



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. B. v Minister of Employment and Social Development*, 2019 SST 1541

Tribunal File Number: GP-18-2333

BETWEEN:

A. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Heather Hamilton

Claimant represented by: Allison Schmidt

Teleconference hearing on: August 22, 2019

Date of decision: September 4, 2019

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension. I am dismissing the appeal. These are my reasons why.

OVERVIEW

[2] The Claimant was a licensed daycare operator and she ran her own business in her home. She started babysitting children and then obtained a license for a daycare business in about 2009. She looked after children and stopped running the daycare in May 2018 due to her inability to care for children because of her medical conditions. The Claimant bases her disability on anxiety, depression, stress and panic attacks.¹ The Minister received her application for the disability pension on November 30, 2017.² The Minister denied the application initially and on reconsideration. The Minister submitted that the medical evidence does not support a pathology or impairment of a severity that would have prevented her from doing suitable work within her limitations at her MQP and thereafter. 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.³ I find the Claimant's MQP to be December 31, 2017.

ISSUES

[4] 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, 2017.

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

¹ Questionnaire GD2 pages 97-103

² GD2 pages 36-39

³ GD3-21

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged.⁴ 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.

Does the Claimant have a severe disability by December 31, 2017?

The Claimant's condition and evidence

[7] I have to decide if the Claimant had a severe and prolonged disability at her MQP. It is the Claimant's responsibility to prove this.⁵

[8] My decision about whether the Claimant's disability is severe is not based on what impairments or diagnosis she has. The important thing is whether her condition prevents her from earning a living at any type of job.⁶ In deciding this, I have to consider all health issues that might affect her employability.⁷ I also have to look at things like age, level of education, language proficiency, and past work and life experience.⁸

[9] The Claimant emigrated from Morocco in 1997. She has worked in Canada for 20 years cleaning houses, babysitting and managing a daycare in her own home. The Claimant explained that she operated and owned a licensed daycare and she looked after children from eight in the morning until five in the evening. She explained they were difficult children to deal with and sometimes she would have to give them a bath when they arrived. The Claimant took fewer and fewer children because she was not sleeping well, was fatigued, and was feeling anxious and depressed. She explained she was looking after two boys in 2016 but that in 2016 she had a visit

⁴ Paragraph 42(2)(a) *Canada Pension Plan*

⁵ The legal test is that the Claimant must prove she is disabled on a balance of probabilities; in other words, she must show it is more likely than not that she is disabled.

⁶ *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

⁷ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁸ *Villani v. Canada (A.G.)*, 2001 FCA 248

to the ER because her heart was racing, she had shortness of breath and was diagnosed with a panic attack. She reduced the number of children she was looking after to one. She stopped working and looking after children on May 1, 2018. She told me that she is very anxious and worries about the future especially about her finances. She does not like to socialize and she does not like to leave the house. She goes to the Salvation Army to ask for food. She was married at a young age and her husband is 28 years older than the Claimant. Her husband is unable to work and has a pension and she is the sole bread-winner.

[10] S. F. who was a witness at the hearing, explained that in the past she helped the Claimant complete her CPP disability application and helped her read questions and write answers to help the Claimant complete her first-aid tests that were required to operate her daycare business. The witness mentioned the Claimant speaks and understands English but she needs help with reading and writing. She further mentioned the Claimant is very wise, determined and hard working.

[11] The Claimant stated that she had to work because of financial reasons to support her family. She explained to me that in 2017 she only looked after one child instead of two during the day and she reduced the number of children because of her medical conditions. She did not prepare any snacks for the children and she needed the children to be out of diapers. She described that she did not provide any learning for the children and “she just played with the children.” The Claimant mentioned that her daughter occasionally took the child to school because the child’s school was beside her daughter’s school. She further explained that she was working only four hours per day, two to three days per week, and she was on call to be available everyday; however, the parents occasionally picked up the child early so she was only working about 12 to 16 hours per week. The witness at the hearing explained that the Claimant did have a child to care for everyday between nine to five, and she had some children before/after school care. I did not find that the Claimant’s statements were compelling and forthright.

[12] I recognize that the Claimant believes that she is disabled. However, I do not think she is disabled as that term is defined in the CPP.

[13] The Minister submitted evidence that they spoke to the Claimant in March 2018 and she told the Minister she provided full time care to one child 6 hours per day, 5 days per week. She

had reduced the number of children that she looked after during the day. The Minister also noted that she provided before/after school care for two additional school age children. I find the Claimant may have reduced the number of children that she was looking after in 2017; however, I find she was capable of working at her MQP and she did not convince me that she could not have increased the number of children in her daycare or increased the number of hours she was working per week. She told the Minister she earned \$1,000 per month and she was the person who usually looked after the children in her daycare. When reviewing the evidence I find she had a residual capacity to work at her MQP within her medical conditions and limitations. She demonstrated she was capable regularly of pursuing substantially gainful occupation.

[14] She told me that she had difficulty working at her MQP and not much has changed since then. She lacks motivation, energy, concentration, and she has loss of memory. She is crying and anxious and does not want to socialize and she does not enjoy life. I find that on the Patient Health Questionnaire (PHQ-9) dated October 23, 2017 that the Claimant noted she had no difficulty on concentrating on things⁹ I also find on the GAD-7 the Claimant noted that with any of her problems that she had; her problems only somewhat made it difficult for her to work.¹⁰ The GAD-7 Mood disorder questionnaire is negative.¹¹ On her CPP questionnaire¹² she noted she has no limitations with standing and sitting and she has no limitations with regards to remembering.

[15] The Claimant was 46 years old when she applied for CPP disability benefits. She told me she had a Grade three education from Morocco; however, she obtained a daycare license and owned and operated her own daycare business in her apartment for at least 6 years. Prior to that she was cleaning houses and babysitting. She has been in Canada for 20 years and worked in Canada for 20 years. Her witness told me the Claimant is a very wise, determined, and hard working individual. I recognize the Claimant needed help with reading and writing English; but the witness confirmed she understands and speaks English. The Claimant is young at 46 and has transferrable skills in the provision of childcare. She has organizational skills and has managed a

⁹ GD2-84

¹⁰ GD-2-85

¹¹ GD2-86

¹² GD2-97-103

daycare in her own home. She has to keep records of the children that she looks after and provides care. The ongoing health and safety requirements to continue to obtain her daycare license suggests the capacity for ongoing learning and retraining. Her work and life experience, age, and adaptability to change and being resourceful are all positives, and I find the positive factors outweigh what she lacks in education when it comes to employability.

Treatment recommendations have not been followed

[16] In March 2019 psychiatrist Dr. Fagbuyi reported the Claimant was to attend the Depression and Anxiety groups but disengaged and was discharged.¹³ He mentioned the Claimant was doubtful about the use of medications and he was unsure if she had been fully compliant with treatment. I find that medical opinion from the specialist Dr. Fagbuyi indicated that the Claimant has not exhausted treatment options that might progressively improve her depression/anxiety and allow her to work again. I also find that family physician Dr. Moghadem reported in March 2019 that the Claimant agreed to follow treatment recommendations from psychiatrist Dr. Fagbuyi but she stopped the medication after two days. After a long discussion she agreed to take it again, but Dr. Moghadem recently learned that she never did. She has not been compliant with medications and therapies.¹⁴ An essential element of qualifying for a disability pension is evidence of serious efforts by the Claimant to help herself and I find she did not comply with this. She has not followed treatment recommendations. I took into consideration that because of cultural differences and being told in a walk-in clinic that medications “can be addictive” that she did not want to take the recommended medication for her depression. I find the Claimant had an opportunity to ask questions about the recommended drugs and to clarify what “can be addictive” meant as she speaks and understands English.” I also find there are no cultures that like to take medication, especially for mental health issues, and she has not provided a reasonable explanation for not following recommended treatment.

[17] The Claimant has Plan G coverage and I find it is reasonable to expect the Claimant may well improve. The Claimant also had difficulty continuing with recommended counselling appointments because of her counsellor moving. I also expect the Claimant to have

¹³ GD6- pages 14 to 18

¹⁴ Letter from Dr. Moghadem GD3 pages 16 to 18

improvement with her anxiety and depression when she sees a counsellor/psychiatrist on a regular basis.

[18] In the Medical Report for CPP Disability family physician Dr. Moghadem noted the Claimant would benefit from temporary time off work until she is more medically fit to work again. He noted a diagnosis of severe anxiety and depression, panic attacks and iron deficiency anemia.¹⁵ He expressed in a letter with the medical report that she would benefit from a temporary disability until her medical condition is treated.¹⁶ The CPP disability is not meant to cover a temporary disability.¹⁷ The evidence tells me the Claimant worked at her MQP and although she stopped work on May 1, 2018 after her MQP, the evidence tells me she is capable of some type of work now and in the foreseeable future.

[19] I recognize that the Claimant's main disabling conditions are severe anxiety and depression with panic attacks. I do not find that iron deficient anemia is a disabling condition.

[20] The Representative submitted that the Claimant's net income was in the negative. I find the Claimant worked and was paid for her work and profitability of a business venture is not necessarily an indicator of capacity.¹⁸ The Appellant did not have substantially gainful employment at her MQP; however I find her regular self-employment income has been below substantially gainful employment when reviewing her income in the years of 2012 to 2015.¹⁹

[21] I find the Claimant worked on or before December 31, 2017 and she worked within her medical conditions and limitations. She showed a residual capacity to work at her MQP and she was not incapable regularly of pursuing any substantially gainful occupation. I recognize that she stopped worked on May 1, 2018, which is after her MQP; however, treatment options remain open for the Claimant and she may have progressive improvement to return to any type of substantially gainful employment within her medical conditions and limitations since she has

¹⁵ Medical report GD2-74 to 77

¹⁶ GD2-78

¹⁷ Canada (MHRD) v. Henderson, 2005 FCA 309

¹⁸ *Kiriakidis v. Attorney General of Canada*, 2011 FCA 316, where the Court found capacity to work based on all the evidence.

¹⁹ GD3-21

Plan G coverage for her medications. She has not proven a severe disability in accordance with the CPP criteria on or before December 31, 2017.

Prolonged disability

[22] Because I found that the Claimant's disability was not severe, it was not necessary to decide if it was prolonged.

CONCLUSION

[23] The appeal is dismissed.

Heather Hamilton
Member, General Division - Income Security