



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. B. v. Minister of Employment and Social Development*, 2017 SSTGDIS 150

Tribunal File Number: GP-16-1720

BETWEEN:

**J. B.**

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: Michael J. Collins

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 August 24, 2015. The Appellant claimed that she was disabled because she had fibromyalgia, arthritis in her neck and spine, and migraines. 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, 2011.

[3] This appeal was decided on the basis of the documents and submissions filed for the following reasons:

- a) The member has decided that a further hearing is not required.
- b) The issues under appeal are not complex.
- 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) In addition to the maximum one year period allowed to appellants to file documents for the Tribunal to consider, the Appellant, with the consent of the Respondent, was allowed an additional 4 months; however, the Appellant filed only a one page medical report and a one page self-assessment, both of which were created in 2017, almost 7 years after the date by which she claimed to be disabled.

[4] The Tribunal has decided that the Appellant is not eligible for a CPP disability pension for the reasons set out below.

## **EVIDENCE**

[5] The Appellant was 50 years of age when she filed her application for the CPP disability benefit (GD2-16).

[6] She reported in her CPP Questionnaire for Disability Benefits (Questionnaire) that her highest level of education was a one year college program for Community Social Service Worker (GD2-42).

[7] She reported that she had been working as a customer service representative and was on leave for “migraines/pain” from her position when the company that employed her closed (GD2- 42). She had been employed since May 17, 2010, and her last day on the job was October 19, 2010 (GD2-42).

[8] She reported herself as self-employed beginning June 2012 (GD-42); however, her Record of Earnings showed no income after 2011 (GD2-5).

[9] She identified the illnesses that prevented her from working as fibromyalgia, arthritis in her neck and spine, and migraines (GD2-44). In addition, she reported that she was diabetic (GD2-44). She described various functional limitations (GD2-45) and claimed that she could not work by reason of her medical condition after October 2010 (GD2-44).

[10] The Appellant’s family physician, Dr. Wang Xi, completed a CPP Medical Report on August 11, 2015 (GD2-41). He reported that he had been the Appellant’s family physician since December 2014, and he gave diagnoses of: fibromyalgia, diabetes (on insulin), and hypertension (GD2-38)

[11] After the Respondent reconsidered the Appellant’s application for the CPP disability benefit and maintained its denial, the Appellant filed a Notice of Appeal on May 18, 2016, stating as her grounds of appeal: “I had and continue to have a severe and prolonged disability prior to December 2011.” (GD1-2) She filed no additional evidence with her Notice of Appeal.

[12] On September 28, 2017, the Appellant filed a one page letter of her current family physician, Dr. Xi, which was dated September 25, 2017, in which Dr. Xi summarized treatments pursued for fibromyalgia in 2016 – 2017 (GD8-2). Also, the Appellant filed a one

page self-assessment, which was dated April 3, 2017, stating that she had stopped working in her home business in January 2017, that she had recently begun having panic attacks and was referred for mental health treatment, and that she had been diagnosed with a brain aneurysm in March 2017 (GD8-3).

## **SUBMISSIONS**

[13] As *per* the statement in her Notice of Appeal, the Appellant submitted that she qualifies for a disability pension because she had a severe and prolonged disability prior to December 2011, and continuously thereafter.

[14] There is no need to summarize the Respondent's submissions, given the Tribunal's analysis of the evidence.

## **ANALYSIS**

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

[15] 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.

[16] 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.

[17] 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

[18] The severe criterion must be assessed in a real world context (*Villani v. Canada (A.G.)*, 2001 FCA 248 at par.38). 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. This does not mean, however, that everyone with a health problem who has some difficulty finding and keeping a job is entitled to a disability pension. Medical evidence will still be needed, as will evidence of employment possibilities and efforts. (*Villani, supra* at par.50)

[19] In addition, section 68(1) of the *Canada Pension Plan Regulations* (CPP Regulations) states that an applicant for the disability benefit must supply the respondent Minister with a report of any physical, or mental disability, including: the nature, extent and prognosis of the disability; findings upon which the diagnosis and prognosis were made; any limitation resulting from the disability; and, any other pertinent information, such as further diagnostic work, or treatment.

[20] In this case the Appellant has filed no medical evidence regarding her health as it was on, or before December 31, 2011.

[21] The only medical evidence of record is that of the family physician, Dr. Xi, who, according to the CPP Medical Report, began treating the Appellant in December 2014, 3 years after the latest date by which the Appellant could be found disabled.

[22] The Appellant filed no medical reports from any physicians whom she might have seen on, or before December 31, 2011, the relevant date for making a finding of disability.

[23] The reports from Dr. Xi, of which there are two, speak only to his diagnosis and clinical observations from December 2014 (CPP Medical Report) and the Appellant's treatment in 2016- 2017 (report of September 28, 2017). His reports do not, and cannot, address the Appellant's health as of December 31, 2011, and earlier.

[24] The Appellant was allowed a total of 16 months to gather relevant medical documentation, but filed none. This is not to say that the Appellant is not being truthful when

she states that she has experienced pain for many years. It is to say, however, that two self-assessments, one in 2015 (CPP Questionnaire) and one in 2017 (letter of April 3, 2017), that speak to how the Appellant saw herself at the relevant time are insufficient to discharge the evidentiary burden imposed by the CPP and the applicable jurisprudence of the Federal Court.

[25] The Appellant stated in her letter of April 3, 2017, that her health has worsened, most notably with the recent diagnosis of a cerebral aneurysm; however, evidence of worsening health *post* MQP is not relevant to the issue before the Tribunal, that is, whether the Appellant had a severe disability on, or before her MQP. (*Gilroy v. Attorney General of Canada*, 2010 FCA 302)

### **Prolonged**

[26] Given the Tribunal's finding with respect to the severe criterion, there is no need to make an assessment with respect to the question of whether the claimed disability is prolonged.

### **CONCLUSION**

[27] The appeal is dismissed.

Michael J. Collins  
Member, General Division - Income Security