



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. T. v Minister of Employment and Social Development*, 2018 SST 1219

Tribunal File Number: GP-17-3065

BETWEEN:

**A. T.**

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: Raymond Raphael

Claimant represented by: Malathi Yogaraajah

Date of decision: October 19, 2018

Form of hearing: On the Record

## **DECISION**

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of April 2016.

## **OVERVIEW**

[2] The Claimant is 55 years old. He was born in Bangladesh and came to Canada in 1982. In April 2006 he injured his left shoulder when he was hit by a car while riding a bicycle to work. In December 2008 he was laid off from his job as a machine operator for X, and has not worked since. He states that is unable to work because of major depression, physical disability, and poor cognitive functioning.

[3] The Minister received the Claimant's current application for a CPP disability pension on March 30, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] This is the Claimant's second application for CPP disability. He initially applied in December 2011 and his application was denied in April 2012. He did not request reconsideration.

## **ISSUES**

[5] Did the Claimant's major depression and cognitive deficits result in his being incapable regularly of pursuing any substantially gainful employment by December 31, 2011?

[6] If so, is his disability long continued and of indefinite duration?

## **ANALYSIS**

[7] A qualifying disability must be severe and prolonged.<sup>1</sup> 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.

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<sup>1</sup> Subsection 42(2) of the CPP

[8] 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, 2011.<sup>2</sup>

### **Severe disability**

#### ***The Claimant's major depression and cognitive deficits were significantly disabling as of the December 31, 2011***

[9] I must assess the Claimant's condition as a whole and consider all the impairments that affect employability, not just his biggest impairments or his main impairment.<sup>3</sup> 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.<sup>4</sup>

[10] I am satisfied that the medical evidence establishes significant disabling conditions by the MQP:

- On July 5, 2010 Dr. Arif, from the Warden Family Practice and Walk-In Clinic, referred the Claimant to Dr. Abouelsner, a psychiatrist, because of depression.<sup>5</sup>
- Dr. Arif's July 5, 2010 office note states: depressed, poor concentration, unable to focus, unable to make decisions, quiet all the time, nervous feelings, anxious, too much sleep, inappropriate talking, no suicidal thought, stays at house all day.
- Dr. Abouelsner was not able to assess the Claimant because he was psychotic.<sup>6</sup>
- On July 30, 2010 Dr. Abouelsner applied under section 15(1) of the *Ontario Mental Health Act* (the serious harm test) for a psychiatric assessment of the Claimant because he had reasonable cause to believe that the Claimant threatened or was threatening to cause bodily harm to himself. The application stated that the Claimant was severely depressed, evasive in his answers, not answering questions concerning his safety, and behaving in a way that suggested auditory hallucinations.<sup>7</sup>

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<sup>2</sup> Record of Contributions: GD4-16

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

<sup>4</sup> *Barata v MHRD* (January 17, 2001) CP 15058 (PAB). This decision is not binding but I find it persuasive

<sup>5</sup> GD6-2 to 3

<sup>6</sup> GD2-186

<sup>7</sup> GD6-4 to 5

- On November 30, 2010 Dr. Morgenthau, a neurologist, assessed the Claimant for possible cognitive changes. Although the Claimant stated that he had no complaints about cognitive changes: when specifically asked about memory he replied that “ he was thinking too much”, did not know why he lost his job after 26 years with the same employer, gave no response when asked if he was depressed, and gave no response as to why he was separated. The Claimant’s wife indicated that he was getting lost and his brother-in-law stated that he was forgetful.<sup>8</sup>
- On January 4, 2011 Dr. Salama, a psychiatrist, stated the Claimant’s psychiatric illnesses started after he was laid off in 2008.<sup>9</sup>
- In a CPP medical report dated May 31, 2011 Dr. Liss, the Claimant’s family doctor, diagnosed major depressive disorder, inability to care for himself, and cognitive deficits.. Dr. Liss stated that the Claimant did not understand instruction and language; that he was dependent on others; that he could not go to appointments by himself; and that he was unable to work. He also stated that the Claimant was not improving.<sup>10</sup>
- On October 11, 2012 Dr. Liss, the Claimant’s family doctor, reported to Neighbourhood Legal Services that the Claimant had depression, cognitive deficits, and enlarged ventricles (which are associated with Alzheimer’s and related conditions). The Claimant’s conditions included type II diabetes since 2011; cognitive decline for which he had referred the Claimant to Dr. Morgenthau in November 2010; major depressive disorder for which Dr. Morgenthau had referred the Claimant to Dr. Salama; hypertension documented since December 2009; and a left shoulder injury resulting from being hit by a car while riding to work in April 2006.<sup>11</sup>

[11] I am also satisfied that the medical evidence establishes that the Claimant’s conditions continued after the MQP and that treatment of his conditions was complicated by his mental health disorder:

- An October 24, 2014 encounter note prepared by Dr. Tarun, from the Warden Family Practice and Walk-In Clinic, states: depressed in 2009 after layoff from job, referred to psychiatrist in 2010 but saw him once, cannot do anything by himself, cannot understand anything, forgets things easily. Dr. Tarun referred the Claimant back to Dr. Abouelsner.<sup>12</sup>

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<sup>8</sup> GD2-61

<sup>9</sup> GD2-59 to 60

<sup>10</sup> GD2-175 to 178

<sup>11</sup> GD2-57 to 58

<sup>12</sup> GD6-13 to 15

- On November 12, 2014 Dr. Dr. Abouelsner stated the Claimant was vague most of the time and was not a reliable historian. His impression was that the Claimant had a history of mental illness, but the history was not sufficiently clear to confirm a diagnosis.<sup>13</sup>
- On May 13, 2015 Dr. Torshizi, an endocrinologist, stated that the Claimant had extremely poorly controlled diabetes which was complicated by his mental health disorder. Dr. Torshizi also stated that the Claimant “absolutely” needed insulin and if he couldn’t safely take insulin it should be provided by a Community Care Access Centres (CCAC) nurse.<sup>14</sup>
- On July 16, 2015 Dr. Abouelsner wrote to Jane Finch Community Legal Services in support of the Claimant’s application for a provincial disability pension. The Claimant’s main diagnosis was psychosis and depression, but he was also diabetic, had high blood pressure and high cholesterol, and had pain in his knees and feet. The Claimant had no insight because of his mental condition leading Dr. Abouelsner to question whether he was compliant with taking anti-psychotic medication. Dr. Abouelsner stated that the Claimant would not be able to maintain a job due to his active psychosis and depression: it was difficult for him to trust, work, or communicate with anyone; and his functioning was also limited by his diabetes, poor concentration, difficulty focusing, and knee and foot pain.<sup>15</sup>
- In a Humber River Hospital discharge report faxed on November 20, 2015 Dr. Kumar, a psychiatrist, observed that the Claimant was dressed in disheveled clothes, his hygiene was unkempt, and he appeared noticeably malodorous. The Claimant could not identify why he was there. Although the Claimant denied any problems his son stated that he spent all day sitting quietly watching movies, did not talk with anyone, did not bathe or keep hygiene, and did not help out around the house. Dr. Kumar was “at a loss” to make a clear and accurate diagnosis.<sup>16</sup>
- On December 14, 2016 Dr. Tymkianski, a neurosurgeon, noted that the Claimant had been admitted to the hospital because of recurrent falls. The Claimant had multilevel foraminal stenosis and cervical stenosis. Although Dr. Tymkianski would have normally recommended spinal decompressive surgery, the Claimant was not in a mental condition to either understand the surgery or benefit from it.<sup>17</sup>
- In a March 24, 2017 CPP medical report Dr. Abouelsner diagnosed major depressive disorder. He stated that the Claimant’s long history of depression affected his ability to function, and he had not responded to treatment. His prognoses were poor.<sup>18</sup>

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<sup>13</sup> GD2-126 to 127

<sup>14</sup> GD6-58 to 59

<sup>15</sup> GD6-19 to 21

<sup>16</sup> GD2-128 to 130

<sup>17</sup> GD6-92 to 93

<sup>18</sup> GD2-122 to 125

[12] I find that the Claimant suffered from significant medical conditions by December 31, 2011 and continuously thereafter. His most significant conditions were psychosis and severe depression, but as of the MQP he also suffered from physical conditions including uncontrolled diabetes and a shoulder injury. His mental health condition complicated treatment not only of his depression and psychosis, but also of his diabetes.

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

[13] 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".<sup>19</sup>

[14] The Minister submitted that the medical evidence does not support a severe pathology or impairment that would have precluded the Claimant from performing all types of work as of the December 31, 2011 MQP and continuously thereafter. It stated that the specialists were unable to determine a diagnosis or explain his symptoms; that he did not attend his current psychiatrist until 2014; that he only sees him every three months or so which does not suggest a severe medical condition; and that psychiatric assessments revealed only evidence of mild symptoms with no evidence of cognitive impairment.

[15] I do not find the Minister’s submissions persuasive.

[16] The Claimant was 48 years old at the MQP, has limited English language proficiency, and all of his employment history in Canada was as a machine operator for the same company. He suffers from severe depression as well as psychosis; he has cognitive deficits including poor memory and concentration; he is unable to care for himself; he is not able to go out independently; and he also has physical limitations which at the MQP included uncontrolled diabetes and a left shoulder injury.

[17] Given these barriers, I cannot envision how the Claimant could regularly pursue any form of substantially gainful employment.

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<sup>19</sup> *Villani* 2001 FCA 248

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

### **Prolonged disability**

[19] The Claimant's mental health conditions have persisted for many years. Because of his lack of insight and apparent denial that he has mental health issues, it is difficult for those issues to be treated. His mental health issues also complicate treatment of his physical conditions. Sadly, the evidence does not support a realistic possibility of successful treatment.

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

### **CONCLUSION**

[21] I find that the Claimant had a severe and prolonged disability as of July 2010, when Dr. Arif referred him to a Dr. Abouelsner. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Minister received the application for a disability pension.<sup>20</sup> The application was received in March 2017; therefore the Claimant is deemed disabled in December 2015. Payments start four months after the deemed date of disability.<sup>21</sup> Payments start as of April 2016.

[22] The appeal is allowed.

Raymond Raphael  
Member, General Division - Income Security

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<sup>20</sup> Paragraph 42(2)(b) of the CPP

<sup>21</sup> Section 69 of the CPP