



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. C. v. Minister of Employment and Social Development*, 2017 SSTGDIS 146

Tribunal File Number: GP-15-4228

BETWEEN:

C. C.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Virginia Saunders

HEARD ON: August 29, 2017

DATE OF DECISION: October 2, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on June 18, 2014. The Appellant claimed that she was disabled because of her mental health. 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, 2010.

[3] This appeal was heard in person for the following reasons:

- a) The method of proceeding is most appropriate to allow for multiple participants.
- b) 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 attended the hearing, as did the following witnesses who testified on her behalf:

- a) C. H.
- b) J. M.
- c) T. A.
- d) B. C.

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

EVIDENCE

Background

[6] The Appellant is now 55 years old. At her MQP she was 48. She has spent most of her life in the Vancouver area, where she continues to live.

[7] The Appellant described herself as a rebellious teenager who quit high school after Grade 10. She worked as a waitress on the B.C. Sunshine Coast, and then moved to Alberta where she worked as a courier. She had her first child in 1982 when she was 20 years old, after which she moved back to Vancouver, where her daughter T. A. was born in 1984. She had a third child who was stillborn, and then her youngest was born in January 1993. She mostly stayed at home to raise her children, but held part-time jobs in stores, greenhouses and restaurants.

[8] The Appellant sustained soft tissue injuries in a number of motor vehicle accidents (MVA) dating back to the early 1990s, and has been left with chronic pain as a result. About 25 years ago she was diagnosed with fibromyalgia and related conditions. She also suffers from irritable bowel syndrome.

[9] In 2005 the Appellant completed a 10-month course to obtain a Community Health Care diploma. She began working for the Fraser Health Authority as a palliative care aide. She testified that she was able to work in spite of her health conditions, except that in 2006 or 2007 she injured her back and was off work for a time. She recalled that she began taking mirtazapine for anxiety and depression around this time. Because of her injury she was unable to safely perform her previous duties, so in 2008 she began working for the Canadian Mental Health Association (CMHA) as a residential support worker.

Working Conditions

[10] The Appellant testified that her job at CMHA was permanent part-time, working weekends at two different group homes for adults with mental health issues in Maple Ridge, B.C. Most of the residents were in transition after discharge from a mental health facility. The Appellant's job was to ensure that they were living up to the contracts that allowed them to be

in the group home, teach them skills such as cooking and cleaning, help them with activities of daily living, and involve them in programs.

[11] The Appellant testified that she enjoyed the work but she found it very challenging as she felt that some of the residents were too ill to be in that setting, and so she had to be hyper-vigilant. Sometimes she observed residents with medical conditions in addition to their mental health issues. When she pursued these in an effort to make sure the conditions were addressed, she would be criticized or disciplined.

[12] The homes were unstaffed between 6 p.m. and 9 a.m., and the Appellant described the conditions then as a free-for-all. Her own home backed onto one of the group homes and sometimes when the residents were unsupervised they would go outside and harass her if she happened to be on her porch or in her backyard.

[13] The Appellant testified that she also had problems with management after the person who hired her took a leave of absence. The file documents several instances where she filed grievances over various matters.

[14] In mid-2010 the Appellant was off work for several months because she had a hysterectomy. She testified that in spite of the stress and anxiety created by her job, she did not miss work because of her mental health until December 2010.

Incident of December 3, 2010

[15] The Appellant testified that on December 3, 2010, she was called into a meeting with her supervisors. They played a video recording by one of the group home residents, who accused the Appellant of something which the Appellant denied. The Appellant was told that if she agreed to have a polygraph test, she would keep her job if she passed the test. If she failed, she would be dismissed and she would also have to pay the \$700 cost of the test. She was also threatened with a charge of extortion.

[16] The Appellant testified that she was devastated by this. She refused to take the polygraph; left the meeting and went to her union representative to file a grievance. That same day she went to a walk-in clinic as her family doctor's office was closed, and she was told by a

doctor at the clinic to stay off work. A few days later the Appellant went to her family doctor, Dr. Prem-Smith, who also advised her to stay away from work. The Appellant did not remember if there was any discussion that day about changing her medication; nor did she recall if Dr. Prem-Smith suggested at that time that she needed a mental health referral.

[17] Dr. Prem-Smith wrote a medical certificate on December 6, 2010, stating that the Appellant was unable to perform all work duties from December 11-12 to December 18-19, 2010; and that she planned to return to work on December 25-26, 2010 (GD6-134).

[18] The Appellant testified that she was in no condition to work after the incident. In testimony and in written statements in the file she described agoraphobia; depression; panic attacks; anxiety; poor concentration; forgetfulness; and extremely poor sleep. She recalled spending most of December 2010 in tears. She saw Dr. Prem-Smith every few weeks, and received counselling from her. She did not return to her job, and except as discussed below she has not worked since December 3, 2010.

[19] Because the Appellant had collected Employment Insurance (EI) sickness benefits when she had the hysterectomy the previous summer, these were not available to her when she stopped working in December 2010. She testified that she discussed this issue with a person at Service Canada and was told to have her doctor provide a letter stating that she was able to work in some other field, after which she would be able to receive regular EI benefits. The Appellant testified that on these instructions she asked Dr. Prem-Harris to write the note dated January 6, 2011, in which she stated that the Appellant “was currently fit to look for work in a different occupation” (GD6-34).

[20] As a result of the incident and the denial of long-term disability from her employee benefits plan, the Appellant had a protracted grievance process with her employer that lasted over three years. In 2014 she accepted a settlement that had her officially resign for personal reasons effective December 31, 2011.

Medical Visits and Treatment after December 2010

[21] The Appellant continued to see Dr. Prem-Smith (GD2-105). She testified that Dr. Prem-Smith made a referral for psychiatric assessment, but she did not know when exactly that

happened. There was considerable delay because she wanted to be seen outside of her catchment area because she was concerned about having contact with colleagues and previous clients, particularly as her employment issues were unresolved. For some reason Dr. Prem-Smith was unable to arrange this. Instead the Appellant received calls for appointments from mental health services in Maple Ridge, which she could not accept. She did not remember when these calls took place, except that it was after she had been waiting for a very long time.

i. Dr. Auersperg – Internal Medicine

[22] In July 2011 the Appellant saw Dr. Auersperg, a specialist in internal medicine, for her fibromyalgia and chronic pain. She told Dr. Auersperg that she was under a lot of stress recently because of work-related disciplinary hearings. Dr. Auersperg observed that while the Appellant looked physically well it was hard to keep her on topic and he thought she might be hypomanic. He recommended some changes to her medication to manage her chronic pain; and noted that she “clearly needs a lot of help with sleep”. In that regard he suggested that trazodone or Amitriptyline be considered (GD2-230-231).

ii. Dr. Prem-Smith – Family Physician

[23] In February 2012 Dr. Prem-Smith reported that she had known the Appellant since October 2008, and at that time she began treating her for fibromyalgia, chronic pain disorder, depression, osteoarthritis, and disturbed sleep. She noted that the Appellant had depression and anxiety with marked agoraphobia, labile mood, an inability to focus on tasks, and was overwhelmed. She was taking Imovane; trazadone; Percocet; Remeron (mirtazapine); clonazepam and Ativan. She was currently seeing a psychologist. Dr. Prem-Smith felt that due to the length of time the Appellant had been symptomatic the prognosis for improvement was guarded (GD2-214-217).

iii. M. Crawford - Counselling

[24] Because the Appellant had as yet been unable to see a psychiatrist, her mother arranged for her to see a private counsellor, Michelle Crawford (GD2-30). She began seeing Ms. Crawford in February 2012 and she testified that these sessions were somewhat helpful.

[25] While on her way to see Ms. Crawford on March 31, 2012, the Appellant was in another MVA. She developed right-sided neck and shoulder pain, and had physiotherapy and a steroid injection, but was still symptomatic the following year when she was referred for orthopedic assessment. She was determined to have a whiplash-associated injury to be treated with activity; medication; and pain management (GD2-151-154).

[26] The Appellant testified that as a result of the MVA she stopped seeing Ms. Crawford. She became overwhelmed with having to deal with the aftermath of the accident, including dealing with insurance issues, repair of her truck, and attending physiotherapy. She then had to find a new family doctor in May 2012 because Dr. Prem-Smith reduced her patient-load. Dr. Tran became the Appellant's family doctor in June 2012.

iv. Dr. Parfitt - Psychiatrist

[27] In November 2012 the Tri-Cities mental health unit contacted the Appellant about attending therapy (GD6-67). She saw psychiatrist Dr. Parfitt in January 2013.

[28] In his initial report Dr. Parfitt noted that the Appellant was seeking treatment for symptoms of depression of at least two years during which she was on a stable dose of mirtazapine. She recalled the events of early December 2010 and described persistent symptoms including loss of enjoyment of activities, becoming almost housebound, difficulty concentrating, forgetfulness, lack of motivation, and disturbed sleep. Dr. Parfitt noted that the Appellant had been seeing a psychologist in 2011-2012 until an MVA. He stated that her anti-depressant medication regime needed to be revised "given her ongoing symptoms and significant disability" and that her disability status needed to be clarified. He stated "it is clear that she is unfit to work in her present state and that recovery is likely to be prolonged". He arranged to see her in March 2013 (GD6-55-57).

[29] In March 2013 Dr. Parfitt prescribed Abilify (aripiprazole) which caused nausea and vomiting but helped calm her a bit (GD6-61). Dr. Parfitt reported in June 2013 that the Appellant had not made much progress (GD2-97).

[30] Dr. Parfitt retired that month, and the Appellant's file was closed by the mental health unit. She was offered group counselling and stated that she would think about it, but she

testified that she could not go because the sessions were at night and she could not drive herself there. Instead she used the Anxiety B.C. web-site. Dr. Tran's notes indicated that he provided some counselling and therapy as well.

v. Dr. Tran – Family Physician

[31] In June 2013 Dr. Tran stated that the Appellant had ongoing shoulder, back and arm pain that limited her ability to lift, push or pull. He stated that her depression prevented her from working "in a stressful setting that requires conflict or dealings with any past employers. She does not currently have the mental capacity to deal with the co-ordination of services or planning required to work as a Residential Support Worker" (GD2-102-103).

[32] On August 30, 2015, Dr. Tran described the Appellant's difficulty accessing medical services in the past. This was at first due to the fact that she would have been a client in the region where she had previously worked; and then Dr. Parfitt retired soon after the Appellant was finally able to see him after waiting several years. Dr. Tran stated that for the past five years the Appellant had been "stuck in the medical system" and was left untreated and unable to work because she was suffering from anxiety and depression. She was now addressing these with Dr. Harrad (GD1-11).

[33] Dr. Tran stated as well that the Appellant had severe IBS that also prevented her from working, and that she was now seeing Dr. George for these. He noted that she had fibromyalgia and rheumatism that also contributed to her inability to work for the past five years (GD1-11).

vi. Dr. Harrad - Psychiatrist

[34] The Appellant asked Dr. Tran to refer her to a psychiatrist, which he finally did in February 2015. The Appellant testified that at first she was told that she would have to wait approximately one year. She asked to be put on a cancellation list and she was called to see a Dr. Harrad in June 2015.

[35] Dr. Harrad stated that the Appellant's job issues had caused a great deal of grief, sadness, depression, and anxiety. He diagnosed her with major depression with anxiety and

panic attacks. He advised her to discontinue Abilify; to start trazodone, Seroquel (quetiapine), and Effexor (venlafaxine); and to see him every three weeks for follow-up (GD2-15-16).

[36] The Appellant testified that since June 2015 she has seen Dr. Harrad once or twice a month. Besides adjusting her medication, he provides talk therapy. In November 2016 Dr. Harrad repeated his diagnosis of the Appellant. He stated that because of the nature and severity of her illness she was not able to return to her regular job, or to participate in vocational rehabilitation (GD4-1-2).

Work Attempts

[37] In mid-2011 the Appellant made several comments indicating that she was interested in working elsewhere, or was actively looking for work. She testified that this was in reference to the following work attempts.

[38] The Appellant had experience working as a deputy returning officer, and so she and her husband worked in the 2011 federal election to try to get her out of the house. She worked on election day counting ballots at the polling station. She found this job difficult as she could not get comfortable, had trouble staying focussed, and needed many bathroom breaks because of IBS.

[39] In early 2012 the Appellant began helping one of her husband's co-workers with his elderly parents who lived in a facility near her home. One of them had Alzheimer's. The Appellant decided to try this to give herself a sense of purpose. She spent a few hours every few days picking the couple up and taking them shopping or to medical appointments. She stopped after only a few months because she found them hard to deal with and because her medications made her drowsy. She was not paid for this work.

Limitations

[40] The Appellant testified that although she is getting regular treatment she does not feel able to return to work. She takes her medication as prescribed and it makes her feel groggy. She still has difficulty remembering things and dealing with schedules; she is easily overwhelmed and she still feels socially withdrawn and tearful.

[41] The Appellant testified that in order to get through a day she breaks her activities into smaller tasks. She does the basics in her home, and she is able to go out in the yard now to garden because the group home is gone. Her children provide her with company and assistance. She has a two and a half year old grandson who she can only spend time with in small doses because she is overwhelmed by him.

Testimony of C. H.

[42] C. H. is the Appellant's mother. She lives in the Vancouver area and sees her daughter about once a month. They talk on the phone frequently. She recalled that the Appellant was very happy when she began working as a care aide. She liked her job in the group homes but she was bothered that some of her concerns were not being addressed and because she was being taunted and harassed by residents of the group home near her own house. Ms. C. H. admitted that she was unsure about dates but she felt that this was when things began to deteriorate for the Appellant. She became very "closed in" and began to avoid family gatherings.

[43] Ms. C. H. recalled that the events of December 2010 were particularly difficult because the Appellant felt she was treated very unfairly and was being punished for caring too much. She became extremely depressed to the point where Ms. C. H. started to worry much more about her mental health. After more than a year of escalating concern, Ms. C. H. and her husband decided to pay for the Appellant to see a psychologist because they were afraid that she would harm herself if she had to wait any longer for help.

Testimony of T. A.

[44] T. A. is the Appellant's daughter. She was living with the Appellant when the Appellant decided to return to school to train as a care aide. She recalled that her mother was vibrant and proud of herself, and the family was excited for her.

[45] Ms. T. A. felt that everything went very well for the first while after the Appellant started working. Eventually she noticed her becoming afraid to be in her own home, especially by herself, but also afraid to go out. Ms. T. A. recalled that part of the problem stemmed from the abuse and threats the Appellant received from the residents in the group home nearby.

[46] Ms. T. A. was certain that the Appellant's withdrawn and anxious behaviour began while the Appellant was still working, and that it became more severe around 2010. By then Ms. T. A. was living with her boyfriend in X but she would see her mother at least a few days a week and she would stay over with her whenever when her father was out of town.

[47] Ms. T. A. recalled discussing these issues with the Appellant, because she thought her mother should quit her job or at least get some help. However, the Appellant's job was too important to her. She kept working, and Ms. T. A. noticed her anxiety, depression, and fear of leaving the house grew worse. She noticed some improvement when her father retired, which also coincided with when Ms. T. A. became pregnant with the Appellant's first grandchild, who was born in 2015.

Testimony of J. M.

[48] J. M. married the Appellant's mother when the Appellant was 11 years old. He adopted the Appellant and her sister, and has remained close to them in spite of having divorced their mother in 1981 and starting a new family. He speaks with the Appellant on the phone every few weeks and usually sees her three or four times a year.

[49] Mr. J. M. recalled that the Appellant was ecstatic when she completed her training in 2005. In the last seven or eight years he noticed a change in her. She loved her job but she was distraught over her workplace problems, including issues with a co-worker. Because Mr. J. M. is a lawyer the Appellant called him frequently to discuss these issues, and most of their phone calls revolved around her being in distress. He noticed her becoming more reclusive and having difficulty with leaving the house for social interaction or to go to work. She began to improve and go out for walks more a year or two ago when her husband retired, but he has not seen her recover significantly where he could imagine her working.

Testimony of B. C.

[50] B. C. is the Appellant's husband. He remembered the Appellant starting to have panic attacks while she was still working; usually caused by harassment from the group home residents. He was travelling a lot for work, but when he was home he noticed that it was hard

for the Appellant to get anything done, and that she was afraid to be out in public. He has noticed a slight improvement since he retired in 2014.

SUBMISSIONS

[51] The Appellant submitted that she qualifies for a disability pension because her combined physical and mental conditions leave her incapable regularly of pursuing any substantially gainful occupation since December 2010.

[52] The Respondent submitted that the Appellant does not qualify for a disability pension because the evidence does not support a finding that she was disabled by December 31, 2010, and continuously thereafter.

[53] The Respondent submitted that in particular:

- a) The Appellant stated in her disability application that she could no longer work and had to cease recreational activities in 2012.
- b) The Appellant's psychological symptoms developed after December 2010.
- c) There is no evidence that IBS or other conditions prevented the Appellant from working in the past.
- d) While her chronic conditions may have prevented her from doing her usual job, there is no information that she attempted other types of work or sought re-training.
- e) Medical reports do not reveal a disabling condition that arose before December 31, 2010.
- f) Dr. Tran's opinions are to be given little weight because he did not begin seeing the Appellant until well after the MQP.
- g) Dr. Harrad indicated that her global assessment of functioning (GAF) score was consistent with moderate symptoms; and in any event his report does not describe her condition at the MQP.

- h) The medical reports suggest that, with treatment, the Appellant's condition may improve.

ANALYSIS

Test for a Disability Pension

[54] The Appellant must prove on a balance of probabilities that she was disabled as defined in the CPP on or before the end of the MQP.

[55] 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.

[56] 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

[57] The Tribunal acknowledges that the Appellant has a number of physical conditions – some pre-dating December 2010 and some arising after – that affect her. The Tribunal considers that the Appellant's mental condition by itself is severe.

[58] In December 2010 the Appellant had what can best be described as a catastrophic event, when she was disciplined at her workplace in circumstances she perceived as unfair and threatening. There is written and oral evidence indicating that before that time she had difficulties with her working conditions and with her employer. She was in distress but managed to continue with a job she was proud to do until the events of December 3, 2010, which appear to have been the last straw for her.

[59] The Appellant's mental condition is not well-documented until after her MQP. The medical evidence immediately after she stopped working is spotty. The Appellant claimed that this was in part because some of her medical records may have disappeared when her files were transferred in 2012; and also because treatment was delayed due to her need to seek treatment outside of her community.

[60] The Tribunal found the Appellant and the witnesses to be credible. They all gave generally consistent testimony that did not appear to have been rehearsed. While their dates were not always in agreement, they were all clear in their recollection that the Appellant was struggling with her mental health before December 2010, and that immediately upon feeling forced to stop in December 2010 her condition grew worse. They described symptoms and limitations that suggest it was unlikely the Appellant would have been able to leave the house to attend any type of work.

[61] The oral evidence of the Appellant's condition immediately after December 3, 2010, is supported by Dr. Prem-Smith's medical report of February 2012. Dr. Prem-Smith would have been able to refer to the Appellant's records from this time, as well as her own recollection. She stated unequivocally that the Appellant was agoraphobic, anxious, and overwhelmed; she described symptoms inconsistent with regular attendance at any workplace; and she stated that the Appellant's prognosis was guarded because of the length of time she had been in this condition.

[62] The Tribunal places no weight on the Appellant's statement in her application that she became disabled in March 2012. It is understandable that she focussed on the most recent significant event in assessing her condition. While the March 2012 MVA affected the Appellant's physical condition there is no evidence that it or any other intervening factor made her mental health appreciably worse than it already was. Thus it is more likely that the symptoms she and her family members described existed before the December 2010 event, grew worse in that month, and did not resolve.

[63] The Tribunal accepts the Appellant's explanation for Dr. Prem-Smith's note of January 2011. Documents in the file support this (GD6-29-38). The note was prepared at the Appellant's request, in compliance with instructions she received from Service Canada, and only because

she could not get medical EI benefits and understood that this was an acceptable alternative. It is not evidence that Dr. Prem-Smith thought she was capable of working in January 2011.

[64] The Tribunal places no weight on Dr. Prem-Smith's note of December 6, 2010, which suggested that the Appellant might return to work by the end of that month. The note was not written after a lengthy assessment of the Appellant's prognosis, but to allow her to keep her job. While all concerned may have hoped or assumed that the Appellant would improve quickly, it is apparent that she did not. The Tribunal finds that that Dr. Prem-Smith likely referred the Appellant for psychiatric health in December 2010 or very soon after that, because of her condition in December 2010. Mix-ups led to the two year delay before the Appellant was able to see Dr. Parfitt.

[65] Any subsequent delays in specialist treatment were due to systemic problems and oversights, and not because anyone thought the Appellant did not need psychiatric treatment. Dr. Tran's letter of August 2015 confirmed this. His clinic notes indicated that the Appellant saw him regularly and reported stress and anxiety about her circumstances; that she was often tearful; had difficulty coping; and was waiting for some mental health support. The Appellant was dealing with numerous issues that made it difficult for her to navigate the health care system and advocate for herself.

[66] The Tribunal acknowledges that Dr. Tran was not the Appellant's family doctor at December 31, 2010. His opinion as to her condition at that time is supported by Dr. Prem-Smith's medical report. The Tribunal notes that Dr. Tran was the Appellant's family doctor for several years and was in a position through training and his familiarity with the Appellant to arrive at a valid opinion about her condition before she became his patient. That is the case with Dr. Harrad and Dr. Parfitt as well. None of these doctors expressed any hesitation about the truth of the Appellant's description of her condition.

[67] It is possible that the Appellant's condition did not deteriorate until after December 31, 2010. However, after assessing the evidence the Tribunal finds that it is more likely than not that the Appellant suffered a significant change in her mental health immediately after and as a direct consequence of the events of December 3, 2010. She was not able to return to that job, or to any other type of work.

[68] 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, i.e. any substantially gainful occupation (*Klabouch v. Canada (Social Development)*, 2008 FCA 33).

[69] 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).

[70] The Tribunal finds that the Appellant had no capacity for regular work after December 3, 2010, although she attempted it. She was weepy, afraid to leave the house, disorganized, and forgetful. In the following year and a half she tried two jobs: one was a one-day position that she was hired for because of her prior connections and experience. She had difficulty on that day and it is unlikely she would have been able to repeat the experience regularly. Her second “job” was not a paid position. Although it was in a field in which she had experience, she did it badly and managed for only a few months.

[71] 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.

[72] At December 31, 2010, the Appellant was 48 years old without a high school diploma. All of her recent working experience was in the health care field. She suffered a damaging blow to an already precarious mental health condition earlier that month, which left her unable to return to the job that she was dedicated to. The Tribunal is satisfied that the Appellant was by then incapable regularly of pursuing any substantially gainful occupation, and that she continues to be.

Prolonged

[73] The Appellant’s condition is prolonged. She has now had regular counselling from Dr. Harrad for two years, and has not improved in any significant way. While her GAF score

suggested that by 2015-2016 her symptoms were only moderate, the Tribunal placed more weight on the more detailed evidence of the Appellant's limitations, which indicate a condition that was and is more debilitating.

[74] The Appellant has been unable to perform any type of work regularly and productively for almost seven years. She has been compliant with all treatments that were available to her that she could reasonably access. Her family paid for her to have counselling when the public system failed her. Her condition has already been long-continued and is likely to be of indefinite duration.

CONCLUSION

[75] The Tribunal finds that the Appellant had a severe and prolonged disability in December 2010, when she was disciplined at work and felt compelled to leave her job. 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 June 2014; therefore the Appellant is deemed disabled in March 2013. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of July 2013.

[76] The appeal is allowed.

Virginia Saunders
Member, General Division - Income Security