



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *N. L. v. Minister of Employment and Social Development*, 2018 SST 1050

Tribunal File Number: GP-17-2757

BETWEEN:

**N. L.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Antoinette Cardillo

HEARD ON: August 30, 2018

DATE OF DECISION: September 26, 2018

## **DECISION**

The Applicant qualifies for a Canada Pension Plan (CPP) disability pension.

## **OVERVIEW**

[1] The Applicant is 57 years old. She has a high school diploma. She applied for a CPP disability pension on January 11, 2017.<sup>1</sup> Her application is based on osteoarthritis, Raynaud's disease, and pain secondary to fibromyalgia. The Applicant worked part-time (25 to 30 hours per week) until January 9, 2017.

[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) ends on December 31, 2018. Since the MQP is in the future, I must decide whether it is more likely than not that the Applicant had a severe and prolonged disability that began on or before the date of the hearing. To qualify for a CPP disability pension, the Applicant must meet the requirements set out in the *Canada Pension Plan*. In particular, the Applicant must be found to be disabled as defined by the *Canada Pension Plan* at or before the end of the MQP. The calculation of the MQP is based on the Applicant's contributions to the CPP.

## **ISSUES**

[4] Can the Applicant's physical conditions be considered a severe disability that prevented her regularly from pursuing any substantially gainful occupation at the date of the hearing?

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

## **ANALYSIS**

[6] To be considered disabled, a person must have a severe and prolonged mental or physical disability.<sup>2</sup> A person is considered to have a severe disability if they are incapable regularly of

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<sup>1</sup> GD2-4.

<sup>2</sup> *Canada Pension Plan*, s 42(2)(a).

pursuing any substantially gainful occupation. A disability is prolonged if it is long continued 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 *Canada Pension Plan*.

**i. The Applicant's Disability is Prolonged – Physical Conditions**

[7] I find that the Applicant has a severe disability because of her physical conditions, specifically, fibromyalgia, osteoarthritis, and Raynaud's disease.

[8] The medical report dated January 5, 2017,<sup>3</sup> from Dr. Blanchard, family doctor, indicates that the Applicant has osteoarthritis, fibromyalgia, and triphasic Raynaud's disease. Dr. Blanchard indicated that the Applicant had chronic conditions even though she showed a slight improvement with medication.

[9] In his report dated March 1, 2017,<sup>4</sup> Dr. Nembo, rheumatologist, indicated that a worsening of pain in January 2017 caused the Applicant to take a permanent leave of absence for health-related reasons. Dr. Nembo noted an improvement in the Applicant's health condition with the introduction of Adalat to treat Raynaud's disease.

[10] In his report dated September 13, 2017,<sup>5</sup> Dr. Nembo indicated that he had been seeing the Applicant since 2011 initially for biphasic Raynaud's phenomenon that was mostly affecting her extremities, her hands, and her feet. She gradually developed widespread musculoskeletal pain and a clinical presentation of osteoarthritis and fibromyalgia. Her condition and the intensity of the pain were variable over time.

[11] In March 2017 and again in his report dated September 13, 2017, Dr. Nembo indicated that the Applicant had been off work since December 2016 because she was in a lot of pain, which she described as 7/10 on the visual analog scale for pain.

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<sup>3</sup> GD2-66.

<sup>4</sup> GD2-83.

<sup>5</sup> GD2-126.

[12] According to Dr. Nembo, in June 2017, the Applicant's fibromyalgia worsened. She had widespread musculoskeletal pain that was much more severe than before. Since that time, the Applicant has not reported improvement in her symptoms; the Applicant has tried several drug treatments. Dr. Nembo said that the main symptoms remain: pain in multiple joints and widespread musculoskeletal pain, chronic fatigue, insomnia, and overwhelming anxiety associated with pain and memory difficulties. Physically, examinations had revealed tender points for several months. According to him, the Applicant's diagnosis is that of very severe fibromyalgia, severe neurological pain, and osteoarthritis. She has biphasic Raynaud's phenomenon that is stable but that shows symptoms that would worsen in cold weather. Dr. Nembo also reported that the Applicant had great difficulty working as a cook while standing for long periods. He explained that constant physical exertion was known to worsen the intensity of the pain. He indicated that the Applicant should continue to take the medications even if she did not report any improvement. He pointed out that the drug treatments provide only a 30% maximum improvement in such cases. The Applicant will continue to remain active as best she can.

[13] The Applicant testified that she had been a cook's helper for 15 years. She worked part-time in a school cafeteria five days per week for five to six hours per day. She was on leave during the summer because the school was closed.

[14] She was often in pain when working. In the mornings, her partner had to help her dress. At work, she was not able to carry out tasks that were too demanding. Over time, she was unable to do much, either at work or at home. She explained that even a task as simple as doing the laundry could take her two to three days.

[15] She continues to take medication, and she has followed through on the therapy recommendations, but she has not seen any improvement. She takes hot baths and uses an electric blanket to relieve the pain.

[16] She also explained that she experienced memory loss due to pain. This problem occurred while she worked.

[17] She cannot remain sitting or standing. She goes out for only short trips and she drives only short distances. According to the Applicant, the pain has not improved since she stopped working. Her morale is also greatly affected by her physical condition.

**ii. Residual Work Capacity**

[18] 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.<sup>6</sup>

[19] 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.<sup>7</sup>

[20] I have considered all of the medical reports, and it is clear that the Applicant has very severe fibromyalgia, severe neurological pain, and osteoarthritis.

[21] Retraining seems unlikely for the Applicant, considering she is 57 years old and given her low level of education and the life experience she has had with her physical conditions. According to her rheumatologist, since January 2017, the Applicant has not reported improvement in her symptoms even after trying several drug treatments. The main symptoms remain: pain in multiple joints and widespread musculoskeletal pain, chronic fatigue, insomnia, and overwhelming anxiety associated with pain and memory difficulties.

[22] Based on the medical reports and the Applicant's testimony, her symptoms have gotten worse since she stopped working in December 2016. She is therefore unable to function in the labour market even on a part-time basis. Therefore, I find that the Applicant has had a severe disability since December 2016.

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<sup>6</sup> *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>7</sup> *Villani v Canada (Attorney General)*, 2001 FCA 248.

**iii. The Applicant's Disability is Prolonged**

[23] I considered Dr. Blanchard's January 2017 report<sup>8</sup> and Dr. Nembo's reports<sup>9</sup> from March and September 2017. Dr. Nembo indicated that he had been seeing the Applicant since 2011 initially for biphasic Raynaud's phenomenon. The Applicant gradually developed widespread musculoskeletal pain and a clinical presentation of osteoarthritis and fibromyalgia. According to him, the diagnosis is that of very severe fibromyalgia, osteoarthritis, and severe neurological pain. By March 2017, the Applicant had been off work since December 2016, and she described the pain as 7/10 on the visual analog scale. In June 2017, the Applicant's fibromyalgia worsened. She had widespread musculoskeletal pain that was much more severe than before. Dr. Nembo mentioned that the drug treatments provide only a 30% maximum improvement in such cases. Physically, examinations had revealed tender points for several months.

[24] I find that the Applicant has had a severe and prolonged disability since December 2016. The disability pension payments start four months after the date of disability. Therefore, payments start as of April 2017.<sup>10</sup>

[25] The appeal is allowed.

Antoinette Cardillo  
Member, General Division – Income Security

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<sup>8</sup> GD2-66.

<sup>9</sup> GD2-83 and 126.

<sup>10</sup> *Canada Pension Plan*, s 69.