



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. J. v Minister of Employment and Social Development*, 2019 SST 1565

Tribunal File Number: GP-18-850

BETWEEN:

R. J.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

Claimant represented by: Duncan Allison

Teleconference hearing on: May 23, 2019

Date of decision: July 21, 2019

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

OVERVIEW

[2] The Claimant worked as a medical transcriptionist, but stopped working due to her medical conditions, including Crohn's disease, hand tremors, rheumatoid arthritis and brain fog. The Minister received the Claimant's application for the disability pension on June 2, 2017. 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, 2012.

[4] However, when an appellant's earnings and contributions are below the year's basic exemption for that year, their earnings and contributions can be prorated if they became disabled during the prorated period.¹ In this case, the prorated period is from January 1, 2013 to August 31, 2013.

ISSUE(S)

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2012 or in 2013 by August 31, 2013?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2012 or in 2013 by August 31, 2013?

¹ Section 19 of the CPP

ANALYSIS

[7] Disability is defined as a physical or mental disability that is severe and prolonged². 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

There is a lack of objective medical evidence dated prior to the MQP and prorated period.

[8] 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 work³.

[9] The Claimant submitted that she has a severe disability. She pointed out that the last time she held a job for any significant period of time was from October 2012 to January 2013.

[10] She testified that she has had symptoms of fatigue, abdominal pain, diarrhea, brain fog and insomnia since she was in high school. She also has longstanding back pain with difficulty sitting. She says that she did not complete high school because of her illnesses. In approximately 2005, she returned to school to complete her GED.

[11] She has worked in a number of different jobs, including as a cashier at McDonald’s, working with children in a daycare, working in sales at a jewelry store and working in several call centres. She stated that she lost her jobs at the daycares, jewelry store and call centres because she missed too much time at work due to flare-ups of Crohn’s disease. Some of her jobs lasted less than a week.

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

³ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

[12] In approximately 2009, she stated that her health worsened. She tried working at X. She worked for only a few months with multiple leaves of absence due to illness. While on leave, her supervisor advised her to return to work or look for another job. She clarified that she did not quit this job, but could not return to work due to her health problems. She then received employment insurance sickness benefits.

[13] She then enrolled in a nursing course, which required her to have the flu vaccine. She had a severe reaction to the flu vaccine and therefore did not start the program. In approximately 2010, she began a medical information course, which she was successful in completing.

[14] In 2011, she worked in another call centre until she had a Crohn`s flare-up and contracted pneumonia. She missed too much time at work and her employment was terminated prior to the end of her three-month probation period.

[15] She then found a job at X in the health records department. Her job was to file patient folders and answer phones. She attended less than one week of training until she had a flare-up of Crohn`s disease. She was extremely tired and ended up also catching the flu. She did not return to work.

[16] By January 2012, she felt that she could no longer work outside of the home. She tried to work from home in a couple of call centres each lasting only 1-2 weeks due to her health problems.

[17] She then accepted a three-month contract to work from home at X. Her duties included accepting calls to assist in placing online orders. Once again, she says she was missing time because of her Crohn`s flare-ups. She was also having difficulty concentrating. She had to ask customers to repeat themselves because she would forget what they asked. Her contract was not renewed after three months, which she feels is because of her poor performance and missed time at work.

[18] As of August 2013, she states that she was having frequent Crohn`s flare-ups, described as a constant need to use the washroom with blood in her stool, extreme fatigue, and whole body aches. She also had pain throughout her body, including her back, joints and muscles. Her symptoms were later diagnosed as fibromyalgia. She had brain fog, poor memory and difficulty

concentrating. She had insomnia. She was getting migraines, especially when using a computer. All of her health problems continued to worsen after the prorated period.

[19] The Minister submitted that there is insufficient medical evidence to support a determination that she had a severe disability as of December 31, 2012 or in 2013 by August 31, 2013. I agree that there is very little in the way of objective medical evidence dated prior to the MQP and prorated period.

[20] There are numerous medical reports on file from the Claimant's family physician, Dr. J.H. McLaughlin. Dr. McLaughlin completed the CPP Medical Report on July 11, 2017. Although he had been treating the Claimant for over 17 years, he stated that he did not begin treating her main medical condition until April 2015, which is several years after the MQP and prorated period. He noted diagnoses of Crohn's disease, inflammatory arthritis, and hypothyroidism. He also stated that she has had progressive loose bowel movements with blood for several years, which, again, is after the MQP and prorated period. He was of the opinion that she has been unable to maintain employment due to problems with bowel urgency, frequency and incontinence, noting that she tried working from home but had difficulty with concentration and memory. However, this opinion was given many years after the MQP and prorated period and corresponds with a worsening in her health after the MQP and prorated period.

[21] Dr. McLaughlin also reported on February 13, 2018 that a review of his records shows that she advised him on April 10, 2012 that she was no longer able to work in health records due to her troublesome bowel symptoms. He felt that she has been unable to regularly pursue any gainful occupation since some time before April 2012, primarily due to abdominal pain and frequent unpredictable and difficult to control loose bowel movements. He also provided copies of his clinical notes, which showed visits on April 10, 2012 and February 7, 2013.

[22] While I accept that she was having some symptoms of Crohn's at that time, as the Minister pointed out, she was only seen by Dr. McLaughlin four times from May 2012 to April 2015. There are no diagnostic investigations or specialist reports throughout that time period. Even several years after the MQP and prorated period, on July 31, 2015, Dr. McLaughlin wrote that she was capable of working from home.

[23] Many years after the MQP and prorated period, Dr. McLaughlin wrote on July 3, 2018 that she suffers from fibromyalgia and gets tremors during activity. Her main problem is mind fog, poor concentration and fatigue. Dr. McLaughlin reported on September 5, 2018 that her sleep is much better.

[24] There are multiple medical reports on file dated after the MQP and prorated period. Dr. Chadwick Ian Williams, gastroenterologist, reported on June 2, 2015 that she was referred for altered bowel habits, which she states have been an issue for many years. She describes chronic diarrhea (1-5 bowel movements per day, always loose). She rarely sees rectal bleeding (twice a year or so). A colonoscopy on August 21, 2015 showed mild inflammatory bowel disease. Dr. Williams reported on October 8, 2015 that she likely has some mild Crohn's disease. Dr. Williams reported on April 1, 2016 that she is a little worse with multiple bowel movements daily, sometimes 10-15. She also describes scant bleeding from time to time. I noted that her symptoms from Crohn's disease were described as mild as of June 2015 and worsened thereafter.

[25] On December 31, 2015, Dr. John M. Dornan reported that her primary problem is weight gain. She is also reporting a low energy level, and this was not that way when she was seen a few years ago, which is after the MQP and prorated period. Dr. Dornan also reported improvement in her energy on November 2, 2017.

[26] Dr. Dornan reported on June 26, 2017 that the Claimant has had forgetfulness for five years. While I accept that her symptoms of forgetfulness may have begun prior to the MQP and prorated period, she was not seeing any doctors or receiving any treatment for this problem at that time. With respect to her hand tremors, Dr. Dornan stated that these began after the MQP and prorated period in 2015.

[27] Dr. Renjy Kuriakose, neurologist, reported on September 6, 2017 that she gives a history of cognitive symptoms and tremor for the last few years, which is well passed the MQP and prorated period. Her tremor was thought to be related to anxiety. On November 22, 2017, Dr. Kuriakose noted improvement in her tremor and headaches. She denied back pain at that time. Her main problem is mind fog, poor concentration and fatigue.

[28] Dr. Alexa Smith, rheumatologist, reported on September 8, 2017 that she has active Crohn`s disease as well as diffuse arthralgias involving her knees, lower back, ankles, wrists and hands ongoing for many years since she was a teenager. While I accept that her symptoms may be longstanding, she did not have a severe disability as of the MQP and prorated period. It is also evident that her symptoms worsened significantly after the MQP and prorated period.

The Claimant has not followed all treatment recommendations.

[29] The Claimant has not optimized her treatment options. The Claimant was advised on numerous occasions that she should pursue treatment for her Crohn`s disease. Dr. Williams reported on April 1, 2016 that she had initially agreed to start treatment, but changed her mind about medical therapy. She said she would manage her disease with exercise and diet, despite being advised that this was unlikely to decrease the inflammation from Crohn`s disease. She stated that she is not ready to go on medical therapy and expressed concern because her mother had a reaction on therapy. However, she was cautioned that she has bigger risks with potential worsening of Crohn`s disease if she does not undergo medical therapy. It is apparent in subsequent reports that the Claimant did not follow this advice.

[30] On June 8, 2017, Dr. Williams also reported that she failed to attend six follow-up appointments and also failed to have her fecal calprotectin levels checked. He noted that she has been quite opposed to medical therapy.

[31] Similarly, on June 26, 2017, Dr. Dornan reported that she has a diagnosis of Crohn`s but is refusing to take any treatment for that. She was advised to take Remicade, but is reluctant to accept this advice because she has relatives who have had problems with Remicade. She was instead noted to be taking marijuana oil and derivative to help with Crohn`s disease. Dr. Dornan reported on November 2, 2017 that she continues to resist Remicade.

[32] Dr. D.D. Smith, physical medicine and rehabilitation, reported on October 13, 2016 that she is reluctant to take Remicade as was recommended due to sensitivity to medication. Dr. Smith noted on October 12, 2017 that she has not pursued any treatment for her Crohn`s disease. Dr. Kuriakose also noted untreated Crohn`s disease on November 22, 2017 and stated that one of the main concerns is that it is not being treated.

[33] Dr. Alexa Smith, rheumatologist, reported on September 8, 2017 that her Crohn`s disease has not been optimized as she has been resistant to escalation of therapy. Dr. Smith felt that her priority should be to follow up regarding Crohn`s management.

[34] Dr. McLaughlin also noted on July 3, 2018 and September 5, 2018 that her Crohn`s disease is untreated.

[35] The Claimant was asked at the hearing to explain why she has not followed this recommendation. She stated that she has a history of melanoma along with a family history of cancer. She is concerned that medications would increase her risks. She has also had adverse reactions to medications and steroids in the past. She is instead using CBD oil every night to help with inflammation from Crohn`s disease, pain, tremors and sleep. She is also taking meal replacement shakes and avoids alcohol and coffee to help with Crohn`s disease.

[36] I considered that an applicant for a disability pension is obligated to abide by and submit to treatment recommendations and, if this is not done, the applicant must show the reasonableness of his or her noncompliance.⁴ I find her decision not to pursue Remicade for treatment of Crohn`s disease to be unreasonable. Her doctors were aware of her concerns and still tried to persuade her to start this medication. Given the Claimant`s failure to establish the reasonableness of her noncompliance, I find that she has not made reasonable efforts to improve her health.

The Claimant`s personal characteristics.

[37] I must assess the severe part of the test in a real world context⁵. 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. In this case, in deciding that the Claimant`s disability is not severe, I considered that she was 28 years old as of the prorated period. She has a medical transcription diploma. She has worked as a salesperson, cashier, daycare worker, in call centres, and as a medical transcriptionist.

⁴ *Bulger v. MHRD* (May 18, 2000), CP 9164 (PAB)

⁵ *Villani v. Canada (A.G.)*, 2001 FCA 248

[38] The Claimant is very young and well-educated. She is fluent in the English language. She has worked in a variety of jobs, including jobs requiring her to use a computer. In considering her personal characteristics, I do not find that she is unemployable in a real world context as of the MQP and prorated period. While it is evident that her health deteriorated significantly after the MQP and prorated period, she was not precluded from working within her restrictions at those times. In fact, Dr. McLaughlin thought she could work from home as late as 2015 and she managed to complete her medical transcriptionist course in 2016, albeit with a three-month extension.

[39] 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 impairment⁶. Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am not satisfied on the balance of probabilities that she suffers from a severe disability.

CONCLUSION

[40] The appeal is dismissed.

Lianne Byrne
Member, General Division - Income Security

⁶ *Bungay v. Canada (A.G.)*, 2011 FCA 47