



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *NG v Minister of Employment and Social Development*, 2019 SST 1704

Tribunal File Number: GP-18-1677

BETWEEN:

**N. G.**

Claimant

and

**Minister of Employment and Social Development**

Minister

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

Decision by: Antoinette Cardillo

Claimant represented by: Brian Murphy

Teleconference hearing on: December 12, 2018

Date of decision: January 29, 2019

**DATE OF CORRIGENDUM : ~~April 3, 2019~~**

**June 24, 2019**

## DECISION

The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid retroactively **[as of January 2000]. [The Claimant became incapacitated and disabled in September 1999, his deemed application date is December 1999 (the month preceding the first month in which the benefit could have commenced to be paid).]**

## OVERVIEW

[1] The Claimant's first application for CPP disability benefits was received in June 1999 and was denied in July 1999. A reconsideration of the decision was submitted in September 1999. The decision for reconsideration was denied in October 1999. There is no indication the Claimant appealed the decision.

[2] The Minister received the Claimant's current application for CPP disability benefits on May 17, 2012<sup>1</sup>. The Claimant's disability application is based on severe chronic Hepatitis C causing chronic fatigue, severe pain, and mild confusion. The Minister denied the application initially, then, on reconsideration, benefits were granted and the Claimant was deemed disabled as of February 2011. The date of disability was determined to be 15 months prior to his date of application as provided in the CPP (maximum retroactivity). The Claimant did not agree with the disability date alleging he was incapacitated and appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[3] The Claimant had an in-person hearing on March 11, 2016 before the Tribunal's General Division and a decision was rendered on June 15, 2016. The Claimant appealed the decision to the Tribunal's Appeal Division alleging that the hearing was conducted unfairly in that the General Division refused to accept post-hearing documents (i.e. documents filed after the hearing but before the General Division's decision had been finalized). The appeal was allowed on July 18, 2018 and the matter was sent back to the General Division for reconsideration on the question of whether the Claimant's disability pension can be backdated any further on account of a period of incapacity.

---

<sup>1</sup> GD3-4

Among the other relevant documents, the General Division was directed to weigh the Claimant's 2014 referral to the Stan Cassidy Centre for Rehabilitation.

[4] The matter was assigned to me and I held a teleconference hearing on December 12, 2018.

## **ISSUE**

[5] Was the Claimant incapable of forming or expressing an intention to apply for CPP disability benefits before May 2012?

## **ANALYSIS**

### **i. CPP – Incapacity provisions**

[6] According to the CPP<sup>2</sup>, where an application for a benefit is made by a person, the application can be deemed to have been made at an earlier date if the person was incapable of forming or expressing an intention to make an application before the day on which the application was actually made. Also, the CPP specifies that the period of incapacity must be continuous. Further, the application has to be made (1) within the period that begins on the day on which that person had ceased to be so incapable and that comprises the same number of days, not exceeding twelve months, as in the period of incapacity, or (2) where the period of incapacity comprises fewer than thirty days, not more than one month after the month in which that person had ceased to be so incapable.

### **ii. Medical reports**

[7] A medical report dated September 27, 2007 addressed to Dr. Anand (Claimant's family physician) from Dr. Thompson<sup>3</sup>, Consultant Infectious Diseases, indicates that the Claimant had less than 10% chance of responding to Interferon and Ribavirin therapy based on the failure of previous treatment. Dr. Thompson adds that in addition, the Claimant had significant

---

<sup>2</sup> Subsections 60(9) and 60(10) of the CPP

<sup>3</sup> GD3-138

psychological side effects from his Interferon treatment the first time around which resulted in him physically assaulting another person in the parking lot. It was also difficult to say that treatment of his Hepatitis C would result in resolution of his fatigue and an improvement in his employability.

[8] A consultation report from Dr. Verger<sup>4</sup>, gastroenterologist, dated February 19, 2014, provides that the Claimant suffered from post-treatment symptoms from Hepatitis C (intake of Interferon) as well as depression. Dr. Verger was seeing the Claimant for complaints of Irritable Bowel Syndrome. He suggested that the Claimant be seen by an occupational therapist to help with his difficulties with comprehension.

[9] A Declaration of Incapacity Form dated April 22, 2014 by Dr. Verger<sup>5</sup> indicated that the Claimant's incapacity of forming or expressing the intention to make a CPP disability application was present since August 1999. He also indicated that the incapacity was ongoing. Dr. Verger stated that the incapacity was caused by chronic fatigue syndrome secondary to the Interferon treatment provided to the Claimant for Hepatitis C.

[10] Dr. Verger also prepared a consultation report on April 22, 2014<sup>6</sup> indicating that the Claimant contracted Hepatitis C as a result of a possible blood transfusion in September 1978. He received Interferon and Ribavirin treatments in August 1999. These treatments lasted for 52 weeks. He noted that the Claimant developed fatigue syndrome as these treatments are known to be difficult on the brain. He further noted that the Claimant experienced negative effects preventing him from applying for disability benefits.

[11] A referral letter dated June 27, 2014<sup>7</sup> from Dr. Anand, family physician, to the X states that the Claimant has suffered from cognitive impairment post treatment for his Hepatitis C. He

---

<sup>4</sup> GD5-4

<sup>5</sup> GD5-2

<sup>6</sup> GD9-8

<sup>7</sup> AD2-3

has trouble with memory and learning new things. Dr. Anand was seeking the Center's opinion and assessment of the Claimant's medical condition.

[12] Dr. Anand completed a Declaration of Incapacity Form on May 12, 2015<sup>8</sup> confirming the Claimant's incapacity since August 1999. Dr. Anand indicated that the Claimant was incapable because he had chronic Hepatitis C and chronic fatigue syndrome from Hepatitis C treatments. The Claimant was unable to care for his daughter.

[13] In a letter dated June 29, 2015, Dr. Anand<sup>9</sup> indicated that the Claimant could not take care of his daughter. Every year, from 1998 to 2011, he signed a disability form for the Claimant stating that he was too sick to care for her. The form was sent to Revenue Canada and the provincial Day Care Program. He adds that the Claimant was treated for Hepatitis C in April 2012, with triple therapy for 12 weeks and then double therapy for 20 weeks with favorable response to treatment. In 2014, Dr. Verger indicated that the Claimant suffered from both Hepatitis C and from post-treatment condition from Hepatitis C which explains why he was incapable of continuing the process of applying for disability, he was too ill to fight.

[14] A letter from the Claimant's spouse in 2015<sup>10</sup> indicates that back in 1999, she became the only provider of the family, she took care of all the banking because the Claimant was too ill to work. After his treatment in 1999, she had to make sure that he did not miss any doctor appointments, she had to remind him all the time, he was too sick to remember matters, he could not help with their daughter and he was in bed most of the time with bad side effects. She had to call him every day to wake him up. In another letter dated January 4, 2016, she<sup>11</sup> indicates that she filled in the forms for the Daycare Assistance and made sure that the Claimant went to their family doctor to get them signed from 1998 to 2011. He was unable to fill out forms by himself, due his condition.

---

<sup>8</sup> GD9-5

<sup>9</sup> GD19-2

<sup>10</sup> GD12-2

<sup>11</sup> GD14-8

[15] A letter from the Claimant dated January 22, 2016<sup>12</sup> indicated that the staff of his MP's office filled out the appropriate CPP application and appeal forms and his spouse also filled out forms on his behalf. She was also his caregiver. The assistance received from the MP's office is also corroborated by two letters submitted as evidence from the MP's office<sup>13</sup>.

[16] At the hearing, the Claimant's Representative made submissions that the Claimant was incapacitated between 1999 and May 2012. The referral letter to the X confirms that the Claimant was not capable. The Representative further stated that he could not take care of his daughter or perform other daily tasks such as banking. The Claimant's incapacity and medical condition are well documented in reports from highly trained medical experts. The Claimant symptoms affected his sleep as well as his memory as indicated in the medical reports, he was unable to remember conversations with his wife, he also could not perform day-to-day tasks. It was his spouse who did the majority of the chores including handling financial matters and caring for their child.

[17] The Claimant testified that he was too ill to make any further claims between 1999 and 2012, the treatments he received for Hepatitis C caused severe damage. He explained that he spent most of his time lying on the couch for many years.

[18] The Federal Court of Appeal stated that the activities and the medical documents can help to determine whether an individual was incapable of forming or expressing an intention to make an application<sup>14</sup>.

[19] Based on the evidence on file, the testimonies of the Claimant both at the previous hearing and at the hearing held on December 12, 2018, and the submissions of the Claimant's Representative, I find that the Claimant was incapable of forming or expressing an intention to make a CPP retirement pension application between September 1999 (date that he requested a

---

<sup>12</sup> GD16-2

<sup>13</sup> GD14-9 and GD15-2

<sup>14</sup> *Slater v. Canada (Attorney General)*, 2008 FCA 375

reconsideration of the Minister's decision based on his first application in June 1999) and May 2012.

[20] Both Dr. Verger and Dr. Anand completed a Declaration of Incapacity Form. In April 2014, Dr. Verger indicated that the Claimant was incapable of forming or expressing the intention to make an application since August 1999 and that the incapacity was ongoing. In May 2015, Dr. Anand confirmed the Claimant's incapacity since August 1999. Dr. Anand indicated that the Claimant was incapable because he suffered from chronic Hepatitis C and chronic fatigue syndrome from Hepatitis C treatments.

[21] I also considered the referral letter dated June 27, 2014 from Dr. Anand to the X stating that the Claimant had suffered from cognitive impairment post treatment for his Hepatitis C. He had trouble with memory and learning new things. Dr. Anand was seeking the Center's opinion and assessment of the Claimant's medical condition.

[22] Further, I considered the fact that the Claimant required assistance to manage his affairs from his spouse including attendance at medical appointments, filling out forms, banking and day-to-day tasks. It was also noted on many occasions in the medical reports that he could not take care of this daughter.

[23] I do not consider the fact that the Claimant did not sign a Power of Attorney (POA) relevant in this situation. It is clear from the evidence that his spouse was handling the Claimant's affairs. It is the Claimant's actual capacity, irrespective of whether he had given a POA that is the real issue. It is evident from the evidence that the Claimant was very ill and was treated for numerous years. There is no evidence that the Claimant was active or performing tasks without assistance either from his spouse or others. In addition, I cannot ignore the two Declaration of Incapacity Forms from two different medical experts. In the case of Dr. Anand, he had been treating the Claimant since 1999. I have also considered whether or not the Claimant was able to give his consent to the treatments he received and I can only ascertain that the Claimant needed to be treated since 1999 as he was very ill and he received the medical attention required. There is certainly evidence that the Claimant needed assistance to attend

medical appointments and that the treatment for Hepatitis C caused him severe damage and psychological side effects since 1999.

[24] Therefore, I find that the Claimant does meet the incapacity criterion set out in the CPP and he is eligible to receive retroactive disability benefits beyond those already paid by the Respondent. The Claimant was incapacitated between September 1999 and May 2012. **[I also find that the Claimant was disabled on September 1999, payments start four months after the deemed date of disability, on January 2000.<sup>15</sup>]**

## CONCLUSION

[25] The appeal is allowed.

Antoinette Cardillo  
Member, General Division - Income Security

---

<sup>15</sup> Section 69 of the CPP