



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. J. v Minister of Employment and Social Development*, 2018 SST 1206

Tribunal File Number: GP-17-130

BETWEEN:

L. J.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

HEARD ON: September 4, 2018

DATE OF DECISION: October 4, 2018

DECISION

The Applicant is eligible for a *Canada Pension Plan* (CPP) disability pension.

OVERVIEW

[1] The Applicant is 53 years old. She has a Bachelor's of Education. She applied for a CPP disability pension on October 6, 2015.¹ Her application was based on headaches, osteoarthritis, arthritis, back pain, poor concentration, insomnia, and fatigue. She had to leave her employment as a teacher in February 2014 because of burnout and a shoulder surgery.

[2] The Respondent denied the application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal.

[3] The Applicant's minimum qualifying period (MQP) ended on December 31, 2016. To qualify for a CPP disability pension, the Applicant must meet the requirements set out in the CPP. In particular, the Applicant must be found to be disabled as defined by the CPP at or before the end of the MQP. The MQP calculation is based on the Applicant's contributions to the CPP.

ISSUES

[4] Can the Applicant's physical and psychological conditions be considered a severe disability that prevented her regularly from pursuing any substantially gainful occupation by December 31, 2016?

[5] Can the Applicant's physical and psychological conditions be considered a prolonged disability?

ANALYSIS

[6] To be considered disabled, a person must have a severe and prolonged mental or physical disability.² A person is considered to have a severe disability if they are incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is long continued

¹ GD2-6.

² CPP, s 42(2)(a).

and of indefinite duration or if it is likely to result in death. The disability must not only be severe, but also prolonged for a person to be able to be found disabled as defined by the CPP.

Severe Disability

[7] I find that the Applicant has a severe disability because of her physical and psychological conditions.

a) Physical conditions

i. Headaches, poor concentration, insomnia, and fatigue

[8] According to a report dated May 26, 2014,³ from Dr. Paradiso, neurologist, the Applicant developed headaches 10 years before, and they are ongoing with intermittent fluctuations and with episodes of more intense pain about every 15 days for no more than one day. Dr. Paradiso indicated that the pain lessened after surgery on her left shoulder. The Applicant reported memory problems. Dr. Paradiso noted that the depression and anxiety could cause poor concentration.

[9] The score from a cognitive assessment dated August 20, 2014,⁴ was 29/30, indicating normal cognitive skills. The score from another cognitive assessment, from June 10, 2015,⁵ was 25/30—a normal score being 26 or higher. The score from May 31, 2016,⁶ was 27/30, which is within the normal range.

[10] The medical report dated September 29, 2016, from Dr. Gauthier,⁷ family doctor, indicates that the Applicant has had cervicobrachialgia (irritation of certain nerves in the neck), back pain, memory disorder, difficulty adapting to chronic pain, and high blood pressure. Dr. Gauthier noted that the Applicant had a history of surgery on her left shoulder and depression since 1990. The Applicant's prognosis was poor because there had not been any improvement with medication.

³ GD2-74.

⁴ GD2-69.

⁵ GD2-120.

⁶ GD2-143.

⁷ GD2-59.

ii. Osteoarthritis, arthritis, and back pain

[11] On March 5, 2015,⁸ a lumbar CT scan showed degenerative changes resulting in moderate foraminal stenosis (narrowing of an anatomical gap) at the left L5–S1 level and mild to moderate spinal stenosis (narrowing of the canal) at the L4–L5 level.

[12] In a report dated September 21, 2015,⁹ Dr. Clevinger indicated that, for the past three to four years, the Applicant had lower back pain that radiated down the left leg. He also noted that she had left shoulder pain that radiated into the neck with three or four headaches per month. He found that the left leg pain was consistent with musculoskeletal pain. Dr. Clevinger recommended using anti-inflammatories and that going back to physiotherapy could be helpful.

[13] An MRI of the lumbar spine from December 3, 2015,¹⁰ showed mild to moderate degenerative changes that were most prevalent at the L4–L5 level with facet osteoarthritis and mild spinal stenosis associated with foraminal stenoses.

[14] A functional capacity evaluation from June 29 and 30, 2016,¹¹ showed that the Applicant was capable of sedentary work, apart from lifting weight from the waist to the shoulders. It showed an ability to work for a period of four hours. However, this type of evaluation could not determine whether she could work for more than four hours.

b) Psychological condition

[15] The reports from Dr. Poirier, psychologist, from December 2015¹² and May 2016¹³ indicate that the Applicant has had pain disorders for several years, which got worse in the last two years. The sleep disorders got worse in the last two years because of the pain disorders. Her anxiety disorder also got worse with symptoms of generalized anxiety.

⁸ GD2-122.

⁹ GD2-113.

¹⁰ GD2-109.

¹¹ GD2-193.

¹² GD2-112.

¹³ GD2-139.

[16] According to a report by Dr. Godin, psychiatrist, dated August 3, 2016,¹⁴ the Applicant has been under a prolonged period of psychological care following a traumatic incident in 1990. She had a psychiatric assessment in August 2016. Dr. Godin diagnosed moderate post-traumatic stress disorder (PTSD) and pain disorder with psychological and physical factors. Dr. Godin noted that the Applicant had been taking the same antidepressant for 10 years. He therefore recommended increasing her Effexor dosage according to response and tolerance and added Seroquel, an antipsychotic drug. The psychiatrist referred the Applicant back to her family doctor for a follow-up and remained available if needed. He indicated that he considered the Applicant unfit for any sort of work for a period of three months.

c) Work capacity

[17] The test that I must consider in determining whether a disability is severe is not whether the person has severe impairments, but whether their disability prevents them from earning a living. The determination of the severity of the disability is not premised upon the person's inability to perform their regular job, but rather on their inability to perform any work, that is, "any substantially gainful occupation."¹⁵

[18] Also, a real-world approach must be taken with the test for severity. This means that, when deciding whether a person's disability is severe, I must consider factors such as age, level of education, language proficiency, and past work and life experience.¹⁶

[19] I have considered all of the medical reports, and it is clear that the Applicant's symptoms have gotten worse.

[20] Dr. Paradiso's report from May 26, 2014, indicates that the Applicant's headaches, which started 10 years before, are ongoing with intermittent fluctuations and with episodes of more intense pain about every 15 days for no more than one day, even though there was improvement after the surgery on her left shoulder. However, the Applicant reported memory problems. According to Dr. Paradiso, the depression and anxiety could cause poor concentration.

¹⁴ GD2-189.

¹⁵ *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹⁶ *Villani v Canada (Attorney General)*, 2001 FCA 248.

[21] Dr. Gauthier's medical report from September 29, 2015, indicates that the Applicant has had cervicobrachialgia, back pain, memory disorder, difficulty adapting to chronic pain, and high blood pressure. Dr. Gauthier noted that the Applicant has had depression since 1990. The Applicant's prognosis was poor because there had not been any improvement with medication.

[22] In a report dated September 21, 2015, Dr. Clevinger indicated that, for the past three to four years, the Applicant had lower back pain that radiated down the left leg. He also noted that she had left shoulder pain that radiated into the neck with three or four headaches per month.

[23] I note that a functional capacity evaluation from June 29 and 30, 2016, showed that the Applicant was capable of sedentary work, apart from lifting weight from the waist to the shoulders. However, it showed an ability to work for a period of four hours. This type of evaluation could not determine whether she could work for more than four hours.

[24] Dr. Poirier's and Dr. Godin's reports from 2015 and 2016 indicate that the Applicant has had pain disorders for several years, which had worsened in the last two years. She has a sleep disorder that had also worsened in the last two years, as well as an anxiety disorder with symptoms of generalized anxiety.

[25] I find that it seems unlikely that the Applicant could retrain or find employment with her physical limitations and psychological issues.

[26] The Applicant testified that, when she was working, she had to take a lot of sick leave because of pain and headaches. She did not have enough energy because of the pain. She explained that she continues to have constant pain in different places. She takes medication for relief, but sometimes she experiences nausea. She continues to have back pain. She has a limited range of motion. She has been under the care of a psychologist since 1990 for anxiety. For a while, she had improved, but her condition has deteriorated in recent years. She has a lack of energy and poor concentration.

[27] Based on the medical reports and the Applicant's testimony, it is clear that her symptoms have gotten worse in recent years. I find that the Applicant has had a severe and prolonged disability since February 2014 when she stopped working.

Prolonged Disability

[28] I find that the Applicant has a prolonged disability.

[29] I considered the MRI reports that showed mild to moderate degenerative changes since 2015 and Dr. Gauthier's report indicating that the Applicant's prognosis was poor because there had not been any improvement with medication.

[30] I also considered Dr. Poirier's reports about the Applicant's psychological condition, and it is clear that her symptoms continue to get worse.

CONCLUSION

[31] I find that the Applicant has had a severe and prolonged disability since February 2014. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension.¹⁷ The application was received in October 2015; therefore, the Applicant is deemed disabled since July 2014. The disability pension payments start four months after the date of disability. Payments start as of November 2014.¹⁸

[32] The appeal is allowed.

Antoinette Cardillo
Member, General Division – Income Security

¹⁷ CPP, s 4292)(b) [*sic*].

¹⁸ CPP, s 69.