



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: R. L. v Minister of Employment and Social Development, 2018 SST 1223

Tribunal File Number: GP-17-2070

BETWEEN:

R. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Videoconference hearing on: October 18, 2018

Date of decision: October 22, 2018

DECISION

[1] The Claimant is eligible for a *Canada Pension Plan* (CPP) disability pension with payment starting June 2016.

OVERVIEW

[2] The Claimant was diagnosed with myasthenia gravis and dermatomyositis in 2013, and made numerous unsuccessful attempts to continue working despite his condition. He was 24 years old when he applied for a CPP disability pension in June 2016. He states that he has been unable to work since February 2016 because of these conditions and the resultant depression and anxiety. The Minister denied the application initially and upon reconsideration, and the Claimant appealed to the Social Security Tribunal.

[3] Myasthenia gravis is a long-term neuromuscular disease that causes weakness in the skeletal muscles which are responsible for breathing and moving parts of the body including the arms and legs. Dermatomyositis is a long term inflammatory disorder which affects muscles; its symptoms are generally a skin rash and worsening muscle weakness over time.

ISSUES

1. Did the Claimant's physical and mental health conditions result in his being incapable regularly of pursuing any substantially gainful employment by December 31, 2016?
2. If so, is his disability long continued and of indefinite duration?

ANALYSIS

Test for a Disability Pension

[4] A qualifying disability must be severe and prolonged. A disability is severe if it causes a person to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.¹

¹ Subsection 42(2) of the CPP

[5] The Claimant must prove on a balance of probabilities that he became disabled on or before the end of his Minimum Qualifying Period (MQP), which is calculated based on his contributions to the CPP. His MQP ended on December 31, 2016.²

Severe Disability

The Claimant's conditions were significantly disabling by December 31, 2016

[6] I must assess the Claimant's condition as a whole and consider all the impairments that affect employability, not just his biggest impairments or the main impairment.³ Although each of his medical problems taken separately might not result in a severe disability, the collective effect of his various health conditions may render him severely disabled.⁴

[7] The Claimant has been struggling with myasthenia gravis and dermatomyositis since 2013. These conditions are rare, little is known about them, and they are volatile and unpredictable. This struggle has led to depression, anxiety, and an alcohol addiction problem.

[8] In the CPP medical report dated May 30, 2016 Dr. McKenzie, the Claimant's family doctor, diagnosed myasthenia gravis, dermatomyositis, and anxiety disorder. The Claimant had dysarthria (motor speech disorder), nasal speech, ptosis (drooping of the upper eyelid), diplopia (double vision), hand weakness, fatigue and ongoing dysphagia (difficulty swallowing). Dr. McKenzie's opinion was that the Claimant was unable to work or study, and that his condition was severe, treatment resistant, and permanent.⁵

[9] On November 23, 2016 Dr. Heng, a psychiatrist, diagnosed major depressive disorder; rule out substance induced abusive disorder and marijuana/alcohol use disorder.⁶

[10] Diana Lidenthaler, the Claimant's mother, testified that he struggles on a daily basis with nausea, severe insomnia, depression, anxiety, limited physical endurance, inability to follow through on activities, decreased concentration, and digestive issues. Because of his medications

² Record of Contributions: GD4-16

³ *Bungay* 2011 FCA 47

⁴ *Barata v MHRD* (January 17, 2001) CP 15058 (PAB)

⁵ GD2-153 to 158

⁶ GD2-126

his immune system has been compromised, leaving him prone to infections; and his calcium has been depleted leading to dental problems and weakened bones. He now spends most of his time at home, suffers severe insomnia, and has difficulty getting up in the morning.

[11] Adeline Ciu, the Claimant's girlfriend, described his unsuccessful employment efforts to work part-time at two liquor stores and at BestBuy, and his unsuccessful attempt to complete a computer course at Langara College.

[12] At the first liquor store he was working three shifts for approximately twenty hours a week: he missed shifts, was late because he threw up after taking his medications, and his insomnia became worse. He had similar problems at the second liquor store. He was only able to last for a short period at each of these jobs. He attempted part-time work on the floor at BestBuy for 20 hours per week, but was only able to last for a couple of months because of his upper muscle weakness, nausea, and increased insomnia and depression. He wasn't able to complete a computer course at Langara College, even though it was only for a couple of hours in the morning, three days per week. He had to quit after 6-8 weeks.

[13] The Claimant stated that his medical condition has "killed his spirit. The biggest problem is what it has done to his mental state – he has lost friendships, is unable to do simple tasks, and has to cancel plans at the last moment. He finds his situation degrading and demeaning and feels like he is "beating his head against the wall." He is living alone in an apartment and Adeline comes over on a daily basis to help out and make sure that he is eating properly.

[14] He is now seeing Dr. McKenzie on a monthly basis, and seeing both Dr. Mezie, a neurologist, and Dr. Shjania, a rheumatologist, twice a year. He has only seen Dr. Heng on three occasions because he hasn't found him helpful. He has seen two different counsellors who have addressed his alcohol addiction issues, and is now looking for a counsellor to address his mental health issues. He is trying to find a psychiatrist with whom he can "connect" more than he has with Dr. Heng.

[15] The Claimant's current medications include Retuxane (twice yearly six-hour IV transfers at a hospital), Tacrolimus (one tablet, twice per day) for his auto-immune disorder, and Prozac and Wellbutrin (two tablets of each every day) for his depression and anxiety. His medications

have had significant side-effects including: indigestion, diarrhea, nausea, erectile dysfunction, sensitivity to sun light, cold sweats, shakes, increased anxiety and depression, and a lower immune system. He also takes calcium and Vitamin D supplements. He has weakened bones and dental issues because of the steroids that he previously took.

[16] I find that the cumulative effect of the Claimant's physical and mental health conditions was significantly disabling at December 31, 2016, and that it continues to be so.

The Claimant has established a severe disability

[17] A disability is severe if it renders a Claimant incapable of pursuing with consistent frequency any truly remunerative occupation. I must assess the severity requirement in a "real world context" and consider such factors as the Claimant's age, education level, language proficiency, and past work and life experiences when determining his "employability".⁷

[18] The Minister acknowledges that the Claimant was not able to work for a period of time due to his medical condition but submits that the medical evidence supports that he has gradually improved with treatment. It relies on the following specialist reports from 2016 to early 2017: Dr. Mezie, August 31, 2016, doing 'really well', virtually no myasthenia gravis complaints⁸; Dr. Shojania, October 27, 2016, doing well now, but not sure what is keeping him stable, either the PLEX (plasma exchange), the rituximab, or even the tacrolimus/steroids⁹; Dr. Mezie, December 15, 2016, has done well over the last few months, continues to be in remission; Dr. Heng, January 11, 2017, depression improving¹⁰ and March 22, 2017, plans to return to a web development course and has been doing self-study in preparation for next semester.¹¹

[19] The Minister noted that that the CPP does not provide temporary, partial, or short-term benefits and that its purpose is to provide a pension when a disability forces an individual to leave the workforce on a long-term basis and not to tide an individual over a temporary period where a medical condition prevents him from working.

⁷ Villani 2001 FCA 248

⁸ GD2-73

⁹ GD2-124

¹⁰ GD2-127

¹¹ GD2-128

[20] The Minister's position, however, looks at only brief snapshots of the Claimant's condition and fails to consider its volatile and unpredictable nature. I must look at the entire picture. Although there have been occasional periods of remission, there are repeated relapses and collapses.

[21] The Claimant was hospitalized from April 26, 2016 to May 6, 2016 and again from June 9, 2016 to June 24, 2016. On March 8, 2016 Dr. Shojania stated his symptoms included difficulty swallowing, fatigue, ptosis (drooping of the upper eyelid), and facial weakness.¹² On April 11, 2016 Dr. Mezei stated that the Claimant had been deteriorating over the past two to three weeks and he was experiencing increasing slurred speech and more swallowing difficulties.¹³ On April 25, 2016 Dr. Mezei stated that the Claimant had difficult to treat predominantly bulbar (involving the brain stem) but also generalized myasthenia gravis that limits him in most jobs that require physical activity.¹⁴ In a letter to Dr. Shojania on the same date Dr. Mezei stated that the Claimant was "worsening."¹⁵ On June 7, 2016 Dr. Shojania stated that the Claimant was not doing very well, his swallowing was worse, his speech was becoming more difficult, and that his mood was variable.¹⁶ On November 23, 2016 Dr. Heng stated that the Claimant had myasthenia gravis complications due to treatment in the summer that led to a medically induced coma for five days. The Claimant was feeling completely unmotivated, did not want to get out of bed, did not want to clean up, and did not want to do any school work.¹⁷

[22] The Claimant, his mother, and his girl-friend all gave compelling evidence concerning the long-term effects of his condition, and how it has affected his life, functional limitations, and capacity to work.

[23] The Claimant's mother stated that the Claimant is struggling to reach a semi-functioning state. His condition is life altering and his whole purpose in life has been taken away. Adeline cannot envision any type of employment the Claimant could regularly pursue because: he has difficulty getting out of bed in the morning due to his severe insomnia; he has difficulty finding

¹² GD2-92

¹³ GD2-111

¹⁴ GD2-103

¹⁵ GD2-104

¹⁶ GD2-114 to 115

¹⁷ GD2-125

the energy and motivation to do household chores, eat a meal, or go out grocery shopping; and he has unpredictable symptoms of nausea, insomnia, inability to focus, decreased endurance, depression, and anxiety. She and his family have to help him with day to day chores, transportation, and organizing medical appointments.

[24] On average the Claimant has three functional days and four bad days each week. On functional days he is able to go out grocery shopping and do a little housework but on bad days he mostly just lies in bed. He spends most days sleeping, he barely eats, and he considers it an accomplishment if he can get halfway through cleaning his apartment. He cannot envision any type of work that he could regularly do because of his physical limitations and his “mental exhaustion”. He couldn’t do an office job because he can’t do anything productive due to his mental state.

[25] I recognize that the Claimant is only 25 years old and that it is unusual for a person to suffer a disability like the Claimant’s at such a young age; however, this in itself is not a reason for disqualifying him from CPP disability. It is possible that some developments will occur in the future that will provide the relief the Claimant requires; however, I must act only on credible and supporting evidence and not on speculation.¹⁸

[26] I am satisfied that the Claimant lacks the regular capacity for any type of substantially gainful employment; he could not be a regular and reliable employee.

[27] I find that the Claimant has established, on the balance of probabilities, a severe disability in accordance with the CPP requirements.

Prolonged Disability

[28] The Claimant’s disabling conditions have persisted since 2013, and despite extensive and ongoing treatment there has been little improvement.

¹⁸*Lewis v MHRD* (September 3, 2002), CP 19177 (PAB) & *Elwood v. MEI* (June 23, 1994) CP 2781 CEB & PG 8541). These decisions are not binding but I find them persuasive.

[29] The Claimant's disability is long continued and that there is no reasonable prospect of improvement in the foreseeable future.

CONCLUSION

[30] I find that the Claimant had a severe and prolonged disability in February 2016, when he last worked at regular employment.¹⁹ Payments start as of June 2016, four months after the date of disability.²⁰

[31] The appeal is allowed.

Raymond Raphael
Member, General Division - Income Security

¹⁹ Disability Questionnaire: GD2-191

²⁰ Section 69 of the CPP