



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. D. v Minister of Employment and Social Development*, 2019 SST 1534

Tribunal File Number: GP-18-2380

BETWEEN:

**P. D.**

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: Brian Rodenhurst

Claimant represented by: Eloho Atekha-Aideyan

Videoconference hearing on: July 19, 2019

Date of decision: August 6, 2019

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant was employed in Early Childhood Education. She obtained the necessary professional designation including the education requirements to work in the profession. On January 6, 2017, she was laid off. She maintains that she has not been capable of working in any job since early 2017.

[3] The Minister received the Claimant's application for the disability pension on September 20, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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, 2019.

## **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 the date of the hearing as the MQP is the future date of December 31, 2019?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by the date of the hearing?

## **ANALYSIS**

[7] Disability is defined as a physical or mental disability that is severe and prolonged<sup>1</sup>. A person is considered to have a severe disability if incapable regularly of pursuing any

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

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**

#### *Oral testimony*

[8] The Claimant testified that she collected Employment Insurance from January 2017 to September 2017.<sup>2</sup> She was in so much pain<sup>3</sup> she was laid off. She had missed a lot of work due to sick days. She stated this was her worst period, and she never got better.<sup>4</sup> Symptoms included dizziness, nausea, inability to exert herself without getting really sick. Concentration/focus was impacted after a few minutes she stated everything gets blurry. When she read she got bad headaches. In January 2017, her tinnitus became severe and buzzing that started in 2014 became more pronounced. She indicated she could hear the blood flow in the right side of her neck. Her symptoms included interference with her sleep. She confirmed her functional limitations and symptoms were in existence at the end of 2016 and were severe by January 2017. At this time and continuously since she could not focus, concentrate, had problems walking, dizziness, nausea, and struggled with exhaustion.

[9] The Claimant testified she has not taken any type of pill in 15 years, save and except a sleeping pill that disagreed with her, so she stopped. She has taken an anti-biotic. She does not like to take medication. She prefers natural solutions. She is a vegetarian. Her oral testimony was she continues to see Dr. Slyfield for treatment for anxiety. Simple tasks like housework or walking her dog exhausts her. She is unable to drive on the highway due to her right eye vision problem. Prior to her vision problem, lack of focus stopped her from driving any long distance. Her dizziness and nausea stops her from gardening or any other physical activity. She fainted when attempting to play tennis. Her symptoms started in 2016 and all the symptoms she experienced became severe in early 2017.<sup>5</sup> They have been continuous since. Everything was

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<sup>2</sup> Confirmed at GD2-63

<sup>3</sup> Recording 2 – 0:56

<sup>4</sup> Recording 2 – 1:56

<sup>5</sup> Recording 2 - 19:36

present in 2017 except the eye hemorrhage in June 2018. She realized she could not go back to office work due to her hearing issues, and lack of concentration.

[10] Last year she volunteered at a seniors' centre two days a week. This was within walking distance. She stopped this activity after her eye hemorrhaged. She could not continue. She was too tired and exhausted to try any other employment. She testified her right eye has not drained appropriately and may be subject to further treatment. She does not have issues with her left eye. At the time of the hearing, she did not take medication. Concern about her breast has increased her anxiety.

[11] The Claimant completed and signed a Questionnaire on November 6, 2017. She noted she could no longer work due to her medical condition on February 1, 2017. She had been laid off on January 6, 2017. The illness that prevented her from working was tinnitus. There is no mention of anemia on the Questionnaire. The other health related condition noted by her was hearing loss in both ears, more severe in the left ear. The Claimant filled out the difficulties/functional limitations as follows: hearing – very hard to hear what is being said because of pulsating sounds in my head; concentrating – very short concentration span; sleeping – sleep is constantly interrupted by the continuous noise in her head. Notably she did not list any other functional limitation. She wrote the impairment that prevented her from working was roaring, whistling, hissing and buzzing noises that became a severe obstacle in her communicating and interacting with people.

[12] The Claimant was asked to explain the difference between her oral evidence and the fact the functional limitations were not noted by her on the Questionnaire signed in November 2017. She testified she did not know what to put there. I note she did fill out three functional limitations. Her testimony earlier in the hearing was this was the worse period (early 2017) and was terrible. She explained that she always had anemia and this interfered with her ability to understand the meaning of functional limitations. She then testified that she was “always” dizzy, she was “always” fainting. This occurred since her early 20's. This happened any time her iron was down. This would happen two to three times a week and she would get dizzy and sometimes faint. Her earlier testimony was she always had an active lifestyle including gardening and

playing tennis. She testified she used to jog and swim prior to late 2016<sup>6</sup>. She was able to read a lot. Her testimony was she was always independent, worked hard and never relied on other people. She had testified that her physical restrictions, sleeping, and fainting started in 2017.<sup>7</sup>

[13] The Claimant was asked if she remembers signing the statement she was ready, willing and able to work while collecting E.I. from January to September 2017. Her answer: yes. She testified she was still trying to figure out what her medical problems were at that time.

[14] I do not find the evidence of the Claimant to be consistent. She testified that January 2017 period was her worst period. She was clear and repeated this was the worst time for her symptoms. This is not consistent with signing a document that she was ready, willing and able to work. The issue was not the diagnosis but the readiness and ability to work. Her testimony is inconsistent with her written confirmation made to collect E.I.

[15] The Claimant testified that all of her functional limitations were present in late 2016. She confirmed this testimony and stated that all her functional limitations were not only present but severe in January 2017. Only three limitations were noted on the Questionnaire signed in November 2017. She was asked for an explanation of why there was a difference in her written evidence and her oral testimony. She had testified she always worked hard, played tennis, gardened, and was independent. She testified that she was confused due to anemia. This is not logical as her active life style and work history does not support her statement that anemia caused confusion and she was always dizzy and fainted. She also testified that her symptoms started in late 2016 and became very severe in early 2017. Her active lifestyle and career belies her evidence she always had the limitations and was confused. I do not accept this explanation as consistent with her evidence the symptoms and limitations started in late 2016. The Claimant is well educated and competent in the English language. I do not accept she would be confused by the questions concerning functional limitations. She may have symptoms in her history related to her anemia. There may be a logical explanation for not filling in the functional limitations consistent with her oral evidence. She was given a full opportunity to explain the difference between the functional limitations due to her medical condition on her Questionnaire and her oral

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<sup>6</sup> Recording 2 – 2:12 again at 18:00

<sup>7</sup> Recording 2 – 19:13

evidence. The explanation she gave is not logical. She stated that she was laid off due to her sick days and struggles with medical symptoms. She also testified she was laid off due to a shortage of students. I find her evidence is not consistent and reliable.

### ***Medical Evidence***

[16] There must be sufficient objective medical evidence to prove on a balance of probabilities the Claimant experienced a severe disability as defined in the CPP at the time of the hearing. The Standard Medical Report was authored by Dr. Sebastian on November 6, 2017. The only diagnosis noted by the Family Physician was tinnitus. The Doctor did not indicate any physical findings and functional limitations. Under the heading prognosis: guarded. The Family Physician attached a report from a specialist. Dr. Sky, Family Hearing Centre, reported on June 12, 2017, a MRI was normal, ruling out acoustic neuroma. Dr. Sky wrote he assured the Claimant a hearing aid was not necessary and advised her to return in one year for evaluation. Dr. Sky on August 21, 2018 performed an examination of the Claimant's ears, nose, and throat. All were within normal limits. An audiogram revealed bilateral neurosensory loss similar to the previous years. He suggested a further appointment in one year.

[17] Dr. Knyahnytska, Department of Psychiatry, Centre for Addictions and Mental Health, issued a consultation report in September 2018. The Doctor repeated the subjective history disclosed by the Claimant. Dr. Knyahnytska was of the opinion the Claimant did not meet the criteria for depressive disorder. She noted the Claimant's mood was "ok", no suicidal ideation, no delusions or paranoia. Cognition was alert, attentive, oriented, with no evidence of impaired judgment.

[18] Dr. Knyahnytska noted the Claimant presented with symptoms which may suggest tinnitus. The Doctor did not base a possible diagnosis of tinnitus on an objective test. She noted TMS trials for tinnitus were not run. She recommended a referral to a neurologist. There is no neurologist report filed with the Tribunal.

[19] On June 20, 2019, Trillium Health Partners treated the Claimant for long standing lower jaw cyst. The diagnosis was infected facial cyst. Prism Eye Institute noted the right eye was examined due to posterior pole and peripheral retinovascular changes and pre-retinal fibrosis.

[20] The key question in these cases is not the nature or name of the medical condition, but its functional effect on the claimant's ability to work.<sup>8</sup> 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 impairment<sup>9</sup>. The Family Physician did not provide any functional limitation that would preclude the Claimant from all types of occupations. There are not any functional limitations documented due to her facial cyst. It was noted that the right eye might need specialty draining. The Claimant was treated for posterior pole and pre-retinal fibrosis. The report does not indicate the condition of her eye would result in an incapacity to perform any type of occupation. There were no issues with the left eye. The Claimant was diagnosed with breast tumour. The breast was treated conservatively.<sup>10</sup> Abnormal cells were discovered in her cervix. The Claimant testified cervical surgery was successful. There is not any objective medical evidence or opinion on file that would indicate either condition would effect her ability to work.

[21] Dr. Sebastian wrote a synopsis on behalf of the Claimant dated August 29, 2018. The Doctor noted the lab test and examination in March 2017 were all normal. Nose and throat completely unremarkable, MRI to rule out acoustic neuroma was normal. She was referred to a Psychiatrist who placed her on Ativan to help her sleep. Dr. Sebastian noted Dr. Sky recommended a repeat audiogram in one year to monitor bilateral neurosensory loss similar to the year before. I note there are not any finding or opinion expressed by Dr. Sebastian that indicated a medical condition resulted in a significant functional effect on her ability to work.

[22] The Claimant gave oral evidence of anemia and the effect on her health. This is not substantiated by objective medical evidence. There is not any report that indicates anemia affected her ability to work. I note the Family Physician does not mention it. Dr. Inyahnyska in the heading Past Medical History does not note anemia. Dr. Slyfield included a brief mention of anemia without an opinion whether this had any effect on employment possibilities. The Doctor noted that she was not on medication and tries "stuff" from a health food store.

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<sup>8</sup> *Ferreira v. AGC* 2013 FCA 81

<sup>9</sup> *Bungay v. Canada (A.G.)* 2011 FCA 47

<sup>10</sup> GD3-3

[23] The evidence of the Claimant her impairments and severe symptoms results in an incapacity of working except for a few volunteer hours per week is not substantiated by objective medical evidence. There is not any objective medical evidence to support her evidence that anemia caused confusion and she “always” fainted. When considering her oral evidence, the medical documentation, and all possible impairments, the Claimant did not prove on a balance of probabilities she experienced a severe disability as defined in the CPP on or before the MQP.<sup>11</sup>

### ***Real World Analysis***

[24] I must assess the severe part of the test in a real world context<sup>12</sup>. 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. Medical evidence will still be required as will evidence of employment efforts and possibilities.

[25] The Claimant was 55 years of age at the time of the hearing. She obtained transferable skills including operating a business. She operated a child- care business out of her home. She obtained a licence from the Province of Ontario and City of Toronto. She completed the requirements for a certificate in Early Child Care Education from X and a few university courses. Her employment experience included early childhood education with some administrative and office experience. She is proficient in English. The medical evidence does not support a finding of a severe disability as defined in the CPP. Her age, education, and medical condition does not result in a severe disability when assessed in a real world context.

[26] I find the Claimant did not prove on a balance of probabilities she experienced a severe disability as defined in the CPP.

### **CONCLUSION**

[27] The appeal is dismissed.

Brian Rodenhurst  
Member, General Division - Income Security

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<sup>11</sup> MQP - December 31, 2019 = date of the hearing.

<sup>12</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248