



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. S. v. Minister of Employment and Social Development*, 2018 SST 482

Tribunal File Number: GP-17-486

BETWEEN:

D. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

Claimant represented by: Angelo Consiglio

Teleconference hearing on: May 8, 2018

Date of decision: May 18, 2018

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension for the closed period she requests.

OVERVIEW

[2] The Claimant applied for a CPP disability pension, stating that she stopped working in April 2014 due to severe osteoarthritis in both of her hips and lower spine. She had bilateral hip replacement surgery in January 2017 and returned to work in July 2017. She is requesting a CPP disability pension for the three years that she was unable to work. The Respondent denied her application initially and upon reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. More specifically, the Claimant 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 Claimant's contributions to the CPP. I find the Claimant's MQP to be December 31, 2017.

ISSUES

[4] Is the Claimant entitled to a disability pension for a closed period of time, from April 2014 until July 2017, the period of time she was unable to work?

ANALYSIS

[5] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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. A Claimant must prove on a balance of probabilities that his or her disability meets both parts of the test, which means that if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

¹ Paragraph 42(2)(a) Canada Pension Plan

Severe and Prolonged

[6] I have considered the written evidence as well as the Claimant's testimony at the hearing. I found the Claimant to be forthright, credible and sincere in her testimony. I acknowledge that her health problems prevented her from working for a period of three years.

[7] In this case, the Claimant's testimony and the medical reports on file confirm that she was suffering from severe osteoarthritis in her hips prior to hip replacement surgery as well as degenerative disc disease in the lumbar spine. She testified that her hip pain began in approximately 2008 and worsened over time. She also had lower back pain and sciatica. She described numerous functional limitations, including with respect to prolonged sitting, standing and walking.

[8] The Claimant submitted that she was not aware that she would be able to return to work when she applied for CPP disability benefits. She had a severe condition for a limited period of time until she recovered following surgery. She is asking for CPP disability benefits for the three years that her disability was severe.

[9] I acknowledge that the Claimant was unable to work during the 3 year period for which she requests a disability benefit and that her disability may have met the definition of severe during that period of time. However, she must prove on a balance of probabilities that her disability was also expected to be prolonged at that time.

[10] Her health problems prior to surgery are confirmed by her family physician, Dr. Randhawa, who reported on May 12, 2016 that she had osteoarthritis in the hips and that her prognosis would depend on possible surgery. Similarly, her orthopedic surgeon, Dr. Davey, confirmed that she had advanced degenerative disease in both hips in a report dated August 10, 2016. He also noted a history of degenerative disc disease in the lumbosacral spine. She was booked for total hip arthroplasty on January 30, 2017 after which Dr. Davey expected that she would be able to return to sedentary work. There are no further medical reports on file from either Dr. Randhawa or Dr. Davey to indicate whether her surgery was successful.

[11] However, her physiotherapist, Mr. Jonah, reported on February 16, 2017 that she made significant gains in her functional mobility following surgery. The Claimant herself also testified

that her health improved significantly following bilateral hip replacement surgery. The pain that she had before surgery is now gone and she is now able to do prolonged sitting, standing, bending and lifting. The Claimant successfully returned to full-time work (8 hours per day, 5 days per week) in July 2017 as a customer service representative. Her duties include assisting customers with shipping, printing, binding, copying and cutting. Her job requires prolonged standing, which she is able to do. She is able to perform her duties and attend work as required.

[12] The purpose of the disability benefit is to provide income to those who are disabled from working on a long-term basis, not to tide claimants over a temporary period where a medical condition prevents them from working. A disability cannot be “prolonged” unless it is determined to be of “indefinite duration.”² In this case, the Claimant testified that her pain is now gone and she has returned to regular, full-time work. Therefore, I do not accept that she has a prolonged disability.

CONCLUSION

[13] The appeal is dismissed

Lianne Byrne
Member, General Division - Income Security

² *Canada (MHRD) v. Henderson*, 2005 FCA 309