



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. R. v Minister of Employment and Social Development*, 2019 SST 1458

Tribunal File Number: GP-19-175

BETWEEN:

T. R.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Claimant represented by: K. B.

Teleconference hearing on: November 25, 2019

Date of decision: November 26, 2019

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of December 2017.

OVERVIEW

[2] The Claimant was employed as a public health nurse for “X” until August 17, 2017, when she stopped work owing to her medical condition. The Claimant was working on modified hours (10-to-15 hours per week) when she stopped working for the employer. The Claimant has not worked since August 2017 and has been on long-term disability benefits through a private insurer (“Great West Life”).

[3] The Claimant was diagnosed with a major depressive disorder and anxiety. The Minister recognized the Claimant had limitations due to her condition, but submitted the information did not support a condition of a severity to prevent the Claimant from performing any employment including suitable part-time work. The Claimant’s representative submitted the Claimant had a severe and prolonged disability with a date of onset of August 18, 2017. The Claimant’s representative also submitted the medical reports from Dr. Nolan supported the Claimant had a severe and prolonged disability.

The Calculation of the Claimant’s Minimum Qualifying Period (MQP)

[4] The Minister received the Claimant’s current application for the disability pension on January 15, 2018. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[5] 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, 2020.

PRELIMINARY MATTERS

[6] The Claimant provided her verbal consent that K. B. would be her representative during the hearing. K. B. indicated she would file an “Authorization to Disclose” form to the Tribunal post-hearing.

ISSUES

[7] 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 on November 25, 2019?

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

ANALYSIS

[9] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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

[10] I must assess the severe part of the test in a real world context². 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.

[11] 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

¹ Paragraph 42(2)(a) *Canada Pension Plan*

² *Villani v. Canada (A.G.)*, 2001 FCA 248

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.

[12] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition⁴.

Did the Claimant have a severe disability by November 25, 2019?

[13] I find on a balance of probabilities the Claimant had a severe disability by November 25, 2019, for the following reasons:

[14] First: The Claimant's oral testimony on her functional limitations was credible, because her statements were forthright and plausible. Specifically, the Claimant testified about the cognitive difficulties she had when she stopped working as a nurse. For example, the Claimant explained that she was forgetting information, making mistakes, and had trouble speaking. I recognize the Minister submitted that while the Claimant's limitations might prevent her from returning to her former position, the evidence on file suggested she would have capacity for suitable alternate work. However, the Claimant was working significantly reduced hours as a public health nurse in August 2017 and her depression, anxiety and functional limitations precluded her from other work.

[15] Second: The medical reports from Dr. Nolan (Psychiatrist) supported the Claimant had a severe disability. For example, Dr. Nolan diagnosed the Claimant with Major Depression, recurrent, treatment-refractory. Furthermore, Dr. Nolan's report in November 2019 indicated the Claimant was unable to work at any occupation at present or for the foreseeable future (GD5-1). Dr. Nolan also reported in January 2019 that the Claimant was "completely unable" to work since August 2017 and not able to function reasonably with markedly reduced hours at her work (GD1A-4). I realize the Minister submitted that notes in the Appeal file did not report the presence of symptoms of a severe or worsening mental health condition that required further intervention. Nevertheless, I place more weight on the reports from Dr. Nolan because they were direct, thorough, detailed, consistent, and plausible.

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

⁴ *Inclima v. Canada (A.G.)*, 2003 FCA 117

[16] Third: The Claimant has followed the recommended treatment. For example, the Claimant tried cognitive therapy sessions, transcranial magnetic stimulation, occupational assessments, and psychiatric consultations. Furthermore, the Claimant has taken multiple medications for her condition. Nevertheless, the Claimant's condition has not improved and her functional limitations were such that she was incapable regularly of pursuing any substantially gainful occupation.

Additional Submissions from the Minister

[17] I do recognize the Minister submitted that the Claimant's age would not significantly affect her ability to adjust to alternate work. The Minister also submitted that based on the Claimant's education she would have an advanced ability to learn and possess many transferable skills she could apply to alternate work. However, I place more weight on the Claimant's testimony that her depressive disorder and anxiety prevented her from working at other employment. Specifically, the Claimant testified she had difficulties with rudimentary tasks and continued to have memory lapses with moments of disabling anxiety.

Prolonged disability

Was the Claimant's disability long continued and of indefinite duration?

[18] I find on a balance of probabilities the Claimant had a prolonged disability for the following reasons:

[19] First: The report from Dr. Nolan in January 2109 indicated it was unlikely the Claimant would be able to engage in any form of work in the foreseeable future (GD1A-4). Furthermore, the report from Dr. Nolan in November 2019 explained that the Claimant was unable to work at any occupation at present or the foreseeable future.

[20] Second: The Claimant's testimony on her functional limitations persuaded me her condition was not improving and her disability was long continued and indefinite duration. Furthermore, the oral submissions from the Claimant's representative also persuaded me the Claimant's condition was not improving and possibly even worsening.

CONCLUSION

[21] The Claimant had a severe and prolonged disability in August 2017, when she stopped working on modified hours as a public health nurse. Payments start four-months after the date of disability, as of December 2017⁵.

[22] The appeal is allowed.

Gerry McCarthy
Member, General Division - Income Security

⁵ Section 69 *Canada Pension Plan*