



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MG v Minister of Employment and Social Development*, 2019 SST 1686

Tribunal File Number: GP-18-252

BETWEEN:

M. G.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: David Somer

Teleconference hearing on: December 18, 2018

Date of decision: January 24, 2019

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of July 2015.

OVERVIEW

[2] The Claimant was 60 years of age at the time of his application for a CPP disability in pension June 2016. He has a Master's degree in Clinical Psychology. He worked as a self-employed psychotherapist from September 1989 until April 2016, when he stopped work due to a major depressive disorder. The Minister received the Claimant's application for the disability pension on July 28, 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. At my request, the Respondent submitted a Record of Earnings printed on January 14, 2019. By law, I must find Record of Earnings from the Canada Revenue Agency accurate. Therefore, I find the Claimant's MQP to be April 30, 2014.

ISSUES

[4] Did the Claimant's major depressive disorder result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by April 30, 2014?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by April 30, 2014?

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 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 disability

The Claimant's health conditions and functional limitations affected his capacity to work

[7] The Claimant testified that he could no longer work as of September 2011. His psychologist, Dr. Lisa Keith, confirmed this in her testimony and in her letter to HRDC dated January 3, 2018.² The Claimant testified that he did attempt to return to work after September 2011 but was unsuccessful. In the questionnaire submitted with his application, the Claimant stated that he worked as a self-employed psychotherapist from September 1989 until April 1, 2016. He stated both in the questionnaire and in his testimony that he is unable to work due to a major depressive disorder, which interferes with his ability to perform the essential tasks of psychotherapy.

- **Mental Health**

[8] In a medical report dated June 17, 2016³, Dr. Lisa Keith, Psychologist, provided a diagnosis of major depressive order along with an adjustment disorder with anxiety (generalized and posttraumatic). Dr. Keith noted that his major depression developed in 2011 subsequent to his mother's involvement in two motor vehicle accidents (MVA's). Dr. Keith reported that she provided psychotherapy as needed with cognitive behavioural therapy strategies. His initial response to treatment was moderate but he has reached maximum recovery. His sessions now are booked as needed or on a crisis basis. Dr. Keith further reported that the Claimant's impairments include disturbed sleep, mood disturbance, helplessness, generalized and posttraumatic anxiety and worry, cognitive impairments, difficulty organizing and multitasking, decreased physical

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

² GD2-111

³ GD2-140-143

stamina and tinnitus. These impairments interfere with his ability to participate in social contact, family activities and housekeeping. Dr. Keith stated that the Claimant's GAF was 45-55 which indicates moderate to severe symptoms. His prognosis for a full recovery is poor and further treatment may assist in crisis situations, but is unlikely to result in improvement to return to work. He is no longer able to continue his work as a psychotherapist or return to any type of employment. In a letter dated June 20, 2016, Dr. Keith wrote that she does not believe that the Claimant is competitively employable in any occupation to the combination of psychological and cognitive impairments. His depression, anxiety and cognitive impairments is severe and prolonged.

[9] The Claimant testified that he stopped work completely in September 2011 in order to provide care for his mother who had been involved in two motor vehicle accidents. After his mother passed away in November 2014, he returned to work on a very part-time basis of approximately 15 hours per week. After ongoing discussions with his psychologist, Dr. Lisa Keith, he decided that it was best for himself and his clients that he should close his practice.

- **Other Medical Conditions**

The Claimant testified that he has chronic pain as a result of a motor vehicle accident in January 1999. There is no medical evidence provided to support that he was disabled from this incident. In fact, he returned to work for several years following the MVA. In addition, the Claimant also reported that he has sleep problems, acid reflux and high cholesterol. Once again, there is no medical evidence provided that would contribute to the determination of a medical disability regarding these conditions.

The Claimant had income in 2014, 2015, 2016 and 2017. The Claimant explained that much of this income were receivables from work performed in previous years. I note that the income amounts reported were well below substantially gainful. Therefore, I have determined that, while the Claimant did return to work after his reported claim date of September 2011, his return to work was essentially unsuccessful and I agree with his claim date of September 2011.

The Claimant's personal circumstances and functional limitations resulted in a severe disability

[10] I must assess the severe part of the test in a real world context⁴. 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 was 60 years of age at the time of his application. He is well educated with a Master's degree in clinical psychology. He has many years of experience as a self-employed psychotherapist. I am of the view that he developed transferable skills from his work experience. However, I believe that the Claimant's psychiatric condition as well as his age, would prevent him from seeking and maintaining suitable gainful employment. His medical condition would negatively affect his ability to retrain for part-time or full-time employment.

[11] 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 is 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 work⁵. Dr. Keith has known the Claimant for 18/19 years and I give significant weight to her opinion that he is unable to work at any profession.

[12] 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 condition⁶. I find that there is no evidence of capacity to work because of the limitations due to his psychiatric condition. He is therefore exempt from the requirement in *Inclima* to provide evidence that this failure to find and maintain employment was unsuccessful because of his health condition.

[13] The Claimant has the burden of proof and after careful review of the evidence, I have found that the Claimant has established, on the balance of probabilities, a severe disability in accordance with the CPP criteria. Ability in accordance with the CPP criteria.

⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁵ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁶ *Inclima v. Canada (A.G.)*, 2003 FCA 117

Prolonged disability

[14] The Claimant stopped work after his mother's second MVA and his understandable decision to care for her full time. During this time, he saw Dr. Keith regularly to treat his major depressive disorder. Following her death, he did attempt to return to work; however, he was unsuccessful in that endeavor.

[15] Dr. Keith stated clearly in June 2016 that because of his diagnosis of major depressive disorder and adjustment disorder with anxiety, that the Claimant would be unable to continue his work as a psychotherapist or a return to any type of employment. His prognosis for a full recovery is poor. Further treatment is unlikely to result in improvement to be able to return to work, either full or part time.

[16] For these reasons, I find that the Claimant has a prolonged disability.

CONCLUSION

[17] The Claimant had a severe and prolonged disability in September 2011, when he stopped work due to a major depressive disorder. However, to calculate the date of payment of the pension, a person cannot be deemed disabled more than fifteen months before the Minister received the application for the pension⁷. The application was received in June 2016 so the deemed date of disability is March 2015. Payments start four months after the deemed date of disability, as of July 2015⁸.

[18] The appeal is allowed.

David Somer
Member, General Division - Income Security

⁷ Paragraph 42(2)(b) *Canada Pension Plan*

⁸ Section 69 *Canada Pension Plan*

