



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. L. v Minister of Employment and Social Development*, 2019 SST 1555

Tribunal File Number: GP-19-1011

BETWEEN:

S. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Teleconference hearing on: November 26, 2019

Date of decision: December 12, 2019

DECISION

[1] The Claimant has not met the criteria for the incapacity provision, as defined in the CPP. My reasons are as follows.

OVERVIEW

[2] The Claimant applied for a CPP disability pension on March 27, 2018. The Minister granted the application at the initial level with a date of onset of December 2016. The Claimant requested that the Minister reconsider the date of onset. She submitted that she was incapable of making an application for a period of almost 14 years, between June 2004 and March 2018. This was because of undiagnosed schizophrenia. The Minister denied the request for reconsideration, and the Claimant appealed the reconsideration decision to the Social Security Tribunal.

APPLICABLE PROVISIONS

[3] The CPP legislation defines a narrow window for the application of the incapacity provision. According to Section 60(8), where an application for a benefit is made on behalf of a person and the Minister is satisfied, that the person had been incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the application may be deemed to have been made in the month before the first month in which the benefit could have started to be paid, or in the month that the person's last relevant period of incapacity started, whichever is later.

[4] To meet the definition under Section 60(9) of the CPP, a person must meet the following components: have been incapable of forming or expressing an intention to make an application before the day on which the application was actually made; ceased to be incapable before that day; and the application was made within the time period that starts on the day on which the person had ceased to be incapable that is the same number of days as the period of incapacity, not to exceed 12 months; or if the period of incapacity is less than 30 days, the application must have been made not more than 1 month after the month in which the person ceased to be incapable.

[5] Section 60(10) of the CPP defines that for the purposes of both subsection 60(8) and 60(9), the period of incapacity must be a continuous period.

ISSUE

[6] Was the Claimant able to form or express an intention to apply for a CPP disability pension between June 2004 and March 2018, and was her incapacity continuous?

ANALYSIS

i. The Claimant's incapacity was not continuous between June 2004 and March 2018.

[7] The intention to apply for benefits is not different from the capacity to form an intention with respect to other choices that present themselves¹. In order to assess capacity, I must consider both the medical evidence and the activities of a person between the claimed date of commencement of disability and the date of application².

[8] First off, I found the Claimant to be credible. Her testimony at the time of the hearing was candid. She was able to provide good insight into her daily life and activities between 2004 and 2018.

[9] In assessing the medical evidence on file there is no question that the Claimant had periods of incapacity after June 2004. According to Dr. Penfold/Dr. Munchi who oversaw the Claimant's care when she was hospitalized in 2014, the Claimant was first admitted to hospital for psychosis in 2004. She was then hospitalized because of her mental health for 6 weeks in 2012, and then she was admitted again in 2014. I accept that those were defined periods of incapacity.

[10] Dr. Penfold/Dr. Munchi reported that the Claimant had suffered from psychosis for 2 decades. As part of that psychosis, she struggled with delusions and misperceptions. Part of her condition involved spending time looking for clues to prove that her delusions were real. Although no specific dates were provided, Dr. Penfold/Munchi noted that the Claimant has

¹ *Sedrak v. MSD*, 2008 FCA 86

² *McDonald v. Canada (A.G.)*, 2013 FCA 37

engaged in spending sprees and has claimed bankruptcy. One spending spree was fuelled by a delusion that she had other children she didn't know about. Although the Claimant had times where her behaviour was less bizarre, she struggled with her delusions and misperceptions. At some of her places of employment, she would become fearful that her co-workers were connected to the mafia or that they were conspiring against her. That led to poor job performance, and resulted in the Claimant either quitting or not having her contracts renewed.

[11] A declaration of incapability was signed by Dr. Patel on January 10, 2018. It listed the Claimant's diagnosis as schizophrenia vs. schizoaffective disorder and noted that related impairments began in 2004. The document did not specifically address the start or end date of any periods of incapacity or whether or not it was ongoing. The Claimant submitted that the legal clinic she was consulting with had given her the wrong form to have Dr. Patel complete.

[12] A declaration of incapacity was completed by Dr. Jain on February 20, 2019. Dr. Jain indicated that the Claimant's condition did not render her incapable of forming or expressing the intention to make an application for benefits. Dr. Jain has been the Claimant's family doctor since 2013.

[13] In April 2012, the Claimant's treating psychiatrist, Dr. Burra, confirmed that the Claimant had been the single mother of 3 since separating from her husband in 2003. She made the decision to move to X in 2005 to be with her now ex-spouse. According to the Claimant, they only remained together for about a year before deciding to separate once again. The Claimant and her children continued to live in the family home. Her ex-spouse kept paying for their living expenses because the Claimant did not have a job. Dr. Burra mentioned that the Claimant had to cut that April 2012 appointment short with him because she wanted to attend a job interview she was asked to go to on short notice.

[14] In April 2013, Dr. Burra's noted that the Claimant's ex-spouse had found her to be coping very well when he was home visiting at Easter. Then, in October 2013, Dr. Burra reported that the Claimant had been doing very well on her medication regimen. He made specific mention that while she did not have a job at the time, she had been promised one starting February 2014. The Claimant reported to Dr. Burra that she was looking for work until that time. Dr. Burra's February 2014 clinical notes revealed that the Claimant had been working full-time

on a contract since the end of October 2013 at a local insurance company. Her role was filing claims, which she was reportedly quite good at. The Claimant submitted, however, that she quit the job before the contract ended because she thought it was a dangerous place to be. Shortly after, she was hospitalized because of her poor mental health.

[15] According to the Claimant, she was misdiagnosed with Bipolar disorder from 2004 to 2014. It was not until she was hospitalized in 2014 that she was diagnosed with schizophrenia. However, even after being diagnosed with schizophrenia she continued to have paranoid thoughts. She was medicated, but the new medication made her sick and unable to function. When she was switched to Risperidone medication, her thoughts started to clear and it was then that she was able apply for a CPP disability pension. The Claimant submitted that she hadn't recognized that she was mentally ill up to that point and kept trying to work and carry on with her life. She also hadn't really told Dr. Burra about her earlier paranoid and delusional thoughts. She didn't see anything wrong with them at the time.

[16] The Claimant has always been the primary caregiver of her 3 children who were born in 1995, 1997, and 1999. Unfortunately, that has come at a cost. Her daughter now reportedly suffers from post-traumatic stress disorder because of the many things the Claimant told her growing up that weren't true. There also were many times that she wouldn't send her son to school because was convinced that he was being poisoned. There were times she had the principal from his school come to her home to take her son to school. She rarely kept the house clean, and her ex-spouse who was not living with her looked after all of the household expenses. The Claimant submitted that day to day life was a constant struggle.

[17] In terms of employment during the time period in question, the Claimant had gainful earnings in 2005, 2008, 2010, and 2014. I accept that most of the Claimant's jobs were short-term contracts because her mental health condition rendered her dysfunctional from time to time. However, she was able to seek and gain employment and do the job she was hired to do.

[18] The Claimant has been in receipt of ODSP benefits since 2014. She submitted that her family completed the application and she signed it. She didn't really know what she was signing for. The Claimant also reported getting assistance with completing her CPP disability pension application but she understood what she was signing for.

[19] I find that the Claimant had several periods of incapacity during the time period in question. I am not convinced, however, that her incapacity was continuous from June 2004 to March 2018. I find that the Claimant's mental state was subject to fluctuations, meaning that, as the medical reports and testimony show, the Claimant's mental state changed from time to time³.

[20] Based on the Claimant's Record of Earnings, she had multiple years of gainful employment between 2004 and 2018. She lived independently and cared for and raising 3 young children, albeit with difficulty. She made the choice in 2005 to move back in with her now ex-spouse and then to separate from him a year later. The Claimant's family physician since 2013 indicated that she was capable of forming and expressing an intention to make an application for the CPP disability pension. Her treating psychiatrist between at least 2012 to 2014 expressed periods of symptom improvement and stability. He provided specific examples like the Claimant's choice to attend job interviews and her planning for future employment. The Claimant worked for defined periods and was reportedly good at her most recent job that involved filing insurance claims. She has been able to consent to various medical treatments and medication trials between 2004 and 2018. She also sought assistance from a legal clinic prior to January 2018 regarding her CPP disability pension application.

[21] There are no clearly defined periods of incapacity based on the medical evidence, apart from her hospitalizations in 2004, 2012, and 2014. Yes, the Claimant's mental health status has greatly impacted her ability to regularly work since June 2004, but the criteria for disability vs incapacity according to the CPP are vastly different. I find that the fact that the Claimant's diagnosis changed from Bipolar to Schizophrenia in 2014 does not in and of itself lead to a finding that the Claimant was incapable of forming or expressing an intent to apply for a CPP disability pension before March 2018.

CONCLUSION

[22] The appeal is dismissed.

Tyler Moore
Member, General Division - Income Security

³ *Hussein v. Canada (A.G.)*, 2016 FC 112