



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. M. v Minister of Employment and Social Development*, 2019 SST 1557

Tribunal File Number: GP-19-1026

BETWEEN:

N. M.

Applicant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Date of decision: September 14, 2019

DECISION

[1] The Claimant has not established new material facts.

OVERVIEW

[2] The Claimant was 58 years old when she applied for a *Canada Pension Plan* (CPP) disability pension in February 2017. She stated that she had been unable to work since February 2014 because of a respiratory ailment, food and environmental allergies, severe asthma, chronic obstructive pulmonary disease, and osteoarthritis. The Minister denied the application initially and upon reconsideration, and the Claimant appealed to the Social Security Tribunal.

[3] I heard the appeal by teleconference on March 18, 2019, and dismissed the appeal on March 19, 2019. In June 2019, the Claimant applied to rescind or amend the decision.

The initial decision

[4] I found that the Claimant had failed to establish that it was more likely than not that she had a severe disability in accordance with the CPP requirements.

[5] A qualifying disability must be severe and prolonged.¹ A Claimant's disability is severe if it causes her to be incapable regularly of pursuing any substantially gainful occupation. Her disability is prolonged if it is likely to be long continued and of indefinite duration.

[6] The Claimant was required to prove that it was more likely than not that she became disabled by the end of her Minimum Qualifying Period (MQP), which was calculated based on her contributions to the CPP. Her MQP ended on December 31, 2007.²

[7] The Claimant had earnings of \$2,038 in 2008.³ This amount is below the minimum level of earnings required to make valid contributions to the CPP. In this situation, the law allows for proration of the below minimum level of earnings to help a person meet contributory

¹ Subsection 42(2) of the CPP

² Record of Contributions: GD6-12

³ GD2-61

requirements. Using proration, the Claimant would qualify for the disability benefit if she became disabled between January 1 and May 31, 2008.

[8] The issue before me was whether the Claimant's medical conditions resulted in her being regularly incapable of pursuing any substantial gainful employment by May 31, 2008.

[9] I dismissed the appeal because the Claimant had failed to establish that it was more likely than not that her medical conditions satisfied this test.

[10] At the outset of the teleconference hearing on March 18, 2019, I reviewed with the Claimant the significance of her last qualifying for CPP disability in May 2008. I also reviewed the CPP criteria for a disability to be severe. She acknowledged that she did not meet the CPP disability criteria.

[11] Although she had been unable to work at a physically demanding job since 2016, she was mentally able to work. She had worked at various part-time jobs after May 2008. She had been a childcare worker, bus driver, personal support worker, and general labourer. She was a writer, and wrote poetry and non-fiction. She wrote every day, for up to eight hours. She was able to do sedentary work.

ISSUE

1. Has the Claimant established new material facts?

ANALYSIS

Test for New Facts

[12] I may rescind or amend a decision if a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.⁴

[13] This is a two-part test for evidence to be considered a new material fact:

⁴ Paragraph 66(1)(b) of the *Department of Employment and Social Development Act*

- a) It must establish a fact (usually a medical condition in the context of the CPP) that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of reasonable diligence (the “discoverability test”), and
- b) The evidence must reasonably be expected to affect the results of the prior hearing (the “materiality test”).

[14] The documents submitted by the Claimant are not new facts. They were either in existence and discoverable by the exercise of reasonable diligence, or not in existence.

[15] The following documents were in existence and discoverable by the exercise of reasonable diligence. Dr. Hay, the Claimant’s family doctor in British Columbia forwarded them to the Anson Medical Clinic in Iroquois Falls in December 2008. The Claimant moved back to Iroquois Falls in 2008 and her new family doctor was part of that clinic.⁵

- A chest x-ray dated September 10, 1984.⁶
- An October 10, 1984 prescription for allergy treatment.⁷
- Dr. Wong’s July 16, 1985 report. This report was in the appeal file for the March 2019 hearing.⁸
- A list of allergy injections from May 1984 to April 1986. This list was in the appeal file for the initial hearing.⁹
- A July 23, 1985 sinus x-ray.¹⁰
- Dr. Jacks’ August 1, 1985 report.¹¹
- Dr. Jacks’ September 8, 1987 report.¹²
- An October 15, 1994 abdominal ultrasound,¹³ and

⁵ RA1-20

⁶ RA1-11

⁷ RA1-12

⁸ RA1-13 and GD2-118

⁹ RA1-10 and GD2-136

¹⁰ RA1-14

¹¹ RA1-15

¹² RA1-16

¹³ RA1-17

- A January 21, 1996 gastrointestinal tract ultrasound.¹⁴

[16] The following documents were not in existence at the time of the initial hearing.

- An application for an accessible parking permit signed by Dr. Wu on June 13, 2019.¹⁵ This document is not relevant since it speaks to the Claimant's condition in 2019, which is more than 11 years after she last qualified for CPP in May 2008.
- A notice of appeal to the Social Security Tribunal signed on June 15, 2019.¹⁶ This raises issues that should be heard by way of an application for leave to appeal to the Appeal Division. They are not relevant to the application to rescind or amend.

[17] The Claimant also stated that her application to rescind or amend is based on the Tribunal's refusal to admit documents relating to her application for relief from a student loan. These documents were in existence at the time of the initial hearing. The Tribunal excluded them because they were not relevant.¹⁷

[18] I find that the Claimant has not satisfied the discoverability test. In view of this, I need not determine whether the documents and proposed evidence meet the materiality test.

CONCLUSION

[19] The Claimant has failed to establish new material facts.

[20] The application is dismissed.

Raymond Raphael
Member, General Division - Income Security

¹⁴ RA1-18

¹⁵ RA1-21 to 22

¹⁶ RA1-23 to 25

¹⁷ GD9 and Appendix to General Division decision.