



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. L. v Minister of Employment and Social Development*, 2018 SST 1204

Tribunal File Number: GP-17-1437

BETWEEN:

N. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Nicole Zwiers

Claimant represented by: Paul Sacco

Teleconference hearing on: August 29, 2018

Date of decision: October 2, 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 October 13, 2016 (the Second Application). The Claimant's first application dated September 29, 2015 was denied by the Minister. The Minister denied the Second 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 December 31, 2018. However, because the Claimant's MQP is a future date I must determine whether the Claimant had a severe and prolonged disability as of the date of the hearing.

ISSUE(S)

[4] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by the date of the hearing?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by the date of the hearing?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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

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

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

The Claimant does not have a severe disability

[7] The Claimant's Second Application was filed when the Claimant was 36 years old and she indicated that she suffered from "unknown ataxia that caused loss of balance and loss of fine motor skills". The Claimant stopped working in 2014 due to her condition. She had been working in a clerical position since April 10 2012 for the same employer. The Claimant has received disability benefits through her employer.

[8] The medical evidence does not indicate that the Claimant was advised to stop working due to her conditions. The medical evidence does show that the Claimant was diagnosed with gait ataxia not yet determined and that the Claimant's family physician, Dr. Mar, had been treating the Claimant for this condition.² Dr. Mar described that the Claimant had experienced a decrease in balance and decrease in coordination, dropping items. Dr. Mar further described that the Claimant was not able to walk greater than 50 feet due to an imbalance; she could not do heavy lifting and that she felt she was going to fall on stairs.³ Treatment was listed as personal fitness training 3 times a week to increase balance and speed.⁴ Dr. Mar's prognosis for the Claimant was "unknown".⁵ Dr. Mar provided that the Claimant was not currently on medication.⁶

[9] Further medical evidence filed with the Tribunal is a report from Dr. Lang, Neurology at Toronto Western Hospital dated February 10, 2016.⁷ Dr. Lang indicates that the Claimant was assessed with respect to her condition and, in particular, following a seizure the Claimant had experienced. Dr. Lang referred to the Claimant's acute onset of non-progressive gait instability and hypokinetic movements since 2014 and concluded that the nature of her symptoms makes a

² GD2-48

³ GD2-49

⁴ GD2-50

⁵ GD2-51

⁶ GD2-50

⁷ GD2-51-58

neurodegenerative disorder extremely unlikely.⁸ Dr. Lang noted that the symptoms have significantly impacted the Claimant's life and she was currently unable to work.⁹ However, Dr. Lang went on to write that he could not provide any prediction as to the time course or prognosis although it was hoped that these types of symptoms would improve with time.¹⁰ In addition, Dr. Lang encouraged the Claimant to stay active and work with her personal trainer to build core strength and balance skills.¹¹ Dr. Lang indicated that no further follow up with him was necessary at that time.

[10] I find that although the medical evidence corroborates the Claimant's testimony and her CPP Questionnaire to the extent that she has had a loss of balance and loss of fine motor skills since 2014, the evidence does not establish that the Claimant is unable to regularly pursue any substantially gainful employment as of the date of the hearing.¹² While Dr. Lang opined that the Claimant was unable to work at the time of his assessment, he did not indicate what the Claimant's limitations were preventing her from working in any capacity, nor did he provide medical support for his conclusion other than his observation that the Claimant's life was significantly impacted by her symptoms. There is no other medical evidence that corroborates Dr. Lang's conclusion that the Claimant is or was unable to work. Dr. Mar's prognosis was "uncertain".¹³

[11] Moreover, the fact that the Claimant's treatment is confined to working with a personal trainer 3 days a week and there is no medication prescribed for any condition does not support a finding of severe disability. An MRI from 2014 was reported as normal although the Claimant's gait was noted as "odd" and her inability to perform tandem was further noted.¹⁴ This is evidence of a health condition but it does not disclose a severe disability that prevents the Claimant from regularly pursuing any substantially gainful employment.

⁸ GD2-57

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ GD2-58

¹² GD2-66

¹³ GD2-132

¹⁴ GD2-136

The Claimant has capacity to work

[12] I must assess the severe part of the test in a real world context¹⁵. 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. In this matter, the Claimant is fluent in English, has college education and has work experience. Of particular note, in my consideration, is the Claimant's relatively young age of 36 at the time of her Second Application. Moreover, the Claimant testified that she has a valid driver's license although she only drives short distances, in familiar areas and not at night. These are factors that, in a real world context, militate in favour of the Claimant re-entering the workforce.

[13] I note as well that the Claimant testified that the onset of her condition was very sudden after she returned from a trip and she was unable to walk or speak properly. She further testified that, at its onset, she was unable to drive and had no balance. However, over the course of time the Claimant's condition has improved to the point where she does drive a car with a valid license and she can walk and speak. The Claimant attributes this to her work with a therapeutic trainer 3 times a week although she testified that she feels she has plateaued.

[14] I accept that the Claimant has medical issues impacting her gait and balance. At times her speech may be impacted although I did not observe any speech difficulties during the hearing as I note below. However, the evidence before me suggests that there is capacity to work. Such work may or may not include the job the Claimant had at the time of her work stoppage in 2014. For these reasons, I also find that the Claimant is a suitable candidate for retraining.

[15] It is important to note that the Claimant testified as to the difficulty she has experienced with slurred speech as a symptom of her condition. The Claimant also testified that she cannot hold conversations with others because she has trouble responding and needs time. I observed on the record during the hearing that I could not detect any slurred speech on the Claimant's part throughout her testimony during the hearing. I invited the Claimant to explain why she was not

¹⁵ *Villani v. Canada (A.G.)*, 2001 FCA 248

experiencing slurred speech or difficulty responding to my questions during the hearing. The Claimant answered that she had prepared for the hearing and was reading from prepared notes which helped her to speak more clearly without needing more time to respond.

[16] Despite the Claimant's explanation, I found the Claimant's speech during the hearing to be clear, cogent and coherent without slurred speech. The Claimant was able to answer my questions directly, without notable pauses although it would likely have been more difficult for the Claimant to anticipate and prepare in advance for all of my questions as compared to those of her legal representative. The observations I made, combined with the explanation by the Claimant, indicate that the Claimant could speak well and be responsive in, at least, some circumstances and with some preparation. Again, the Claimant's speech and comportment during the hearing, in addition to the evidence filed with the Tribunal, do not support a finding of severe disability.

[17] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living. It's not a question of whether a person is unable to perform their regular job, but rather the person's inability to perform any substantially gainful work¹⁶. As I set out above, in the within matter, the Claimant's testimony and the medical evidence does indicate that the Claimant has been diagnosed with ataxia since 2014 and has been referred to specialists. The evidence further indicated that the Claimant has some limitations such as walking greater than 50 feet. However, the evidence does not show that the Claimant's condition prevents her from earning a living.

[18] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition¹⁷. The Claimant has not returned to work since she stopped working in 2014. The Claimant testified that the severity of her symptoms prevented her from returning to work and her employer has not asked her to return. However, as I have set out above, the evidence supports a finding that the Claimant has capacity to work. The Claimant's condition has improved to the point where the Claimant can now drive again, and can walk and speak in contrast to her

¹⁶ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

¹⁷ *Inclima v. Canada (A.G.)*, 2003 FCA 117

inability to do these activities at the onset of her condition. Although the Claimant has not returned to the work she was doing, the evidence does not show that the Claimant is unable to obtain and maintain employment by reason of her health condition.

Prolonged disability

[19] As I have found that the Claimant did not have a severe disability as of the date of the hearing, it is not necessary that I determine whether the Claimant had a prolonged disability.

CONCLUSION

[20] The appeal is dismissed.

Nicole Zwiers
Member, General Division - Income Security