



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. R. v. Minister of Employment and Social Development*, 2018 SST 1053

Tribunal File Number: GP-17-709

BETWEEN:

**V. R.**

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: Brisette Lucas

Claimant represented by: Jessica McInnes

Teleconference hearing on: August 8, 2018

Date of decision: September 12, 2018

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of July 2015.

## **OVERVIEW**

[2] The Claimant was 53 years old with a college education in personal support work when she applied for benefits in June 2016. She claimed that she was disabled because of depression and PTSD. The Claimant was last employed as a personal support worker (PSW) from June 2002 to February 2013, but claimed she could not continue because of limitations including depression, anxiety, panic attacks, fatigue, weakness, stress, agoraphobia and hypervigilance.<sup>1</sup>

[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, 2016. The Respondent denied the application initially and upon reconsideration because the Claimant did not have a severe and prolonged disability as of her MQP.

## **PRELIMINARY ISSUES**

[4] On August 20, 2018, after the close of the hearing, the Claimant's representative attempted to submit additional medical evidence. I did not admit the document for the following reasons:

- a) The document had little probative value and did not bring any new evidence to the proceeding;
- b) It would have caused undue delay to the proceeding by admitting the document to allow time for a response; and
- c) It could have been provided for consideration at an earlier date.

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<sup>1</sup> GD2-83

## ISSUES

- d) Whether the limitations caused by depression, anxiety, panic attacks, fatigue, weakness, stress, agoraphobia and hypervigilance resulted in the Claimant being incapable regularly of pursuing any substantially gainful occupation, on or before December 31, 2016; and
- e) If so, whether the disability was likely to be long continued and of indefinite duration.

## ANALYSIS

[5] 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<sup>2</sup>.

### Severe disability

*The Claimant had multiple impairments as of December 31, 2016 resulting from depression and PTSD caused by her October 2012 accident*

[6] On October 11, 2012 the Claimant was struck by a motor vehicle while she participating in a strike outside her workplace. She sustained soft tissue injuries to her neck and shoulder and pain in her left foot, which was run over in the accident. The Claimant also experienced anxiety due to the driver leaving the scene before being identified, confusion and inability to think clearly. I must assess the Appellant's condition as a whole and consider all of her impairments that affect employability, not just her biggest impairments or her main impairment.<sup>3</sup> I reviewed all of the medical evidence and found the following the most relevant in relation to the Claimant's impairments:

- a) In a Psychologist Assessment dated September 27, 2013<sup>4</sup> the assessors noted that the Claimant was suffering from impairment as a result of the accident including: PTSD, flashbacks, poor concentration, nightmares, tearfulness, anxiety and frustration.

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

<sup>3</sup> *Bungay* 2011 FCA 47

<sup>4</sup> GD2-73

- b) In an Independent Medical Examination dated April 13, 2015<sup>5</sup> Dr. Farcnik, Psychiatrist, noted that the Claimant was unable to work because of significant and ongoing symptoms of depression, anxiety and PTSD. Dr. Farcnik stated that while the accident had a role in her current state, there was evidence of recurrent depressive symptoms prior to the accident and previous family-related unresolved traumas.
- c) In a Medical Legal Psychology Assessment Report dated April 17, 2015<sup>6</sup>, the psychological assessment team (Dr. Miller and Dr. Holmes-Bose) noted that the Claimant presented with chronic trauma-related distress and increasingly entrenched depression due to a number of factors including persistent and intrusive recollections of the accident, nightmares, flashbacks, psychological distress when confronted with stimuli that remind her of the accident and psychological symptoms of distress (panic attacks, abdominal and chest pain). They determined that the Claimant had impairments in emotional functioning, cognitive functioning, physical functioning and social functioning.
- d) In a Medical Report dated July 8, 2016<sup>7</sup>, Dr. Wong, Family Physician, stated the Claimant's diagnoses of PTSD and that his prognosis of the Claimant's condition was poor. Dr. Wong did not feel the Claimant could work.

[7] At the hearing the Claimant testified that she does not feel capable of working in any position since her accident. She did attempt to go back to her regular position in December 2012 caring for six residents in her facility. At the time she experienced tension, rapid breathing, panic attacks, difficulty seeing and hearing and hypervigilance. She began to experience symptoms of depression in January 2013, including suicidal ideation with intent to overdose, inability to leave her house, weight loss, hypersomnia and low energy. The Claimant was given a two-week leave from work in February 2013. She returned afterwards and attempted to work; after three night shifts she felt like she could no longer work in that role due to anxiety. She testified there were no modified duties available at her workplace. The Claimant testified that since the accident she has experienced continual depression, anxiety and PTSD and that it has gotten worse with time. In her application for benefits the Claimant stated that she can only sit and stand for short

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<sup>5</sup> GD1-48

<sup>6</sup> GD1-9

<sup>7</sup> GD2-79

periods; her speech is sometimes slurred depending on fatigue; she had sporadic thinking; had difficulty concentrating; she may go for days without bathing; and she developed an eating disorder because of her PTSD<sup>8</sup>.

***The Claimant has been compliant with pursuing treatment recommendations***

[8] The Claimant testified that she has done everything recommended by her doctors. She testified that she saw Dr. Shelley 8 to 12 times beginning in late 2015; tried reiki treatment eight times; and sees her family doctor for psychological treatment and management of her medication once a month. She tried Abilify but had to stop because it actually increased all her symptoms; as of December 2016 she has been on CipraleX and Lorazepam. I find that the Claimant has done all she can to seek and to follow recommended treatments. I am also persuaded by the medical evidence on file:

- a) In September 2013 Dr. Shelley indicated that he saw the Claimant three times between July and September 2013. Dr. Shelley stated that the Claimant made some progress and seemed motivated to change but was significantly compromised by lack of funding from her insurer.<sup>9</sup>
- b) In April 2015 the Claimant's medical/legal assessors noted that given the complexity and chronicity of her psychological conditions her treatment may be slower and may require more sessions than would normally be required. The Claimant was noted to have developed a strong therapeutic alliance with Ms. Cameron, R.N., and recommended she continue counselling with her.<sup>10</sup>
- c) In April 2015, Dr. Farcnik stated that the Claimant was taking CipraleX for depression and Ativan for anxiety. She was noted to have seen a counsellor once but stopped because it was not a good fit; attended four sessions of cognitive behavioural therapy (CBT); and meeting with an R.N. who had some expertise in PTSD. Dr. Farcnik also

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<sup>8</sup> GD2-84

<sup>9</sup> GD1-13

<sup>10</sup> GD1-28

noted that the Claimant sees Dr. Wong regularly for counselling sessions and medication prescription.<sup>11</sup>

- d) In September 2016 Dr. Wong stated despite being treated with medication Dr. Wong's prognosis of the Claimant's condition was poor.<sup>12</sup>

[9] The Respondent submitted that the Claimant has not exhausted all forms of treatment, and that some of her counseling was only short-term and was terminated due to improvements in her condition.<sup>13</sup> I disagree. The Claimant testified that she stopped some forms of counselling because she reached a plateau in treatment. I find that stopping counselling because of ineffectiveness is not equivalent to stopping due to improvement. The only doctor she has seen on a consistent basis for her psychological limitations, Dr. Wong, stated that the Claimant has not gotten relief from her symptoms despite being treated with medication. This is consistent with the Claimant's testimony, which I accept as she testified in a straightforward and honest manner. Moreover, the Claimant has shown a willingness to engage in different types of treatments with different practitioners. She was ultimately most comfortable with remaining in her family doctor's care for her counselling and medication management. I find this reasonable and that she has been compliant with pursuing medical treatment.

***The Claimant's functional limitations prevent her from performing any substantially gainful occupation***

[10] 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. 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 substantially gainful occupation<sup>14</sup>.

[11] I find that that the Claimant's physical and cognitive functional limitations prevented her from performing any substantially gainful occupation as of December 31, 2016, specifically in February 2013 after she attempted to return to work and was not successful. The Claimant's last

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<sup>11</sup> GD1-53

<sup>12</sup> GD2-76

<sup>13</sup> GD6-2

<sup>14</sup> *Klabouch* 2008 FCA 33

job, from June 2002 to February 2013, was full-time as a PSW for individuals with brain injuries. Her duties included bringing individuals to activities; dispensing medication; helping with bathing and toileting; and being aware of potential violence from her patients. The Minister submits that there was insufficient evidence to support a severe disability as of the Claimant's MQP and continuously onward. I disagree. In September 2013, after her attempt to return to work, a psychologist assessed her as having an emotional vulnerability that would present a significant impairment in managing her work duties in a safe and consistent manner.<sup>15</sup> She testified that she experienced panic attacks, flashbacks, cognitive impairment and inability to interact socially with others. While in March 2015<sup>16</sup> Dr. Farcnik was hopeful about the Claimant's recovery if she worked at a different location from where the incident occurred, the Claimant testified that due to her social anxiety and inability to interact with others she would not have been able to work at any other location. While I accept, based on the testimony and medical evidence that the Claimant could not work in her usual position which was physically and cognitively demanding, I must examine whether she could work in an alternate, more sedentary position.

[12] The Minister stated that the Claimant completed a volunteer placement in 2014. The Claimant testified that during her volunteer work she experienced panic attacks which made her anxiety worse. She worked at a food bank and due to her social anxiety she could not interact with the people who used the services. The Claimant testified that her energy levels constantly fluctuated and she eventually had to leave. After the food bank she secured another volunteer position gardening. She was able to do this work for a short period of time, though with extreme difficulty, because it was solitary work. I find that the combination of her anxiety, depression, fatigue and low energy would make it difficult for the Claimant to find and retain even more sedentary employment. I find that Claimant tried sedentary work and was not successful.

[13] I must also consider factors such the Claimant's age, education level, language proficiency, and past work and life experiences when determining her employability<sup>17</sup>. The Claimant was 53 years old with a college education as of December 31, 2016. Although she has some experience in other fields, her education and primary work experience has been in the PSW

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<sup>15</sup> GD2-73

<sup>16</sup> GD1-59

<sup>17</sup> *Villani* 2001 FCA 248

field. It is difficult to imagine the type of work that the Claimant could realistically perform in a competitive employment environment given her limitations, even a more sedentary role. The Claimant is not expected to find a philanthropic, supportive, and flexible employer who is prepared to accommodate her disabilities.<sup>18</sup>

[14] In conjunction with her psychological limitations, I find that the Claimant's relatively limited work experience and education would be additional barriers to her ability to obtain alternative employment. The Minister submits that the Claimant did not attempt to find alternative employment within her limitations. Because I have found that the Claimant did not have work capacity by December 31, 2016, she is not required to establish that she has made efforts to obtain and maintain employment that were unsuccessful by reason of her health conditions.

***The Claimant has established a severe disability***

[15] I find that the Claimant has established on the balance of probabilities, a severe disability as defined in the CPP.

**Prolonged disability**

[16] Having found that the Claimant's disability is severe, I must also determine whether her disability is prolonged. The Claimant testified that her disabling conditions have persisted since February 2013 have not improved significantly with treatment, medication or time. I also find the following medical evidence persuasive:

- a) In April 2015 the Claimant was deemed to have sustained a permanent impairment that was likely to continue into the foreseeable future in a medical/legal psychological report.<sup>19</sup>
- b) In September 2016 Dr. Wong stated that due to her PTSD the Claimant was totally disabled and unable to work<sup>20</sup>.

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<sup>18</sup> *MHRD v Bennett* (July 10, 1997) CP 4757 (PAB). This decision is not binding, but I consider it to be persuasive.

<sup>19</sup> GD1-32

<sup>20</sup> GD2-79



[17] Medical opinions about the Claimant's limitations remained the same for years after her accident. I find the Claimant's disability is long continued and of indefinite duration. I find her disability is prolonged.

## **CONCLUSION**

[18] I find that the Claimant had a severe and prolonged disability in February 2013. However, to calculate the date of payment of the pension, a person cannot be deemed disabled more than fifteen months before the Minister received the application for the pension<sup>21</sup>. The application was received in June 2016 so the deemed date of disability is March 2015. Payments start four months after the deemed date of disability, as of July 2015<sup>22</sup>.

[19] The appeal is allowed.

Brisette Lucas  
Member, General Division - Income Security

## **ANNEX**

I excluded medical evidence dated August 20, 2018 that the Claimant attempted to submit after the hearing for the reasons outlined in the decision.

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<sup>21</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>22</sup> Section 69 *Canada Pension Plan*