



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. L. v. Minister of Employment and Social Development*, 2017 SSTGDIS 193

Tribunal File Number: GP-16-1589

BETWEEN:

**R. L.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

DECISION BY: Antoinette Cardillo

HEARD ON: October 26, 2017

DATE OF DECISION: December 11, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on February 9, 2015. The Appellant claimed that she was disabled because of dizziness, diabetes, high blood pressure and 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, 2015.

[3] This appeal was heard by teleconference for the following reasons:

- a) there were gaps in the information in the file and/or a need for clarification; and
- b) this method of proceeding respected the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[4] The following people attended the hearing: the Appellant and the Appellant's Representative.

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

### EVIDENCE

[6] The Appellant is 54 years of age old with a grade 12 education.

[7] Based on the Questionnaire for Disability Benefits date stamped on February 12, 2015, the Appellant indicated that her main disabling conditions are: dizziness, diabetes, high blood

pressure and depression. She was last employed as a supervisor at a fast food restaurant from September 20, 2009 to December 11, 2013, when she stopped working due to her health.

**Medical Reports**

[8] A report dated October 17, 2012 from Dr. Moore, family physician, indicated that the Appellant was extremely depressed. She had an unhappy work environment and a very unhappy household environment. She discussed suicide, although she did not have a confirmed plan, she did not see much reason to live. Dr. Moore indicated that the Appellant required counseling on an urgent basis and he readjustment her anti-depressant medication.

[9] A report dated November 5, 2012 from Mrs. Chiasson-LeBel, registered social worker at the Community Mental Health Centre, provided that the Appellant was referred to the Centre by her family physician in October 2012. She stated the Appellant was followed at the Centre regularly, one (1) to two (2) times per month, due to adaptation problems accompanied by an anxio-depressive mood that was considered chronic. Mrs. Chiasson-LeBel, in a subsequent report dated October 3, 2016, added that since the Appellant's last hospitalization in December 2014, her mood had been positive for the most part and had remained stable for longer periods of time but nonetheless, she occasionally continued to have some drops in mood. During the drops in mood, she had difficulty sleeping, felt isolated, had dysfunctional thinking provoking variable asthenia which slowed down her daily functioning.

[10] Based on the evidence, in December 2014 and in February 2015, the Appellant was hospitalized for one week on each occasion. She was a treat to herself. Her medication was adjusted and she had counselling.

[11] A report dated March 30, 2015 from Dr. Moore, indicated that he had known the Appellant was 10 years. She was diagnosed with severe, recurrent and chronic depression, diabetes mellitus and hypertension. He stated her main problem was chronic depression, which had been on-going for some time. The Appellant had been off work since May or June 2014 due to her depression and was admitted to psychiatry in November 2014. He also added she was followed by a psychiatrist since her hospitalization. Further, he stated she had not improved

significantly despite the appropriate treatment and he did not feel she could return to work at that time.

[12] Dr. Virgili, psychiatrist, indicated in a report dated August 11, 2015 that the Appellant's depressed mood was mild. He stated there was no motivation to return to work and that from a psychiatric point of view, the Appellant did not meet the criteria to obtain a CPP disability pension. In another report dated June 2016, Dr. Virgili noted the Appellant's clinical presentation was stable. He explained there was some variable anxiety related to the Appellant's planned separation from her spouse but there were no cognitive problems, her appetite had increased and psychosocial follow-up was positive. He did not make any changes to her treatment and planned on seeing her in four (4) months.

[13] In visitations notes dated February 17, 2015 from the Mental Health Clinic, it was noted the Appellant had been hospitalized for suicidal ideation with a plan. In March 2015, it was noted that the Appellant had lost 25 pounds and was stable from a psychiatric and physical point of view. She participated in a therapeutic group, completed all sessions and received a certificate. In October 2015, it was noted that the Appellant was keeping very busy, going to the gym daily and participating in support groups. There is also a note indicating that during this period, the Appellant stated she had suicidal thoughts.

### **Testimony**

[14] The Appellant explained that her symptoms began in 2008, she had several family issues and usually, every year during the fall, she found it difficult to cope and would take time off work.

[15] In 2013, she could not cope anymore and her doctor recommended she stop working.

[16] She was working at Burger King as a supervisor. She had many tasks such as handling the cash register, the broiler, unpacking merchandise from trucks, etc. She had difficulties with unpacking the merchandise, it was too heavy, it was also stressful because she would have to resolve all issues and at times she had to return to work once she was home. The issues were both physical and psychological. Her employer did not make any accommodations to make her tasks easier.

[17] In the summer of 2014, she tried working at a private nursing home giving baths to the elderly, however, it was too demanding physically, she was only able to work for two (2) hours due to the pain (muscle pain). Then, in the fall of 2014, she made another attempt to return to work for three (3) hours but could not physically move. Her tasks consisted in standing on a harvester and remove items, she could not handle standing.

[18] She continues to Mrs. Chiasson-LeBel. She stated that she tried group therapy but she found it difficult to speak in a group setting.

[19] She explained that on bad days, she does not sleep or eat, she just worries about the future and about having suicidal thoughts again.

[20] On good days, she will only go out for grocery and nothing else. When she is in a public environment, she will have panic attacks. She does have panic attacks every time she goes to the groceries

[21] She has difficulty concentrating and remembering, therefore she does not feel she can perform tasks, she is too forgetful and needs to write everything down.

[22] She explained that her biggest issues are the depression and body pains. Her diabetes is still on going, she currently takes three (3) types of medication. She also takes medication for high blood pressure

[23] She testified that it is not realistic for her to return to work, she is still struggling, perhaps in the future she could return to an occupation that will not be too stressful or demanding, and where the environment is not too crowded otherwise she will not be able to cope, she will have panic attacks.

[24] She admitted that she is doing a little better and is less negative then in 2015 but still struggles on a regular basis. She has on occasion suicidal thoughts, the last time was two (2) months ago.

## **SUBMISSIONS**

[25] The Appellant' Representative submitted that based on the medical evidence, the Appellant qualifies for a disability pension.

[26] The Respondent submitted that the Appellant does not qualify for a disability pension. While she may not have been able to continue working at her usual place of employment, there is no indication she attempted alternate forms of employment suitable to her limitations. The medical evidence does not show any serious pathology or impairment which would prevent the Appellant from doing suitable work within her limitations.

## **ANALYSIS**

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

[27] 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.

[28] 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.

[29] 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***

[30] 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.

[31] In this case, the balance of the evidence persuaded the Tribunal that the Appellant does suffer a severe disability before her MQP of December 31, 2015.

[32] The Tribunal put weight on Dr. Moore's report dated October 17, 2012 indicating that the Appellant was extremely depressed. She had an unhappy work environment and a very unhappy household environment. She discussed suicide, although she did not have a confirmed plan, she did not see much reason to live. Dr. Moore indicated that the Appellant required counseling on an urgent basis and he readjustment her anti-depressant medication.

[33] The Tribunal also put weight on the report dated November 5, 2012 from Mrs. Chiasson-LeBel. The report indicated that the Appellant was referred to the Centre by her family physician in October 2012. She stated the Appellant was followed at the Centre regularly, one to two times per month, due to adaptation problems accompanied by an anxio-depressive mood that was considered chronic. Mrs. Chiasson-LeBel added in a report dated October 3, 2016 that since her last hospitalization in December 2014, the Appellant's mood had been positive for the most part and had remained stable for longer periods of time but nonetheless, she occasionally continued to have some drops in mood. During the drops in mood, she had difficulty sleeping, felt isolated, had dysfunctional thinking provoking variable asthenia which slowed down her daily functioning.

[34] The Tribunal also considered the fact that the Appellant's depression continued to be severe after she stopped working since based on the evidence, in December 2014 and in February 2015, the Appellant was hospitalized for one week on each occasion as she was a treat to herself. Her medication was adjusted and she had counselling.

[35] Another report dated March 30, 2015 from Dr. Moore, indicated that the Appellant was diagnosed with severe, recurrent and chronic depression, diabetes mellitus and hypertension. He stated her main problem was chronic depression, which had been on-going for some time. The Appellant had been off work since May or June 2014 due to her depression and was admitted to psychiatry in November 2014. He also added she was followed by a psychiatrist since her

hospitalization. Further, he stated she had not improved significantly despite the appropriate treatment and he did not feel she could return to work at that time.

[36] The Tribunal recognizes that Dr. Virgili indicated in a report dated August 11, 2015 that the Appellant's depressed mood was mild and that from a psychiatric point of view, she did not meet the criteria to obtain a CPP disability pension. He also stated in another report dated June 2016, that the Appellant's clinical presentation was stable. He did however indicate that there was some variable anxiety related to the Appellant's planned separation from her spouse but there were no cognitive problems, her appetite had increased and psychosocial follow-up was positive.

[37] However, the Tribunal could not ignore the reports from Dr. Moore who had known the Appellant for 10 years, and the visitation notes from the Mental Health Clinic indicating that the Appellant's depression was not always stable. In February 17, 2015, the visitation notes indicate the Appellant had been hospitalized for suicidal ideation with a plan. In March 2015, it was noted the Appellant was stable from a psychiatric and physical point of view. She participated in a therapeutic group, completed all sessions and received a certificate. In October 2015, it was noted that the Appellant was keeping very busy, going to the gym daily and participating in support groups. However, during the same period, the notes indicate that the Appellant had suicidal thoughts.

[38] Further, the Appellant's testimony convinced the Tribunal of her disability as her testimony conveyed forthrightness and her description of her symptoms and their effect on her ability to function in a vocational setting were credible.

[39] She explained that her symptoms began in 2008, she had several family issues and usually, every year during the fall, she found it difficult to cope and would take time off work. In 2013, she could not cope anymore and her doctor recommended she stop working. The issues were both physical and psychological. Her employer did not make any accommodations to make the work easier. After she stopped working, in the summer of 2014, she tried working at a private nursing home giving baths to the elderly, however, it was too demanding physically, she was only able to work for two (2) hours due to the pain (muscle pain). Then, in the fall of 2014, she



made another attempt to return to work for three (3) hours but could not physically move. Her tasks consisted in standing on a harvester and remove items, she could not handle standing. She explained that on bad days, she does not sleep or eat, she just worries about the future and about having suicidal thoughts again. On good days, she will only go out for grocery and nothing else. When she is in a public environment, she will have panic attacks. She does have panic attacks every time she goes to the groceries. She added that she has difficulty concentrating and remembering, therefore she does not feel she can perform tasks, she is too forgetful and needs to write everything down. She explained that her biggest issues are the depression and body pains. She testified that it is not realistic that she would be able to return to work, she is still struggling, perhaps in the future, she could return to an occupation that will not be too stressful or demanding, and where the environment is not too crowded as she cannot cope, she will have panic attacks. She still on occasion has suicidal thoughts, the last time was two (2) months ago.

[40] The question arises, then, whether the Appellant was capable of some alternative type of work that might have accommodated her pain. Applying the *Villani* criteria, the Tribunal was hard pressed to imagine what else the Appellant could do, given her age, her level of education, her two (2) attempts to return to work in 2014 and her life experience with her symptoms. The Appellant's testimony about the effect of the muscle pains and the depression would significantly limit her ability to function in a vocational setting. Further, as supported by the medical evidence, the Appellant's long standing depression and continued struggles with suicidal thoughts would also render her incapable of performing tasks in a vocational setting.

[41] In the opinion of the Tribunal, the Appellant's ongoing symptoms of depression are adequately supported by the medical evidence, and render her unfit for any sort of employment. Given her limitations, when considered in a "real world" context (*Villani v. Canada (A.G.)*, 2001 FCA 248), the Tribunal is satisfied that the Appellant's disability is severe since she left work in December 2013.

### **Prolonged**

[42] The Tribunal found that the Appellant's disability is long continued and of indefinite duration. She testified that her symptoms began in 2008, she had several family issues and every

year during the fall, she found it difficult to cope and would take time off work. In 2013, she could not cope anymore and her doctor recommended she stop working. A report dated March 30, 2015 from Dr. Moore, indicated that the Appellant's main problem was chronic depression, which had been on-going for some time. The Appellant had been off work due to her depression and was admitted to psychiatry in November 2014. He also added she was followed by a psychiatrist since her hospitalization. Further, he stated she had not improved significantly despite the appropriate treatment and he did not feel she could return to work at that time.

[43] The Appellant also had many counselling sessions and took medication, although there has been some improvement, the Appellant still struggles with suicidal thoughts and has panic attacks. For these reasons, the Tribunal concluded the Appellant's disability was indeed "prolonged" in accordance with the statutory definition.

## **CONCLUSION**

[44] The Tribunal finds that the Appellant had a severe and prolonged disability in December 2013, when she stopped working. According to section 69 of the CPP, payments start four months after the date of disability. Payments start as of April 2014.

[45] The appeal is allowed.

Antoinette Cardillo  
Member, General Division - Income Security