



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. W. v. Minister of Employment and Social Development*, 2017 SSTGDIS 184

Tribunal File Number: GP-16-1226

BETWEEN:

**C. W.**

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: Adam Picotte

HEARD ON: October 27, 2017

DATE OF DECISION: November 28, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on May 14, 2015. The Appellant claimed that she was disabled because of complications arising from her diabetes. 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 by Teleconference for the following reasons:

- a) The issues under appeal are complex.
- b) There are gaps in the information in the file and/or a need for clarification.
- c) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[4] The Appellant was joined at the hearing by her representative Joanne McLellan.

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

## **EVIDENCE**

### **Application for CPP disability benefits**

[6] On May 14, 2015 the Appellant submitted an application for CPP disability benefits. The Application enclosed responses to a questionnaire for CPP disability benefits. The responses were in respect of both her vocational and medical history.

#### *Vocational history*

[7] The Appellant indicated that she was born X.

[8] She indicated that she had a grade 12 education and a degree in social work. In addition she had a nursing certificate as a licensed practical nurse.

[9] She indicated that she had worked most recently from November 2011 to January 2012. She stopped working because her feet went on her due to diabetes and Charcots joints. The Appellant noted that prior to this she worked at St. Joseph Integrated Care Centre.

[10] The Appellant indicated that she was in receipt of long term disability benefits through Great West Life.

#### *Medical history*

[11] The Appellant detailed that she could no longer work because of her medical condition as of January 30, 2013.

[12] She noted that she had acute renal failure and as a result had immobility, lack of sight, renal impairment, and received dialysis 3 times a week.

[13] The Appellant endorsed the following functional limitations:

- Standing for 1 minute and walking with aids;
- Walking one block of 15 minutes;
- Unable to carry or lift due to a risk of fall;

- Unable to reach;
- Required to be careful when bending;
- Unable to attend to basic personal needs;
- Requires assistance of a housekeeper;
- Difficulty driving due to eyesight;
- Shortness of breath;
- Erratic sleep patterns; and
- Impaired sight.

**Medical Report for CPP disability benefit application**

[14] On April 21, 2015 Dr. Ellwood, nephrologist, completed a medical report in support of the Appellant's application for disability benefits. Dr. Ellwood detailed that the Appellant had the following medical conditions:

- End stage renal disease;
- Chronic hemodialysis;
- Hypertension; and
- Type 2 diabetes.

[15] He further noted that the Appellant had functional limitations including the following:

- Visual limitations;
- Mobility limitations;
- Dietary restrictions; and
- Required to attend 4.5 hours three times weekly for hemodialysis.

[16] Dr. Ellwood detailed that this was a lifelong condition and he anticipated deterioration over time.

**Additional evidence**

[17] On April 14, 2008 Dr. Rees, orthopaedic surgeon, completed a consultation report for the Appellant. He indicated that she had a right forefoot and midfoot pain and large ulcer. He noted that radiographs from November the prior year showed multiple fractures and dislocations of the midfoot.

[18] On April 14, 2010 Tracey Howie, Vocational Rehabilitation Consultant, conducted a functional capacity evaluation.

[19] Ms. Howie indicated under the client profile that the Appellant had Charcot's disease and was unable to perform the physical demands of her pre-disability position. She was unable to walk for long distances or stand on her feet for a limited time.

[20] Ms. Howie further indicated that the Appellant was limited in walking and could only walk 50 feet without experiencing pain in her feet. She was further limited in sitting without elevating her feet. She could stand for 10-15 minutes, was unable to push, pull, or carry, was limited in her ability to reach, and was unable to perform bending, twisting, kneeling, and climbing.

[21] Ms. Howie detailed that given the Appellant's functional limitations and restrictions she was limited to two occupational titles, either something within the context of licensed practical nursing or operating room technician.

[22] Ms. Howie concluded by noting that based upon her analysis there was a number of occupational options identified as appropriate for consideration.

[23] On June 14, 2010 Dr. Rees detailed in a medical certificate that the Appellant would be unable to work due to medical reasons until at least September 1, 2010.

[24] On August 31, 2010 Dr. Rees saw the Appellant for debridement of large plantar ulcers on her feet. These were treated with debridement and casting.

[25] On October 12, 2010 Dr. Thiessen saw the Appellant for a diabetic right foot. She had a quarter sized ulcer on her foot. It was noted that the ulcer continued to improve.

[26] On November 9, 2010 Dr. Rees provided a list of functional limitations for the Appellant. He indicated that the Appellant was only able to do light and sedentary work. She was unable to stand or walk for any significant length of time. Dr. Rees indicated that he thought it likely that once her present medical issues had resolved she would see steady improvement.

[27] On November 22, 2010 Dr. Rees detailed that he had seen the Appellant for repeated debridement and splinting of her foot. Continued improvement was noted.

[28] On May 22, 2014 Dr. Sivasundaran, orthopaedic surgeon provided a medical report for CPP disability benefits. Dr. Sivasundaran detailed that the Appellant had a below knee amputation on February 1, 2014 and was awaiting prosthetics and used a wheel chair for ambulation. He noted that the Appellant had diabetes and renal failure.

[29] An April 10, 2014 chart note detailed that the Appellant had a diagnosis of palliative renal failure.

[30] In an April 8, 2015 report Dr. Beck detailed that the Appellant had a below knee amputation in February 2014 following a six year period of right foot ulcers. Dr. Beck further noted that the Appellant's left foot had non-pitting edema and signs of peripheral vascular disease with venous stasis and a dropped arch. She appeared to either have a bad fungal infection or problems from her diabetes.

[31] Dr. Beck concluded by detailing that the Appellant was not a good surgical candidate given her functional limitations, weight, and deconditioning.

### **Testimony of the Appellant**

[32] The Appellant was asked about her employment experience. She stated that she worked from 2010 to 2012 as a foster care worker. She stated that her work was administrative she did policy and programming. She stated that she started working November 29, 2010. She stated that she worked there until February 2012. She worked 40 hours a week. The Appellant stated that she did not have any accommodations at work.

[33] The Appellant stated that after February 2012 she could not work any longer. The Appellant stated that by this time her ulcers had reappeared on both feet. She had surgical debridements on both feet. The Appellant stated that she went on antibiotics for six months for her ulcers and this destroyed her kidneys. The ulcers did not go away and eventually she suffered infections that caused her to have amputation of her feet.

[34] The Appellant stated that as of January 2012 she was no longer working and she had to stay home. She was going to dialysis three times a week.

[35] The Appellant stated that she could do very minimal activities after January 2012. She could only do a little bit of cleaning.

## **SUBMISSIONS**

- a) The representative stated that the Appellant had applied for benefits because she is unemployable. She has diabetes, renal failure, and two amputations.

[36] The Respondent submitted that the Appellant does not qualify for a disability pension because she did not have a severe and prolonged disability on or before her MQP.

## **ANALYSIS**

### **Preliminary Issues**

[37] A preliminary issue arose in the context of the Appellant's record of earnings and her associated MQP. Specifically, the Reconsideration file contained a record of employment detailing that the Appellant had worked from November 2010 to February 2012 as a Foster Care Worker and that in this employment she had 2056 insurable hours and \$25,777.43 of insurable earnings.

[38] However, the Appellant's record of earnings indicate that she did not have any CPP contributions during this time save for \$35.57 in 2012.

[39] Had the Appellant made sufficient contributions between the years 2010 and 2012, it may have resulted in a later MQP and for the reasons discussed below in turn entitled her to a CPP disability benefit.

[40] As the Appellant was unable to provide an answer to why she did not have CPP contributions aligned with her employment earnings the Tribunal determined that it was necessary to request additional post-hearing information from the Respondent.

[41] The Respondent was requested to provide submissions in respect of the discrepancy between the Appellant`s record of employment and her record of earnings.

[42] On November 6, 2017 the Respondent submitted notes from a telephone conversation between herself and R.P. in ``Accounts Payable``. R. P. detailed that the employer is located on a First Nations Reserve and that the reserve is tax exempt. None of their employees make contributions to the CPP. Rather they pay into a private pension plan. R. P. further detailed that this had been the practice on the Reserve for a great number of years.

[43] On November 28, 2017 in reply to the Respondent`s November 6, 2017 notes, the Representative stated that she had also contacted the Appellant`s employer and independently verified the contents of the Respondent`s November 6, 2017 note.

[44] The Representative further submitted that the Appellant is a Treaty Indian. Because of her status she is not required to pay into CPP benefits nor pay any income tax while living or working for or on any First Nations land or organization.

[45] She further indicated that because of the Appellant`s status, any issued T4 is coded 71 or 28 which excludes the individual from CPP and income tax in any given taxation year.

[46] In light of this the Representative submitted that she did not see any reason to continue with the Tribunal process.

[47] As a result the Tribunal is satisfied on balance that there was no issue with respect to the record of earnings and that the MQP is December 31, 2010.



[48] A secondary issue arose during the hearing and that was that a substantial portion of medical evidence that the Appellant intended to rely upon had never been submitted to either the Respondent or the Tribunal.

[49] However, this would only have become a factor if the Appellant was determined to have a MQP post 2010. In light of the finding that the MQP was December 31, 2010 as well as the submissions of the Representative the Tribunal has determined that it is not necessary to obtain these additional documents as they relate to a time period well after the MQP and other evidence on file and obtained during the oral hearing are persuasive on the issues of severe and prolonged.

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

[50] 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.

[51] 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.

[52] 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.

[53] The Tribunal finds that the MQP is December 31, 2010.

### **Severe**

[54] There is no doubt that the Appellant is currently disabled and suffers from significant functional impairments that leave her incapable to work in any capacity. However, the test to

determine is whether the Appellant had a severe disability on or before her MQP of December 31, 2010.

[55] In respect of the test the Tribunal has determined that the Appellant did not have a severe disability on or before her MQP.

[56] The evidence demonstrates that between November 2010 and February 2012 the Appellant worked as foster worker. She worked in this capacity full time or 40 hours per week. Importantly, she noted that she did not have any accommodations and conducted the full spectrum of her employment activities. These facts strongly demonstrate that the Appellant was able to regularly pursue substantially gainful employment during this time period that was beyond her MQP.

[57] Moreover, Dr. Rees in his November 2010 letter detailed that the Appellant continued to be able to do light and sedentary work. The Appellant was clearly limited in the nature of the type of employment she was able to engage in. However, the test in the CPP considers whether an Appellant is unable to regularly pursue any substantially gainful employment. The test includes not only ones previous employment but any type of substantially gainful employment. As such employment of a light and sedentary nature, such as that performed by the Appellant for over a year, must also be considered in adjudicating whether or not she meets the test for severe within the CPP.

[58] 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).

[59] As she was able to complete the sedentary and light work for over a year this factor again supports a finding that the Appellant did not have a severe disability on or before her MQP.

[60] The Appellant also detailed in her application that she was no longer able to work January 2013. This is well after her MQP. The date generally accords with the other evidence on

file and again supports a finding that the Appellant did not have a severe disability on or before her MQP.

[61] For these reasons the Tribunal has determined that the Appellant did not have a severe disability or on before her MQP.

**Prolonged**

[62] As the Tribunal found that the disability was not severe, it is not necessary to make a finding on the prolonged criterion.

**CONCLUSION**

[63] The appeal is dismissed.

Adam Picotte  
Member, General Division - Income Security