



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. A. v Minister of Employment and Social Development*, 2018 SST 1230

Tribunal File Number: GP-17-1856

BETWEEN:

M. A.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Claimant represented by: Aman Dhillon

Teleconference hearing on: October 3, 2018

Date of decision: November 1, 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 June 21, 2016. The Minister denied the 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, 2017.

ISSUE(S)

[4] Did the Claimant's right foot hemangioma with resultant right foot pain result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2017?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2017?

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. Claimants must prove on a balance of 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.

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

Severe disability

The Claimant's disability was not severe before December 31, 2017.

[7] The onus is on the Claimant to establish on the balance of probabilities her entitlement to CPP disability benefits. She was thirty-nine years old at her MQP. She worked as a personal support worker (PSW) for various agencies from 2007 until June 6, 2016, and has not worked since. She last worked as a PSW for a homecare service provider from June 2013 until June 6, 2016. She characterized her duties as a PSW as physically demanding work. Prior to 2007, the Claimant worked as a supervisor/manager of a X video store for five years and as a customer service representative in a watch/clock store for two years. She characterized the jobs duties at X and the clock store as sedentary work.

[8] The Claimant noted in the Questionnaire for Disability Benefits (Questionnaire) dated June 8, 2016² she has a high school education. She testified she obtained a PSW diploma in 2005/2006, and social work and child psychology diplomas acquired online during January 2017- February 2018. She said she pursued the social work and child psychology retraining programs as she did not think she would be able to return to work as a PSW.

[9] The Claimant reported in the Questionnaire and testified she stopped working because of a tumour on her right foot and resultant right foot pain after her right foot was run over by a client in a wheelchair in May 2016. In addition to right foot pain she suffered from headaches, anxiety, and depression since age sixteen, which did not prevent her working. She experienced headaches one/two times a week and migraine headaches once a week since age sixteen. The Claimant said migraine headaches have been managed with medication. She has been told she has to live with headaches.

[10] The Claimant had a telephone consultation with a psychiatrist regarding anxiety and depression six months ago. She never saw a psychiatrist, or spoke to a psychiatrist, prior to or since the telephone consultation. She has been prescribed Effexor since age sixteen, and Abilify since she spoke to the psychiatrist. She has seen a life coach regarding stress for several years. There is no report from the psychiatrist, the life coach, or other mental healthcare provider

² GD2 pages 85-92

regarding the Claimant being diagnosed or treated for depression, anxiety, or other mental condition save the Health Status Report completed by Dr. Kapeluto, the Claimant's family physician, dated November 9, 2016³. The Claimant acknowledged headaches, depression, and anxiety did not prevent her working prior to June 6, 2016, and did not contribute to her stopping work on June 6, 2016.

[11] The Claimant in the Questionnaire reported she stopped working June 6, 2006 because of a right foot tumour, diagnosed as a hemangioma, a benign/noncancerous growth. She noted the hemangioma has prevented her working since June 6, 2016 because of pain. She reported she is unable to perform the duties of a PSW until the tumour is removed. The Claimant indicated in the Questionnaire she has no other health related conditions or impairments. She testified the only condition that prevented her working in June 2016 was her right foot condition. She said if surgery on her right foot is successful she will try returning to work.

[12] The Claimant testified she has been unable to work since June 2016 because of right foot pain which precludes prolonged standing, walking, lifting and carrying, headaches, anxiety, and depression, concentration issues, and disturbed sleep resulting in fatigue.

[13] The Claimant testified the hemangioma began in 2015, but did not prevent her from working until the wheelchair ran over her right foot in May 2016. She was off work for two weeks. She thereafter returned to work on modified, sedentary type office duties for two weeks. The Claimant said her employer would not further accommodate her limitations, with the result she stopped working June 6, 2016, and has not worked since. The Claimant's attendance and job performance were satisfactory prior to her right foot being run over by the wheelchair in May 2016.

[14] Dr. Kapeluto, the Claimant's family physician since 2013, completed the medical report dated June 14, 2016⁴ that accompanied the Claimant's benefit application. His diagnosis was hemangioma a condition he first started treating the Claimant for in February 2015. Notes of the Claimant's attendances with Dr. Kapeluto during the period February 24, 2015 to August 22,

³ GD4 pages 27-38

⁴ GD2 pages 73-76

2016⁵ confirm the Claimant was mostly seen because of her right foot condition. There are some references to anxiety and depression without any indication of the severity of such conditions, or that such conditions affect the Claimant's work capacity.

[15] Dr. Kapeluto completed a Health Status Report and Activities of Daily Living Index Report dated November 9, 2016⁶ which accompanied the Claimant's application for Ontario Disability Support Program benefits. He reported the Claimant's conditions as hemangioma, anxiety, depression, and migraines. He noted the Claimant's has only one severe mental health symptom, namely "motivation", and just two severe limitations which affect functioning in the workplace, being walking three or more blocks, and climbing stairs.

[16] Drs. Hickey and Wunder, orthopaedic surgeons, and Drs. Baerlocher and Simon, intervention radiologists, were seen by the Claimant during the period November 2015 and February 2018 regarding a right foot tumour/hemangioma. Dr. Hickey reported November 4, 2015⁷ the Claimant's treatment options are tumour resections and sclerotherapy. Dr. Wunder reported March 20, 2017⁸ the Claimant's condition is amenable to surgery if sclerotherapy proves to be of no benefit, and will be scheduled for surgery if Dr. Simon determines there is no further role for sclerotherapy.

[17] Dr. Kapeluto reported April 27, 2018⁹ that sclerotherapy has not been successful, and the Claimant is undergoing further investigations and awaiting consultation with a specialist. Dr. Kapeluto reported the Claimant is able to do sedentary work. He indicated the Claimant's depression, anxiety, and migraines are managed, and the prognosis regarding these conditions is fair.

[18] The Claimant has had several sclerotherapy injections since 2016, the last being in February 2018¹⁰. Her only treatment for the hemangioma to date has been sclerotherapy. She said the issue of surgery will be revisited when Dr. Simon is next seen, and if surgery is

⁵ GD4 pages 9-18

⁶ GD4 pages 27-38

⁷ GD2 page 77

⁸ GD2 pages 57-58

⁹ GD4 page 6

¹⁰ GD6 page 14

recommended, she will undergo the surgery. She noted she has been told she will need to be off her feet for a couple months following surgery. She testified she will look for work if surgery is successful.

[19] I must assess the severe part of the test in a real world context¹¹. 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. The Claimant is just forty years old, being many years younger than the traditional Canadian retirement age, is fluent in English, has significant life and past work experience with transferable skills, having worked in various positions including supervisory positions, and is well educated. I find the Claimant's personal factors do not in a real world context prevent her pursuing sedentary or light duty type employment.

[20] Evidence of the Claimant's work capacity can be found in Dr. Kapeluto's April 27, 2018 report, an absence of any report by the various treating specialists addressing the Claimant's work capacity, the absence of any evidence the Claimant's anxiety, depression, and headaches worsened significantly since age sixteen, and the Claimant's successful participation in training programs contemporaneous to and subsequent to her MQP. The Claimant has not looked for work not precluded by her functional limitations, being essentially right foot pain, and long standing conditions which did not preclude her working many years prior to June 2016 and did not cause her to stop working in June 2016.

[21] 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 condition¹². The Claimant has not looked for work not precluded by her functional limitations, being essentially right foot pain, since she stopped working in June 2016. I acknowledge the Claimant's condition likely precludes physically demanding work. There is no evidence that light duty sedentary type work is precluded. The Claimant's family physician reported the Claimant, as at her MQP and subsequently, was able to do sedentary work, but not able to return to work as a PSW because of the hemangioma. He reported some limitations including problems

¹¹ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹² *Inclima v. Canada (A.G.)*, 2003 FCA 117

driving to work, which could limit her opportunities, but not preclude appropriate work. The evidence substantiates, and I find the Claimant has not shown that efforts at obtaining and maintaining employment have been unsuccessful by reason of her health condition.

[22] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment¹³. The Claimant's family physician's sole diagnosis in the medical report that accompanied the Claimant's benefit application was hemangioma. While his notes indicate the Claimant suffers from anxiety, depression and migraine headaches, these conditions have been managed conservatively with medications. The evidence of the Claimant is to the effect these conditions existed since age sixteen, did not preclude her from working for many years prior to June 2016, and have not precluded her from working since June 2016. No doctor reported that these conditions would prevent her from working, and, in fact, she worked for years with these conditions.

[23] I find the Claimant failed to establish she was incapable regularly of pursuing any substantially gainful occupation before December 31, 2017. Accordingly, I find the Claimant's disability was not severe before December 31, 2017.

Prolonged disability

The Claimant's disability was not prolonged before December 31, 2017.

[24] A disability cannot be "prolonged unless it is determined to be of indefinite duration". The purpose of the CPP is to provide a pension to those who are disabled from working on a long-term basis, not to tide claimants over a temporary period where a medical condition prevents them from working¹⁴.

[25] The Claimant stopped working in June 2016 because of a right foot hemangioma which resulted in significant right foot pain and difficulties walking and standing for long periods of time. Specialists have determined the Claimant's condition is amenable to surgery. The Claimant has indicated she will see a specialist in the near future to revisit the option of surgery. She

¹³ *Bungay v. Canada (A.G.)*, 2011 FCA 47

¹⁴ *Canada (MHRD) v. Henderson*, 2005 FCA 309

understands there will be a period of convalescence of at least two months following surgery. She indicated in her Questionnaire she could not perform her duties until the tumour is removed. She testified, if the surgery is successful, she will try to return to work. As the Claimant's specialists have indicated her condition is amenable to surgery if sclerotherapy fails, I am unable to find the Claimant's disability is of indefinite duration since surgery may result in significant improvement and resolution of the Claimant's right foot symptoms. Accordingly, I find her disability was not prolonged before December 31, 2017.

CONCLUSION

[26] I find the Claimant's disability was not severe or prolonged before December 31, 2017.

[27] The appeal is dismissed.

Patrick O'Neil
Member, General Division - Income Security