



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. N. v Minister of Employment and Social Development*, 2019 SST 1505

Tribunal File Number: GP-19-663

BETWEEN:

E. N.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Date of decision: December 2, 2019

DECISION

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

OVERVIEW

[2] The Minister received the Claimant's application for the disability pension on April 23, 2018. The Minister denied the application initially and on reconsideration. 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. I find the Claimant did not make sufficient contributions to the CPP to establish a MQP.

[4] The CPP provides when a Claimant's earnings and contributions for a calendar year are below that year's basic exemption, their earnings and contributions can be prorated if the Claimant became disabled during the prorated period¹. The Claimant had earnings of \$2,241 in 2015. She made contributions to the CPP in 2015. The Claimant's prorated period is from January 1, 2015 to May 31, 2015. I find the Claimant's possible prorated MQP to be May 31, 2015. In this case, to qualify for a CPP disability pension, the Claimant's disability must have become severe in 2015, by May 31, 2015, and be prolonged by May 31, 2015.

PRELIMINARY MATTERS

[5] This appeal was scheduled to be heard by Teleconference on November 27, 2019 at 11:30 a.m. Newfoundland Standard Time (NST). I attended the scheduled Teleconference hearing at 11:24 a.m. NST on November 27, 2019, and remained on the teleconference line until 12:04 p.m. NST. The Claimant did not join the Teleconference.

[6] A Notice of Hearing was sent by email to the Claimant on October 25, 2019. The Notice of Hearing advised the date, time, and instructions on how to join the Teleconference. A further

¹ Paragraph 19 *Canada Pension Plan*

email and copy of the Notice of Hearing was sent to the Claimant November 21, 2019, reminding her of the Teleconference hearing scheduled for November 27, 2019 at 11:30 a.m. NST, and again provided instructions on how to join the Teleconference. The Claimant had authorized the Tribunal to communicate with her by email. The noted emails were not been returned as undelivered.

[7] The Claimant did not contact the Tribunal prior to, during, or after the hearing to advise she is/was unable to attend the hearing. Having ascertained the Claimant received the Notice of Hearing, and a reminder of the date and time of the hearing, I determined it was appropriate to proceed with the Appeal. I determined I do not require additional evidence to make my decision, as all relevant evidence in the file is clear and non-contradictory. I made the decision following my review and consideration of all the documentation and submissions contained in the file.

ISSUE(S)

[8] Did the Claimant's disability become severe, meaning incapable regularly of pursuing any substantially gainful occupation in 2015, by May 31, 2015.

[9] If so, was the Claimant's disability also long continued and of indefinite duration by May 31, 2015?

ANALYSIS

[10] Disability is defined as a physical or mental disability that is severe and prolonged². 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

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

The Claimant's disability did not become severe in 2015, by May 31, 2015.

[11] The Claimant was forty-one years old at her possible prorated MQP. She has a high school education and attended college/university for two years. She last worked for as a homecare provider from March 1, 2016 until April 29, 2016, and has not worked since.

[12] The Claimant noted in her Reasons for Appeal dated April 16, 2019³ that her work activity involved sitting with a disabled adult, and assisting with light lunches, feedings, and occasional changes. She noted her doctors recommended she stop working due to her depressive state, the requirement to restart electroconvulsive therapy (ECT), and memory loss.

[13] The Claimant noted in her letter⁴ attached to her Notice of Readiness dated May 31, 2019 that she previously worked at X, a retail craft store, for a few weeks in the fall of 2015, but was unable to continue due to her medical conditions. She did not physically work in 2013 or 2014 due to her on-going medical conditions, notwithstanding earnings noted for those years on her CPP Contributions Statement⁵. She assumes her accountant reported the earnings, which may relate to her ex-husband's business.

[14] The Claimant noted in her Questionnaire for Disability Benefits dated March 13, 2018⁶ she stopped working April 29, 2016 due to illness. She claimed she could no longer work because of her medical condition in June 1994. The illnesses or impairments that prevent her from working are Crohn's disease, bipolar disorder, recent L5-S1 discectomy, and memory loss due to ECT treatments.

[15] Dr. Misik, the Claimant's family physician for forty-two years, completed the medical report dated March 27, 2017⁷ that accompanied the Claimant's application. His diagnoses were Crohn's disease-multiple surgeries, bipolar disease-depression recurrent and present, acute left sciatica, and memory loss due to ECT treatments. He first started treating the Claimant for her

³ GD1 pages 7-8

⁴ GD3 pages 2-4

⁵ GD2 page 46

⁶ GD2 pages 167-173

⁷ GD2 pages 163-166

main medical conditions in October 1975. Dr. Misik reported the Claimant's prognosis as very poor. Her conditions make it impossible to hold down any employment.

[16] A hospital discharge summary by Dr. Martin dated November 16, 2016⁸ noted he saw the Claimant regarding her longstanding history of Crohn's disease. An Emergency Room record dated October 26, 2016⁹ noted the Claimant presented with a history of Crohn's disease with two bowel resections twenty years ago.

[17] Dr. Hogan, orthopaedic surgeon, reported August 28, 2018¹⁰, he has seen the Claimant since October 12, 2017 related to low back pain and left leg radiculopathy. She underwent surgical decompression on October 27, 2017. She attained some pain relief from surgery. She fell following surgery and since has experienced recurrence of pain. Dr. Hogan reported the Claimant has limitations regarding bending, lifting, and household chores due to back pain.

[18] Dr. Collins, psychiatrist, reported March 4, 2019¹¹ he has seen the Claimant since 2009, for bipolar disorder and depression. He reported the Claimant is not able to work due to depression and bipolar illness.

[19] Dr. Collins reported March 19, 2019¹², when he first saw the Claimant ten years ago he diagnosed her with bipolar disorder. She has been his patient since 2009. She presents with significant difficulties with depressed mood, concentration, energy, irritability, hyperactivity, and insomnia despite treatment with anti-depressants, mood stabilizers, and in the last number of years, ECT. He noted the Claimant has attempted to work on numerous occasions in the past, but has not been well enough to maintain work on a regular basis. The Claimant has significant medical comorbidities including Crohn's disease and back problems. She has continued to express ongoing symptoms that are incapable with coping in a work environment. She continues with depressed mood, anxiety, sleep and concentration difficulties. He believes she is not likely to change, and currently remains disabled with respect to work related abilities.

⁸ GD2 pages 75-76

⁹ GD2 page 74

¹⁰ GD2 pages 64-65

¹¹ GD2 page 24

¹² GD2 pages 51-52

[20] I must assess the severe part of the test in a real world context¹³. 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. The Claimant was just forty-one years old at her possible prorated MQP, being years younger than the traditional age of retirement in Canada, has a high school education, and some post secondary education. She is proficient in English. I acknowledge the Claimant's work experience is limited, but she could attend retraining. I find the Claimant's personal factors do not affect her capacity to pursue work or attend retraining or educational upgrading programs.

[21] The issue I must decide is whether the Claimant's disability become severe, meaning incapable regularly of pursuing any substantially gainful occupation, in 2015, by May 31, 2015. The issue is not whether the Claimant's disability was severe prior to January 1, 2015, or became severe after May 31, 2015, or is currently severe. Medical reports confirm the Claimant's long history with Crohn's disease, including bowel resections. That evidence is consistent with the Claimant's date claimed disabled of June 1, 1994. Evidence substantiates the Claimant was diagnosed with bipolar disorder in 2009, and been treated since by medication and ECT, which memory difficulties. The Claimant's psychiatrist reported her condition has not significantly changed since he began treating her in 2009. The Claimant underwent back surgery in October 2017, 2 ½ years after her possible MQP for treatment of a long history of back pain.

[22] I find the onset of the conditions the Claimant submits have precluded her from working, namely Crohn's disease, bipolar disorder, and back pain was prior to January 1, 2015. There is no evidence those conditions significantly worsened in 2015, by May 31, 2015. There is evidence the Claimant's bipolar disorder and back pain worsened after May 31, 2015, as she started ECT since, and underwent back surgery in 2017. The onus is on the Claimant to establish on the balance of probabilities her entitlement to CPP disability benefits. She has not done so. I find the Claimant's disability did not become severe in 2015, by May 31, 2015.

[23] The Claimant applied for a CPP credit split in March 2019. The Minister, on September 10, 2019, denied the Claimant's application¹⁴, as she did not provide the information the Minister

¹³ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹⁴ GD7 pages 15-16

requested to determine her eligibility for a division of pension credits. The Claimant has not to date asked the Minister to reconsider the decision to deny her credit split application. If the Claimant's application for a credit split was approved, her MQP will likely change.

[24] The Claimant may wish to make a new application for a credit split, with the requested information. If she does, and the Minister approves the application, she may wish to make a new application for a CPP disability pension.

Prolonged disability

[25] As I found that the Claimant's disability did not become severe in 2015, by May 31, 2015, it is not necessary to make a finding on the prolonged criterion.

CONCLUSION

[26] The appeal is dismissed.

Patrick O'Neil
Member, General Division - Income Security