



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. P. v Minister of Employment and Social Development*, 2019 SST 1556

Tribunal File Number: GP-19-366

BETWEEN:

S. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Claimant: Self-represented

Minister: Represented by Rob Shaw

Teleconference hearing on: September 10, 2019

Date of decision: October 28, 2019

DECISION

[1] The Minister was entitled to terminate payment of the Claimant's *Canada Pension Plan* (CPP) disability pension as of June 2014.

OVERVIEW

[2] The Claimant is appealing the Minister's decision to terminate payment of her CPP disability pension as of June 2014.

[3] In October 2009, the Claimant applied for the CPP disability pension.¹ She was working as a self-employed massage therapist for 2-3 hours, on one day a week. In her disability questionnaire, she stated that she had been unable to work full-time since January 2007 because of unipolar depression and generalized anxiety disorder with panic. She also suffered from several physical conditions including fibromyalgia, asthma, gastroesophageal reflux disease (GERD), and hypothyroidism.²

[4] In February 2010, the Claimant was granted a CPP disability pension with a date of onset of December 2008.³ In October 2016, the Minister suspended payment of the Claimant's disability pension because her earnings were under review. The Claimant's income tax returns revealed gross earnings of \$18,907 in 2010 and \$17,697 in 2011. The Claimant had not filed tax returns for 2012 to 2015.⁴

[5] In July 2017, the Minister terminated the Claimant's disability payments as of July 2014 because of unreported work activity. The Minister claimed an overpayment of \$19,175.50. The Minister denied the Claimant's request for reconsideration, and the Claimant appealed to the Social Security Tribunal.

ISSUE

¹ GD2-79

² GD2-153

³ GD2-143

⁴ GD2-31 to 32, 89

[6] Has the Minister established that it is more likely than not that the Claimant ceased to be disabled within the meaning of the CPP as of June 2014?

ANALYSIS

[7] A qualifying disability must be severe and prolonged. A disability is severe if it causes a person to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.⁵

[8] In order to terminate a disability pension, the Minister must establish that it is more likely than not that the Claimant has ceased to be disabled. A disability pension ceases to be payable for the month in which a Claimant ceases to be disabled.⁶

[9] The evidence establishes that the Claimant has been working since April 2014. She works on a regular basis and earns a substantial income.

[10] The Claimant testified that she has been working as a registered massage therapist since 2014. She works 11 to 14 hours a week. In 2014, she was earning \$45 an hour. She now earns \$55 per hour. She was “forced” to work because she needed the money to pay for her treatments and medications. Other people made no efforts to adapt to her disability. She also spends about two hours a day learning. She spends time on-line reading and pursuing her interest in Chinese and herbal medicine.

[11] In a May 2014 progress report, Dr. Turner, psychiatrist, stated the Claimant had returned to work at a spa facility. She enjoyed her work, was getting tips from clients who were happy with her work, and was doing much better. She was not on any medications. Dr. Turner diagnosed ADHD (adult attention hyperactivity deficit disorder) and generalized anxiety disorder, improved.⁷

[12] In an Employer Questionnaire signed in June 2017, the Claimant’s employer stated that she had started working as a massage therapist in April 2014. She worked six hours a day, for

⁵ Subsection 42(2) of the CPP

⁶ Subsection 70(1) (a) of the CPP

⁷ IS12

three days a week. She was paid \$45 per hour. Her attendance was good, there were no absences for medical reasons, and her work was satisfactory. She did not require any special equipment or special arrangements.⁸

[13] In her post-hearing submissions, the Claimant stated she has several medical conditions that have worsened due to her lack of appropriate medical attention. She still needs the CPP disability so she can afford proper care for her allergies, breathing problems, and other medical issues.⁹

[14] The Claimant enclosed a September 2016 report from Dr. Gottschalk, medical director, of the Sleep Disorders Clinic. Dr. Gottschalk stated the Claimant suffered from several medical conditions and felt she was totally disabled because of chronic pain. However, Dr. Gottschalk also stated that she was working as a registered massage therapist. She worked at two massage therapy locations and also ran her own home business.¹⁰

[15] The measure of whether a disability is “severe” is not whether the Claimant suffers from severe impairments, but whether her disability “prevents her from earning a living.”¹¹

[16] Although the Claimant continues to suffer from several medical conditions, she has been able regularly to pursue substantially gainful employment since 2014. Her capacity to work, not the diagnosis of her conditions, determines the severity of her disability under the CPP.¹²

[17] I find that the Minister has established that it was more likely than not that the Claimant ceased to be disabled as of June 2014.

CONCLUSION

[18] The appeal is dismissed.

Raymond Raphael

⁸ IS11

⁹ IS14-1

¹⁰ IS14-2 to 4

¹¹ *Granovsky*, [2000] 1 S.C.R. 703

¹² *Klabouch*, 2008 FCA 187

Member, General Division - Income Security