



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. N. v Minister of Employment and Social Development*, 2018 SST 1036

Tribunal File Number: GP-17-1233

BETWEEN:

**R. N.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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

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Decision by: Kelly Temkin

Teleconference hearing on: August 29, 2018

Date of decision: September 12, 2018

## **DECISION**

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

## **OVERVIEW**

[2] The Minister received the Claimant's application for the disability pension on February 19, 2016. She indicated she was last self-employed as a X for X from March 1995 to August 2012 when she stopped working due to X closing. She indicated she felt she could no longer work as of January 29, 2014. The Claimant described her main disabling conditions as endometriosis, endometrial cysts, prolonged headaches/migraines, fatigue, nausea, frequent diarrhea, insomnia, TMJ (temporomandibular joint), gallstones, shoulder, neck and back pain, as well as joint pain in her right knee and ankle related to injuries. The Minister denied the application initially and on 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 June 30, 1993.<sup>1</sup>

## **PRELIMINARY MATTER**

[4] The Notice of Hearing was delivered on May 28, 2018 and confirmation it was received was provided by Canada Post on June 12, 2018.<sup>2</sup> On August 22, 2108 the Registry Officer confirmed with the Claimant that she would be attending the hearing on August 29, 2018. The Claimant did not attend the scheduled teleconference.

[5] I decided to proceed with the hearing, because I was satisfied the Appellant received notice of it.<sup>3</sup> I have concluded from her failure to attend that she is content to have a decision

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<sup>1</sup> GD1-33

<sup>2</sup> GD2-2

<sup>3</sup> Subsection 12(1) *Social Security Tribunal Regulations*

made without the benefit of any oral evidence or submissions by her. As neither party attended, my decision is based on the written evidence and submissions previously filed by the parties.

## **ISSUES**

1. Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by June 30, 1993?
2. If so, was the Claimant's disability also long continued and of indefinite duration by June 30, 1993?

## **ANALYSIS**

### **Test for Disability**

[6] Disability is defined as a physical or mental disability that is severe and prolonged <sup>4</sup>A person is considered to have a severe disability if 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 person must prove on a balance of probabilities their disability meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

### **Severe Disability**

#### ***The Claimant's condition is not serious on or before June 30, 1993***

[7] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment.

[8] The Minister submits that the Claimant's work activities and information provided in her application demonstrates she did not have a severe disability on or before her MQP. I have reviewed the documents on file. I agree.

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<sup>4</sup> paragraph 42(2)(a) of the CPP

[9] The family doctor has treated the Claimant since 1998. In a January 2016 CPP medical report he diagnosed endometriosis/ovarian cysts, sleep pattern disturbance, headaches, left TMJ, gallstones, fatty liver, chronic fatigue and bilateral knee pain with synovitis. He noted she experienced abdominal, pelvic, knee and jaw pain, as well as headaches, nausea, vomiting and fatigue. Her activities of daily living and ambulation were limited by pain and fatigue, as well as her disturbed sleeping and eating patterns. She also had difficulty with her ability to concentrate or focus. Her prognosis was guarded as her quality of life was severely restricted as a result of her conditions which were treated symptomatically.<sup>5</sup>

[10] The Minister sent requests to the family doctor about the Claimant's medical conditions from 1993 to the present. No information was sent. The Claimant wrote that trying to go back and get medical records and documents as well as correct dates and timelines is a significantly difficult process. The doctor she is currently with was not her physician at the time during which she became substantially disabled. Her doctor at the time she became disabled no longer practices and those records are no longer available.<sup>6</sup>

[11] I find the absence of any medical documents from the relevant time period of 1993 and earlier is a major hurdle in the Claimant's ability to show that she had a severe disability as of her MQP.<sup>7</sup> There is no medical evidence in the hearing file to support that the Claimant's problems were severe as of the MQP.

[12] In her disability questionnaires for CPP disability she does not claim to be disabled until January 29, 2014.<sup>8</sup> In 1993 she worked at a fast food restaurant until the early fall when she sustained a burn to her hand. From March 1995 to August 2012, she worked at X. In her Questionnaire for CPP disability benefits she write that she stopped work in August 2012 because X closed due to the rising cost of X. She said the coaches and staff received a paycheck but she received room and board in exchange for the work she was able to do. The Claimant set out in detail her work arrangement. She was initially a X and then her health required a flexible schedule so she became the X. She worked between 7-40 hours a week depending on her health. She often required help to get her work done. Near the end of the business she was only doing

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<sup>5</sup> GD2-114

<sup>6</sup> GD2-45

<sup>7</sup> Warren. v. Attorney General 2008 FCA 377

<sup>8</sup> GD2-118

the minimum of book work determined on a daily basis. There are no tax returns for all the years.

<sup>9</sup> There is no information on file with respect to the Claimant's work history between October 1993 and September 1994. I find there are significant gaps regarding the timeframe and hours the Claimant worked in X. Clearly there is a time period when her employment is possible due to the benevolence of X. The Claimant wrote her work hours varied between 7-40 hours per week. This suggests there is a period of time when her work was substantially gainful.<sup>10</sup> For this reason, in the absence of her testimony to clarify her work activities, I cannot make a finding that her post MQP employment was not substantially gainful. It is my duty and responsibility to act only on credible and supporting evidence and not on speculation.<sup>11</sup>

[13] The severe criterion must be assessed in a real world context. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, and past work and life experience. Since I am not persuaded that the Appellant suffered from a severe disability as of the MQP it is not necessary to apply the "real world" approach.<sup>12</sup>

[14] I recognize that today the Claimant is suffering from a serious medical condition; however, the medical evidence on file demonstrates that she became unable to work as a result of her medical condition after June 30, 1993. I am not empowered to exercise any form of equitable power in respect of the appeals coming before me. I am statutory decision-maker and I am required to interpret and apply the provisions as they are set out in the CPP. I have no authority to make exceptions to the provisions of the CPP and I cannot make decisions based on fairness, compassion, or extenuating circumstances.

[15] I find that the Claimant has failed to establish, on the balance of probabilities, a severe disability in accordance with the CPP requirements as of the June 30, 1993 MQP.

## CONCLUSION

[16] The appeal is dismissed.

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<sup>9</sup> GD2-15

<sup>10</sup> Section 68.1 of the *CPP Regulations*

<sup>11</sup> *MHRD v S.S.* (December 3, 2007) CP 25013 (PAB). This decision is not binding but I consider it persuasive

<sup>12</sup> *Giannaros.v. Canada (Minister of Social Development)*, 2005 FCA 187

Kelly Temkin  
Member, General Division - Income Security