during her hospital stay. No seizure activity was noted.

[40] A clinical note from Dr. Hota dated May 2, 2016 indicated that the Appellant had been unable to attend physiotherapy for transportation reasons. Her husband and son had to take time off work or school to take her to physiotherapy.

[41] Dr. Hota in a clinical note dated July 25, 2016 stated that the Appellant still suffered from headaches.

[42] A MRI of the head taken on September 8, 2016 did not reveal a specific abnormality. No findings were seen to account for the Appellant's vertigo. A follow up MRI of the head taken on December 7, 2016 did not show any adverse change compared to the September 8, 2016 MRI.

[43] The Appellant testified that she suffered from depression in 2008. She was admitted to a mental health facility in 2010. She took time off work in 2010 because of a concussion. She developed seizures in 2011 and was hospitalized in that year. She continued to suffer seizures at the time that she left the workforce in August 2014. A clinical note from Dr. Hota dated November 12, 2014 indicated that the Appellant has having migraines every three to four days that would last for two days. These migraines were accompanied by vomiting and seizures. A clinical note from Dr. Hota dated December 12, 2014 stated that the Appellant had a blackout at a birthday party. The Appellant testified that her headaches triggered seizures. The Appellant is still undergoing treatment and is scheduled to see another specialist. Her current medications include Zopiclone, Citalopram, Lorazepam, Advil, Gravol and Tylenol.

Ability to Function at Work and in Activities of Daily Living

[44] The Appellant in her Questionnaire for Disability Benefits reported a standing tolerance of 30 to 45 minutes. Her vision is often blurred and she reported wearing sunglasses most of the time. She reported limitations with walking. The Appellant stated that her speaking is slurred and not possible during a seizure or migraine episode. She does not lift or carry anything. She reported pain in her back, shoulders and neck with lifting and carrying. The Appellant reported memory and concentration difficulties. She reported problems with bending and going 24 to 48 hours without sleep on occasion. The Appellant reported that her husband had to provide personal care when would have a seizure or migraine episode. She reported problems breathing.

She also stated that she is not able to shop on her own. She is only able to do approximately one to two hours of housecleaning on a good day, once or twice per week.

[45] The Tribunal was provided with a letter of reference from Dr. Gretchen Roedde dated February 8, 2011, where Dr. Roedde described the Appellant as an excellent employee and one of the best people that she had ever worked with.

[46] The Tribunal was provided with a letter from Dr. T. McDermott dated December 6, 2011. This letter stated that the Appellant worked at a family medicine clinic in Northern Ontario for a number of years. The Appellant was described as an invaluable resource because she worked in multiple roles. The Appellant worked in the front office in a secretarial role. She handled IT problems and filled in for physician's secretaries when they were absent. The Appellant was described as an efficient worker and a self-starter, who put in extra time.

[47] There is correspondence in the file from the lead physician at a medical clinic that the Appellant worked at which stated that the Appellant's full-time administrative assistant position was changed to a part-time position effective April 16, 2012. The Appellant's employer stated that it had undertaken every accommodation suggested by the Appellant's physician. The Appellant was still not able to complete her job duties and fulfill her return to work schedule, despite receiving accommodations. The employer did not have an alternative position that would allow the Appellant to continue working. The employer advised that it did not have the resources available to hire someone else to serve in the Appellant's role and maintain her full-time employment. The Appellant was asked if she felt that she could return to work on a full-time basis. Otherwise, her position would change to part-time.

[48] The Appellant testified that she developed major depression in 2008 while working as an administrative assistant at a medical centre in Northern Ontario. She also had a hysterectomy in November 2008. The Appellant's job responsibilities increased in 2009. She had shingles. She developed tremors and had difficulties with her speech. She went back to work but she was not doing well in 2010. She still had tremors. She was admitted to a mental health facility for one week in 2010. She sustained a concussion while figure skating in October 2010 for which she required time off work. She returned to her same job after the concussion. However, she began having seizures in 2011. She spent four days in hospital in July 2011 because of seizures.

She was again hospitalized in December 2011. She went on sick leave. In February 2012, she tried a graduated return to work but it was not working well. A decision was made that the Appellant would move to a part-time role which would mean that she would lose her benefits. The Appellant decided to quit her job. A physician that she worked with, Dr. Roedde was working on a book. The Appellant assisted Dr. Roedde with website and social media management until September 2012. She was working one or two hours per week for Dr. Roedde.

[49] The Appellant continued to have medical problems in 2012. She was being treated by Dr. Swayze, Psychiatrist and Dr. Foell, Neurologist in 2012. However, she continued to suffer from seizures. Her family moved to Eastern Ontario because her husband found a job in that area. She wanted to try to find another type of employment. The Appellant applied to X College in 2013 and was admitted to the Human Resources Management program. X College required that she have a seizure protocol because of her medical issues. Two of the Appellant's professors were not comfortable with the procedure and she therefore took some classes on line. The Appellant could not attend her summer 2013 courses in person because the classes were longer. She reduced her course load by the third semester. She was not able to keep up with the courses and she was low on funds. She testified that she dropped out of the program in December 2013 for both financial and medical reasons with medical reasons being the predominant factor. She stated that she obtained a high GPA as indicated in correspondence from X College dated February 4, 2014. However, she put all of her efforts into the program, as she was not working and doing very little around the house. She obtained her high GPA in the fall semester where she had her lightest course load.

[50] The Appellant looked for work in 2013. She wanted to find a job that would not trigger seizures. She thought that working as a medical secretary would help. She secured a position at a community medical centre in Eastern Ontario in January 2014 and worked there until August 2014. The Appellant had poor work performance. She had difficulty completing her tasks. She was not working fast enough. She suffered from migraines. She had seizures at work. She could not finish her work day after a seizure. The Appellant would generally miss a few days of work after a seizure episode. The Appellant was seeing Dr. Burra in April 2014. She was doing better in April 2014 but they changed locations at work. There were alarms at the new location which

would trigger seizures. It was suggested on a few occasions that the Appellant be transferred to the IT department as a form of accommodation. However, this never happened. The Appellant testified that she was not sure if she would have been able to work in another role. She applied for EI after her resignation in August 2014. She tried online courses at home in both photography and business management starting in October 2014. The Appellant struggled while taking these courses despite the fact that she worked on the courses from a flexible environment at home.

[51] She dropped out of these courses in December 2014 without completing them. The Appellant testified that she collected regular EI benefits in January and February 2014. She indicated that she was not ready and able to work as indicated on an application form. Her health did not improve in 2015. Her EI benefits were running out. She asked Dr. Hota if she could go back to work. Dr. Hota advised her that she was not safe to work in any environment. She stopped trying to find work after receiving this advice. The Appellant was asked if she could find alternative employment by working from home. She stated that she could not even complete her online courses in 2014 because of her health problems that have led to severe memory and concentration difficulties. The Appellant testified that she was having a hard time following instructions prior to her August 2014 resignation. She felt overwhelmed.

[52] Dr. Hota completed a Verification of Disability/Impairment form for the Ontario Ministry of Community and Social Services on April 6, 2015. Dr. Hota stated that the Appellant had migraines that led to hemiplegia (paralysis) and seizures. Dr. Hota stated that the Appellant could not walk due to migraines and it took her longer to dress. She was unable to perform the mental functions necessary for employment because of her medical condition. Dr. Hota stated that the Appellant could not tolerate light and sounds despite multiple medications. Dr. Hota concluded that the Appellant was not fit to work because of incapacitation that could occur at any time and occurs at least three times per week.

[53] The Appellant no longer shops because of her seizure disorder. When she had a good day, she prepares meals for the children and places them in the freezer. Her children assist her with laundry. She used a cane prior to her MQP to get around because she did not feel safe. She experiences body paralysis with seizures and her left leg drags after seizures.

SUBMISSIONS

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

- a) She is incapable regularly of pursuing any substantially gainful occupation due to seizures, pain and fatigue.
- b) Her disability continued to be severe after her MQP. She has a prolonged disability that is likely to be long continued and of indefinite duration.
- c) She is unable to complete her activities of daily living.
- d) She is unable to retrain or pursue alternative employment. She has no residual working capacity.
- e) She has followed her doctors' recommendations.
- f) She has been disabled since August 2014, when she stopped working.
- g) Her collection of regular EI benefits does not preclude her from being eligible for CPP disability benefits.

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

- a) The medical evidence does not show any serious pathology of impairment that would result in the Appellant being categorized as disabled and unemployable in all occupations.
- b) The Appellant did not quit her last job for medical reasons. She also obtained a 3.5 grade point average at X College which supports a finding that she has work capacity.
- c) The Appellant collected regular Employment Insurance benefits from September 2014 until February 2015 on the strength of her statement that she was ready, willing and able to work. One cannot be simultaneously totally disabled and able to work.

ANALYSIS

Test for a Disability Pension

[56] 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.

[57] 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.

[58] 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

[59] The Tribunal finds that the Appellant has established on a balance of probabilities that she had a severe disability that rendered her incapable regularly of pursuing any substantially gainful occupation on or before her December 31, 2014 MQP.

[60] 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.

[61] The Tribunal, in applying *Villani* to the facts of this appeal, finds that the Appellant is incapable regularly of pursuing any substantially gainful occupation in a real world context. The

Appellant was only 37 years old at the time of her MQP. She had a good command of the English language. She also had work experience as a loan officer, administrative assistant and medical secretary. She had IT skills and experience working with websites and social media. She also had some post-secondary education. On the surface, it appears that the Appellant has significant transferable skills and should be employable. However, the Tribunal is satisfied after reviewing the medical, documentary and hearing evidence that the Appellant could not maintain employment in any capacity on or before her MQP date. The Appellant's physical and psychological ailments have led to significant impairments in the areas of standing, walking, driving, memory and concentration. The Appellant cannot sustain activities on a reliable and consistent basis. The Appellant's medical condition renders her incapable of maintaining work on a consistent and reliable basis.

[62] The Tribunal rejects the submissions advanced by the Respondent that the medical evidence does not support a finding that the Appellant has a severe disability, that the Appellant's performance at X College constitutes evidence of work capacity and that the Appellant has credibility issues because she collected regular EI benefits from September 2014 to February 2015 on the strength of her statement that she was ready, willing and able to work.

[63] Turning first to the issue of the Appellant's credibility, the Federal Court of Appeal in *Bungay v. Canada (Attorney General)*, 2011 FCA 47 held that an application for regular EI benefits in conjunction with CPP disability benefits requires an assessment of the applicant's credibility. However, the applicant's disability must still be assessed in accordance with the legislation and the standards set out in *Villani*. The Tribunal finds that a statement made on an EI application that an applicant is willing, ready and able does not necessarily mean that they are able to perform substantially gainful employment.

[64] The Tribunal finds the Appellant to be a credible witness. The Appellant testified that she suffered from depression in 2008. She was admitted to a mental health facility in 2010. She took time off work in 2010 because of a concussion. She developed seizures in 2011 and was hospitalized in that year. She continued to suffer seizures until she left the workforce in August 2014. The medical evidence supports the Appellant's assertion that she had a severe disability on or before her MQP date. Dr. Foell treated the Appellant for her apparent seizure episodes in

2010. Dr. Swayze diagnosed the Appellant with major depressive disorder, presently in remission on September 19, 2010. The medical records confirm a July 15, 2011 hospitalization due to seizures. The Appellant was again admitted to the hospital on December 1, 2011 because of slow and slurred speech. Dr. Swayze in a January 7, 2012 stated that the Appellant might have a conversion disorder. Dr. Roedde in an April 13, 2012 stated that she had witnessed a seizure episode. Dr. Bui diagnosed the Appellant with pseudo-seizures on September 25, 2012. Dr. Burra provided the Appellant with psychiatric treatment in 2014 in relation to depression and somatoform disorder. Dr. Hota in a Verification of Disability/Impairment form that he completed on behalf of the Ontario Minister of Community and Social Services on April 6, 2015, stated that the Appellant could not walk due to migraines and it took her longer to dress. Dr. Hota stated that the Appellant was unable to perform the mental functions necessary for employment because of her medical condition. Dr. Hota stated that the Appellant could not even tolerate light work. He opined that the Appellant was not fit to work because of incapacitation that could occur at any time and that took place at least three times per week. The Tribunal notes that Dr. Hota's report is slightly after the Appellant's MQP but the report findings are based on medical conditions that manifested themselves prior to the MQP.

[65] The Appellant was a credible witness at her hearing. She was both physically and emotionally uncomfortable in giving evidence. She became teary-eyed on several occasions and had significant word finding difficulties. She had to take a few short breaks and her spouse offered her moral support to continue with her testimony. The Appellant was clearly upset about her inability to work. The Tribunal finds that she did not feign or exaggerate her symptoms. Any comment she might have on an EI application that she was ready, willing and able to work after leaving her job in August 2014 were expressions of wishful thinking on the part of the Appellant and were not a true reflection of her work capacity at that time.

[66] What made the Appellant particularly credible was that she went off work in the past but overcame her physical and mental obstacles and returned to work. She resigned from her administrative position at a medical clinic in Northern Ontario in April 2012 after she was moved to part-time work. The Appellant could not return to full-time duties despite receiving accommodation from her then employer. The Appellant continued to work on a casual basis assisting a physician with a book launch that included website and social media management

until September 2012. The Appellant did not give up on returning to the work force despite suffering from migraines and seizures. She attended X College in 2013 and studied Human Resources Management. However, she could not complete this program because of her health issues. She eventually found a job at a medical centre in Eastern Ontario in January 2014 and continued working until August 2014. The Appellant resigned this position voluntarily. The Tribunal disagrees with the Respondent's assertion that this a voluntary resignation indicated that the Appellant had work capacity. The Tribunal finds that medical reasons were the predominant reason for her August 2014 resignation. In reviewing the Appellant's exit form dated August 30, 2014, the Appellant decided to resign because some her or co-workers indicated that she did not do enough to take care of herself. Her disability caused her co-workers a great deal of stress and the Appellant's supervisor asked her what she was going to do about that. It was evident that the Appellant was experiencing interpersonal difficulty at her last place of employment but the Tribunal finds that this was because of her medical condition.

[67] The Tribunal rejects the submission of the Respondent that the Appellant's performance at X College constitutes evidence of work capacity. The Appellant went to X College in 2013 and by her third semester was taking a reduced course load. The Appellant scored a high GPA in the fall semester but with a reduced course load. The Appellant ultimately failed to complete the program because of her medical condition. She also tried an online photography and business management course starting in October 2014. However, she dropped out of these courses in December 2014. The Appellant could not complete these courses despite working in a flexible environment. Contrary to what the Respondent submits, the Appellant's course work demonstrates that the Appellant cannot work in reliable and predictable manner and supports a finding that she has no work capacity. Her coursework shows that the Appellant would not even be able to work in a home environment where she would have some control over her hours of work and the manner in which the work would be done. The Tribunal agrees with Dr. Hota that the Appellant lacks the mental function to perform work on a substantially gainful basis.

[68] 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 had no residual work capacity and has not been able to perform any substantially gainful work in any

type of occupation since she left the workforce in August 2014. A clinical note from Dr. Hota dated March 9, 2015 indicated that the Appellant was able to work two days out of the week. The Appellant's Record of Earnings does not show any income after 2014. The Appellant stated at her hearing that Dr. Hota made an error in this note. The Tribunal agrees with the Appellant. Dr. Hota drafted a report barely one month later on April 6, 2015 to the Ontario Ministry of Community and Social Services indicating that the Appellant was not fit for work. The Tribunal is satisfied that the Appellant had no work capacity on or prior to her MQP.

[69] The Tribunal disagrees with the Respondent's submissions that the medical evidence does not show any serious pathology of impairment that would result in the Appellant being categorized as disabled and unemployable in all occupations. It is true that the Appellant has undergone radiographic investigations and EEGs that did not demonstrate seizure activity. However, there is substantial evidence in the file that the Appellant has valid medical conditions that prevented her from working. Dr. Foell in a report dated May 20, 2010 did not believe that the Appellant's symptoms were consistent with seizures but he did agree that the Appellant's symptoms were consistent with migraines. Dr. Bui diagnosed the Appellant with a pseudo-seizure disorder. Dr. Swayze felt that the Appellant might have a conversion disorder. Dr. Burra treated the Appellant for depression and somatoform disorder. Dr. Hota was clearly of the opinion that the Appellant cannot work and the Tribunal agrees with him after taking into the medical and documentary and the Appellant's hearing evidence. The Appellant testified that her condition has not changed since 2014 and based on her presentation at the hearing, she is clearly not someone who can work in a real world context.

[70] The Tribunal finds that the Appellant has managed her medical conditions appropriately. She has been followed by her family doctor, neurologists and psychologists. She has attended epilepsy clinics. She has been compliant with her medications. There is a reference in one of the clinical notes that the Appellant could not attend physiotherapy for transportation reasons. This inability to attend physiotherapy was reasonable. The Appellant cannot drive and she relies on family members to transport her to medical appointments. This is not a case where the Appellant had a sudden onset of a medical condition and decided to apply for disability right away. The Appellant clearly struggled to maintain employment since 2010. She applied for CPP

disability benefits in 2013 and was denied. The Appellant to her credit made one last attempt to work in 2014 but that ended in failure due to her medical issues.

[71] 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 related to standing, walking, driving memory and concentration. The Appellant's most significant impairment is in her mental function that arises because of her pseudo-seizure disorder. The Appellant cannot drive. The Appellant's seizures are unpredictable and they incapacitate her when they occur for at least one day.

Prolonged

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

[73] The Appellant continues to take Zopiclone, Citalopram and Lorazepam to manage her overall medical conditions, which have not improved in spite of regular treatment.

CONCLUSION

[74] The Tribunal finds that the Appellant had a severe and prolonged disability in August 2014, when she went off work, as explained above. According to section 69 of the CPP, payments start four months after the date of disability. Payments start as of December 2014.

[75] The appeal is allowed.

George Tsakalis
Member, General Division - Income Security