Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *S. M. v Minister of Employment and Social Development*, 2019 SST 1507

Tribunal File Number: GP-18-1488

BETWEEN:

S. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by:	Shannon Russell
Claimant represented by:	Mercedes Mueller (Zweibel and Associates)
Teleconference hearing on:	November 18, 2019
Date of decision:	December 12, 2019

Canada

DECISION

[1] The Claimant is entitled to Canada Pension Plan (CPP) disability benefits to be paid as of October 2016.

OVERVIEW

[2] The Claimant is a 40-year-old man who was injured at work in January 2015. He applied for CPP disability benefits in September 2017, and in his application he reported that he is unable to work because of chronic regional pain syndrome (CRPS), major depressive disorder, somatic symptom disorder, and anxiety. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE(S)

[3] To qualify for CPP disability benefits, 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.

[4] The Claimant has two possible MQPs – namely, May 2015 and March 2016. I have used the word "possible" to describe the MQPs because each MQP calculation requires proration, and proration can only be done in certain situations[1]. One situation that allows for proration is an onset of disability, so that if a person becomes disabled in the year that is prorated (but before the end of the prorated month) then proration is allowed.

[5] Disability is defined as a physical or mental disability that is severe and prolonged[2]. A disability is severe if it renders a person 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

[1] Where a person's earnings in a year are not high enough to trigger a valid contribution to the CPP, section 19 of the CPP allows those earnings to be prorated, provided a prescribed event occurred in the year that is prorated.
[2] Paragraph 42(2)(a) of the *Canada Pension Plan*

meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

[6] I must decide whether the Claimant has a disability that became severe and prolonged between January 1, 2015 and May 31, 2015 or between January 1, 2016 and March 31, 2016.

The Respondent only considered the Claimant's March 2016 MQP

[7] I rarely comment on the approach the Respondent takes to adjudicating an application. However, the circumstances of this case warrant some attention.

[8] When the Respondent assessed the Claimant's application for disability benefits, the Respondent considered only one MQP (the March 2016 MQP). With this MQP in mind, the Respondent determined that the Claimant was not eligible for disability benefits because there was no evidence that a "triggering event" occurred between January 1, 2016 and March 31, 2016[3].

[9] The Respondent did not inform the Claimant that he had another possible MQP (i.e. the May 2015 MQP). In fact, the Respondent led the Claimant to believe that his *only* MQP was the one of March 2016. In May 2018, for example, the Respondent wrote to the Claimant to inform him that his application had been denied again (at the reconsideration level of adjudication) and the Respondent explained that "the only period of time" the Claimant qualified (from a contributory perspective) was the period from January to March 2016[4].

[10] It could be that the Respondent simply made a mistake and did not turn its mind to whether the Claimant's 2015 earnings could be prorated. However, I do not think that this is what happened. I say this because of the difficulties I experienced in having the Respondent acknowledge a second MQP and because of the Respondent's subsequent refusal to provide submissions on whether the Claimant became disabled between January and May 2015.

[3] Pages GD3-2 to GD3-9
[4] Page GD2-8

[11] To illustrate this point, I will briefly summarize what happened after the Claimant filed his appeal with the Tribunal.

- On August 1, 2019, I wrote to the Respondent and asked the Respondent to provide a detailed record of earnings for the year 2015 (similar to what the Respondent had provided for the year 2016). I explained that I was asking for this information because the Claimant's record of earnings (summary) showed that he may have had some earnings in 2015, though not enough to trigger a valid contribution to the CPP[5].

- On September 3, 2019, the Respondent replied to my request by simply stating that the Claimant "currently has a pro-rated MQP of March, 2016 based on his 2016 earnings. Therefore a pro-ration of 2015 would not be applicable"[6].

- On September 9, 2019, I wrote to the Respondent again. I explained that I did not find the Respondent's reply particularly helpful and I pointed out that the Respondent had not addressed what appear to be the relevant facts and statutory provisions – namely, that the Claimant's injury occurred in 2015, that the onset of disability is a triggering event that allows for proration, and that the legislation appears to allow late applicants to use proration[7]. I asked the Respondent to explain its position and to provide references to the statutory provisions it was relying on[8].

- On September 11, 2019, the Respondent provided a detailed record of the Claimant's earnings for 2015 along with two disability prorate worksheets. One worksheet shows that the Claimant had enough earnings in 2015 to cover five contributory months. The other worksheet shows that the Claimant did not have enough earnings in 2015 to cover more than five contributory months. With these documents, the Respondent did not include any written submissions or comments[9].

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[5] Page GD4-1
[6] Page GD6-1
[7] Section 19 and subsection 44(2.1) of the CPP
[8] Page GD7-1
[9] Pages GD8-3 to GD8-6

- On September 23, 2019, the Claimant filed a medical letter from his doctor stating that the Claimant has been disabled since January 2015[10].

- On October 4, 2019, the Respondent filed written submissions indicating that the new medical report did not change the Respondent's position because the new report confirms that the Claimant did not become disabled in 2016[11].

- On October 8, 2019, I wrote to the Respondent again. I acknowledged receipt of the Respondent's submissions, but pointed out that the Respondent had not addressed the possible MQP of May 2015. I asked the Respondent to state its position as to whether the Claimant became disabled between January 1, 2015 and May 31, 2015[12].

- The Respondent replied on October 16, 2019, by re-filing the same submissions it had filed on October 4, 2019 and by adding the following explanation: "The minister reviews the latest MQP for the appellant. The client was not found to be disabled by March 2016. The date stopped work is referenced in the Addendum"[13].

[12] The Respondent's approach to this file is concerning for a number of reasons. I will focus on two.

[13] First, I have reviewed the legislation and the case law and I have been unable to find any support for the Respondent's position that it need only to consider the most recent MQP. If the Respondent was concerned about the 2016 earnings somehow precluding a finding of disability in 2015 (and I am not sure this was in fact the Respondent's concern), then I would have expected to see the Respondent do some assessment of the earnings in 2016 to determine whether they were indicative of a capacity regularly to pursue a substantially gainful occupation (a post-MQP earnings analysis)[14]. The Respondent did not do this. The Respondent also did not provide any legal justification for its narrow approach to adjudication. In the absence of any such justification (or at the very least a well-articulated policy rationale), the Respondent's approach

[10] Page GD9-2
[11] Pages GD10-1 to GD10-4, paragraph 5
[12] Page GD11-1
[13] Page GD13-1
[14] As it turns out, the Claimant only worked for about one week in 2016 and then had to stop for reasons related to his disability.

was injudicious and unprincipled. It was also inconsistent with the benefits-conferring nature of the CPP regime.

[14] Second, before this appeal was assigned to me, the Respondent filed written submissions in which the Respondent seems to have acknowledged that the Claimant may have become disabled in 2015. For example, the Respondent wrote that the Claimant was experiencing significant pain and functional limitations well before March 2016[15]. This makes it even more difficult to understand why, after being asked to consider a possible MQP of May 2015, the Respondent simply reiterated its position that the appeal should be dismissed.

ANALYSIS

Severe disability

The nature of the Claimant's disability

[15] The Claimant began working at X in 2014[16]. On January 21, 2015, he was unloading a heavy box from a skid when he heard and felt a painful "pop" in his left shoulder and left arm. He went to the hospital and eventually learned that he had ruptured his biceps tendon[17].

[16] The Claimant had surgery (a biceps tendon repair) on January 26, 2015[18], and then began physiotherapy. However, things did not improve as hoped. When the Claimant returned to see his surgeon on March 24, 2015, he was reporting significant difficulty with range of motion, pain in the elbow, shoulder, and hand, and some numbness in the hand. His surgeon thought the Claimant was developing CRPS. He recommended aggressive range of motion exercises through physiotherapy and believed that, with time, things would settle down[19].

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[15] Page GD3-8
[16] Page GD2-274
[17] Pages GD2-511 and GD2-523
[18] Page GD2-88
[19] Page GD2-90

[17] The Claimant continued with physiotherapy, but his pain did not improve. He developed pain in his right shoulder[20], and on April 15, 2015 the Claimant's family physician (Dr. Sophia Mobilos) referred him to a comprehensive pain program[21]. The Claimant attended the program on May 5, 2015 for his initial assessment. At that time, the diagnosis of CRPS was confirmed[22].

[18] The Claimant's disability also has a mental health component. After his injury, the Claimant began experiencing anxiety, depression and anger, and so his family physician referred him to Dr. Ernest Light (psychologist). The Claimant saw Dr. Light for the first time in May 2015. Dr. Light interviewed the Claimant for about three hours and administered several psychometric tests. Following the assessment, Dr. Light diagnosed the Claimant with adjustment disorder with mixed anxiety and depressed mood[23].

[19] By September 2017 (when the Claimant applied for disability benefits), the Claimant's family physician was reporting that the CRPS has the Claimant in constant chronic pain throughout his left arm, entire upper body and back. She explained that the intense pain rendered the Claimant physically disabled which in turn caused the Claimant to develop somatic symptom disorder, severe depression and generalized anxiety disorder[24].

The Claimant's injury resulted in significant functional limitations

[20] As I mentioned earlier, the Respondent has acknowledged that the Claimant's injury resulted in significant functional limitations.

[21] Some of the Claimant's limitations result from high levels of pain, while others result from mental health conditions.

[22] With respect to the pain levels, the Claimant told Dr. Tea Cohodarevic (his doctor at the comprehensive pain program) in May 2015 that his left upper extremity pain is burning, stiff and sharp and averages a 10/10 on a pain scale. He also said that his right shoulder pain is sore, achy

[20] Page GD2-69
[21] Page GD2-230
[22] Page GD2-198
[23] Pages GD2-72 to GD2-85
[24] Page GD2-63

and burning, and fluctuates from 7/10 to 10/10. The Claimant told Dr. Cohodarevic that any activity involving his hands, specifically arm extension, makes the pain worse[25].

[23] The Claimant attended the comprehensive pain program for about one year and throughout that time his pain levels remained quite high. In August 2015, the Claimant reported increased neck and shoulder pain over the past month. He rated his left hand, neck and shoulder pain as 10/10 and his left elbow pain as 7/10[26]. In October 2015, the Claimant reported only a slight improvement in his pain due to a change in his medications. Even with the improvement, he rated his pain in his left upper extremity and right shoulder as an 8/10[27]. In June 2016, the Claimant reported his average pain as 7/10[28].

[24] In September 2017, Dr. Mobilos reported that because of pain and spasms, the Claimant is unable to stand or walk for more than 10 minutes, lift more than 5 pounds, or do any housework. She also said that he has decreased left arm supination and wrist extension and decreased range of motion of the neck[29].

[25] Dr. Mobilos did not explain what she meant by housework, but the Claimant told me that he can do his laundry (albeit in small loads) and he can wash his dishes, but he is unable to sweep, mop or clean his bathroom. As a result, his mother comes to his apartment once a week and performs these chores for him. She also cooks all of his meals and stores them in containers for him.

[26] The Claimant's pain also affects his ability to sleep. He spoke of his sleeping difficulties when he met with Dr. Light in May 2015[30] and when he saw a psychiatrist (Dr. Zamir) in November 2016[31]. During the hearing, the Claimant told me that his sleep difficulties continue in that he is only able to get about 3 hours of sleep a night.

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[25] Page GD2-69
[26] Page GD2-86
[27] Page GD2-175
[28] Page GD2-93
[29] Page GD2-64
[30] Page GD2-76
[31] Page GD2-119

[27] Turning now to the mental health conditions and their affect on functionality, Dr. Light reported in May 2015 that the Claimant's symptoms of depression included feelings of worthlessness, loss of hope, dissatisfaction with life, loss of energy, tiredness or fatigue, difficulties with concentration, sadness, irritability, agitation, loss of interest, and indecisiveness[32].

[28] Since May 2015, the Claimant's depressive symptoms appear not to have improved. In February 2016, Dr. Cohodarevic referred the Claimant to Dr. Brian Kirsh (psychiatrist), as she was concerned that the Claimant had developed a depressive reaction to his pain and somatic symptom disorder[33]. Dr. Kirsch saw the Claimant in March 2016 and diagnosed major depression. He explained that the Claimant's extremely difficult pain syndrome created a complete roadblock in the Claimant's life and the Claimant had not learned to get around that roadblock[34].

[29] In September 2017, Dr. Mobilos reported that the Claimant's mental health disability has proven as disabling as his physical symptoms, if not more. She explained that the Claimant is sad and depressed at all times and receives no pleasure in life whatsoever. He has little to no motivation, very poor concentration, difficulty understanding simple text, uncontrollable anger (at times), and socially isolates himself. He also has severe anxiety with constant worrying about his health and future[35].

[30] During the hearing, the Claimant testified that he simply wants to be left alone, and does what he can to avoid being around people. He is angry, irritable and worried about his future. He also has feelings of worthlessness and thinks about death.

The Claimant has made strong efforts to improve his medical conditions

[31] To obtain disability benefits, a claimant must not only provide evidence concerning the nature of his disability, but must also provide evidence of his efforts to manage his medical

[32] Page GD2-79
[33] Page GD2-165
[34] Page GD2-791
[35] Page GD2-66

condition[36]. Such efforts are generally known as a "duty to mitigate". Claimants are not entitled to CPP disability benefits unless the duty to mitigate has been satisfied[37]. When claimants refuse to undergo a recommended treatment that is likely to affect their disability status, claimants must then establish that their refusal was reasonable[38].

[32] I am satisfied that the Claimant has made strong efforts to improve his medical conditions. These efforts include surgery (January 2015), extended physiotherapy[39], acupuncture[40], participation in the comprehensive pain program, attendance at the Allevio pain management clinic (October 2015 to December 2015) where he received three nerve block injections with little relief[41], regular sessions with a psychologist (Dr. Light) until May 2017 (when the WSIB stopped covering the sessions)[42], and two psychiatric consultations (one with Dr. Kirsch in March 2016[43] and one with Dr. Zamir in November 2016[44]).

[33] The Claimant's treatment modalities have also included several medication regimes. In March 2016 (the most recent possible MQP) the Claimant was taking Cymbalta, Lyrica, Baclofen, Abilify, OxyNeo, Docusate and Lactulose[45]. At the time of the hearing, the Claimant was taking Cymbalta, Abilify, Aventyl, Gabapentin, OxyNeo, Baclofen and Docusate[46].

[34] I asked the Claimant if he participated in a sleep study (as recommended by Dr. Zamir), and he said he did. He told me he was diagnosed with sleep apnea and that he tried a CPAP machine. He said he ended up returning the CPAP machine because the WSIB would not cover it and because it was not helping him (even after he had it adjusted). The sleep specialist reportedly told him that it was mostly the pain (and not the sleep apnea) that was waking him up at night. I do not have any reports from the sleep specialist, but I believe that, at the very least, the Claimant tried the CPAP machine and did not notice an improvement with his sleep.

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[36] *Klabouch* v. *MSD*, 2008 FCA 33
[37] *Sharma* v. *Canada (Attorney General)*, 2018 FCA 48
[38] *Lalonde* v. *Minister of Human Resources Development*, 2002 FCA 211
[39] Page GD2-150
[40] Page GD2-150
[41] Pages GD2-166, GD2-168, GD2-179, and GD2-430
[42] Pages GD2-292 to GD2-294
[43] Pages GD2-790 to GD2-792
[44] Pages GD2-119 to GD2-123
[45] Page GD2-791
[46] The Claimant told me the names of the medications that he is currently taking.

[35] The Claimant testified that he has also been assessed by a psychologist and a psychiatrist at CAMH. He was not sure of the dates, but thought the assessments occurred near the end of 2018. The Claimant testified that CAMH recommended that he replace the Cymbalta with Zoloft and that he try Cesamet (Nabilone). He said he tried the Zoloft and the Cesamet, but he could not tolerate either of them. The Zoloft made him constantly think of death and the Cesamet made him euphoric and high and did not do anything for his pain. I do not have any reports from CAMH (and I will address this shortly), but I accept that the Claimant tried the medications they prescribed. I say this because the Claimant has been largely compliant with medication recommendations in the past.

[36] The one treatment modality that the Claimant did not complete is the Function and Pain Program. In April 2016, the Claimant underwent an assessment so as to determine whether he was suitable for the program. The assessors concluded he was an appropriate candidate and that he could participate on a full-time basis for 30 days[47]. The Claimant attended the program for 11 days and then discharged himself from the program. I asked the Claimant why he discharged himself early, and he said he injured his back at the program and was in too much pain to continue. He also said that he did not notice any improvement during his 11 days of treatment and felt that all of the activity was increasing his pain.

[37] Although the Claimant's decision to discharge himself from the Function and Pain Program is troubling, it is not detrimental to his appeal. I say this for five reasons. First, the Claimant *tried* to participate in the program (albeit for 11 days). This is not a case, for example, where the Claimant did not even attempt to participate. Second, by the time the Claimant began the Function and Pain Program, he had already been through the comprehensive pain program and had attended the Allevio Pain management clinic, all with little improvement in his symptoms. Third, the Claimant's prognosis for improving his function through the program was not overly optimistic. In fact, the assessors described the prognosis as "fair"[48]. Fourth, the assessors reported that, during his time in the program, the Claimant did not demonstrate any subjective or objective benefits[49]. This is consistent with the Claimant's testimony that he was

[47] Page GD2-148
[48] Page GD2-149
[49] Page GD2-115

not noticing any improvement. Fifth, the Claimant has mental health conditions, and in and around the time that he discharged himself from the program, the Claimant was explaining to a psychiatrist that he felt overwhelmed by the treatment suggestions and wanted to take a break[50].

[38] After the Claimant stopped the Function and Pain Program, he was re-assessed by a physician at the comprehensive pain program and he was told that the program did not then (October 2016) have any additional medical treatments to provide. However, he was also told that new programs[51] would be rolled out in early 2017 and that his name would be put on a waiting list for these programs[52]. I asked the Claimant if he attended any of these programs and he said he did not. He said he was on the wait list, but he was never contacted. I am not aware of any evidence showing that the Claimant was, in fact, contacted about these programs (once they were rolled out) and so I cannot fault him for not pursuing those modalities.

The Claimant's disability is severe

[39] The Claimant testified that he was told by CAMH that if the recommended medication changes did not work (and he says they did not) then he would never be able to work again. I do not have any reports from CAMH and so I am unable to confirm the Claimant's testimony. The Claimant's representative suggested that a report from CAMH may not have been submitted because it was so recent and outside the timeframe of the MQPs. I acknowledge that the assessments appear to have been done several years after the MQPs, but I nonetheless consider the evidence relevant. To be successful with his appeal, the Claimant has to show that his disability became severe and prolonged in either 2015 (by May) or 2016 (by March), and that he remained disabled *continuously* through to the date of the hearing.

[40] Without a report from CAMH, I am reluctant to accept the Claimant's summary of the conclusions CAMH made with respect to his work capacity. I say this because I have some concerns about the reliability of the Claimant's evidence. He told me, for example, that after he left high school and before he started working at X, he had held several jobs and that most of those jobs were full time and most of them lasted for about one year, with two jobs lasting about

[50] Page GD2-122
[51] The programs included a mindfulness-based stress reduction program, self pain management program, and an acceptance and commitment therapy program.
[52] Page GD2-136

three years. I do not believe that the Claimant's employment history is as robust as he described. His record of earnings simply does not support his testimony. His record of earnings shows only four years of valid contributions to the CPP, being 2008, 2011, 2012 and 2014[53]. I provided the Claimant with an opportunity to comment on the discrepancy, but he was not able to provide an explanation for why his record of earnings shows very little work activity before 2008.

[41] Given my concerns about the reliability of the Claimant's evidence about his employment history, I have considered whether other aspects of his evidence are similarly unreliable. In the end, I do not think it is reasonable to infer that just because the Claimant likely over-stated his employment history he has also over-stated his pain and limitations. The Claimant's health care practitioners have not questioned the genuineness of the Claimant's complaints and they have not suggested that the Claimant's symptoms are exaggerated or feigned. I also note that Dr. Light reported in May 2015 that the Claimant is definitely not a malingerer and that the Claimant is highly motivated towards treatment[54].

[42] I turn now to the medical evidence on file that addresses work tolerances. This evidence, when read together, shows that within months of his injury the Claimant developed a disability that rendered him incapable regularly of pursuing any substantially gainful occupation.

[43] In August 2015, the Claimant was assessed by Dr. Elmaraghy (orthopedic surgeon) and Joanne Hill (physiotherapist) at the Shoulder and Elbow Specialty Clinic. The assessors concluded that, at that time, only sedentary-type activity would be reasonable and that the Claimant should avoid heavy lifting / carrying, pushing / pulling, above chest-level work, repetitive use of his left arm away from his body, repetitive or forceful gripping / twisting, prolonged elbow flexion / extension, direct pressure on the elbow and vibration / impact forces[55]. In September 2015, the same assessors concluded that the Claimant's work restrictions remained the same, but they added that if an appropriately modified sedentary type job became available then it would be safe for the Claimant to do it[56].

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[53] Page GD3-13
[54] Page GD2-85
[55] Page GD2-278
[56] Page GD2-265

[44] While the evidence of Dr. Elmaraghy and Ms. Hill is indicative of work capacity (albeit at the sedentary level), it is not determinative of the issue. This is because the assessors only addressed one aspect of the Claimant's disability – namely, the physical aspect. When the mental health component of his disability is factored in, I am unable to find that the Claimant was (and is) capable of sedentary work. In May 2015 (just a few months before the Claimant was assessed by Dr. Elmaraghy and Ms. Hill), Dr. Light concluded that the Claimant mental health assessment showed a severe level of impairment in function, with his symptoms interfering in all aspects of his life[57]. Neither the Claimant's physical health nor mental health improved, in any significant way, after that. In March 2016, Dr. Kirsh reported that the Claimant had developed major depression and had difficulty with energy and concentration. Dr. Kirsh did not say that the Claimant was unable to work, but he certainly gave no impression that the Claimant had any capacity in that regard. Again, as I stated previously, Dr. Kirsh concluded that the Claimant's extremely difficult pain syndrome created a complete roadblock in his life and he had not learned to get around it[58].

[45] The Claimant's disability did not improve after that. In September 2017, Dr. Mobilos reported that the Claimant's mental disability had proven as disabling as his physical symptoms[59], and in August 2019 Dr. Mobilos reported that the Claimant has been fully disabled (physical and mental) since 2015[60]. Dr. Mobilos' opinions are deserving of weight, as she has been the Claimant's family physician since 2010 (before his injury), has seen him regularly, and as a family physician she is well positioned to comment on the totality of the Claimant's conditions.

[46] In assessing the Claimant's work capacity, I have considered his age, level of education, language proficiency and past work and life experience. These factors are important because they help me to understand how realistic it is for the Claimant to work[61].

[47] At the time of the MQP of March 2016, the Claimant was only 37 years of age. He thus had many years ahead of him before the standard age of retirement. The Claimant is also

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[57] Page GD2-82
[58] Page GD2-791
[59] Page GD2-66
[60] Page GD9-2
[61] Villani v. Canada (A.G.), 2001 FCA 248

proficient in at least one of Canada's two official languages. Despite these attributes, the Claimant is not well educated (he said he left school before finishing grade 11) and, as I have mentioned previously, he does not have a lengthy or established work history. With his high levels of pain and mental health conditions (affecting concentration, energy, sleep, and motivation), retraining was (and is) unrealistic.

Prolonged disability

[48] In the early months after the Claimant's injury, his prognosis was quite good. For example, in March 2015, the Claimant's surgeon indicated that, with treatment, the CRPS would settle down[62]. With respect to his mental health, Dr. Light reported in May 2015 that the Claimant's prognosis was favourable[63].

[49] By March 2016, the Claimant's prognosis was looking much less optimistic. At that time, Dr. Kirsh reported that, given the Claimant's current state, he would need another two years of psychotherapy. This is significant, particularly since the Claimant had started seeing Dr. Light in May 2015.

[50] The Claimant continued to see Dr. Light after March 2016 (as often as his WSIB coverage permitted) and despite those efforts he did not improve. In May 2017, Dr. Light reported that the Claimant had not reached maximum medical recovery, but was nonetheless being discharged because he had exhausted his approved number of treatment sessions[64]. In September 2017, Dr. Mobilos reported that the Claimant's prognosis was guarded to poor[65].

[51] Taken as a whole, the evidence shows that the Claimant's disability is long continued and of indefinite duration, and was likely so in March 2016.

CONCLUSION

[52] The Claimant has a disability that is severe and prolonged. Although he was diagnosed with CRPS and a mental health condition between January 1, 2015 and May 31, 2015, I cannot

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[62] Page GD2-90
[63] Page GD2-85
[64] Page GD2-293
[65] Page GD2-66

find that his disability became prolonged at that time, as his prognosis was favourable and he was only just starting treatment.

[53] His disability likely became severe *and prolonged* in March 2016, being the date of Dr. Kirsh's report.

[54] For payment purposes, the earliest that a person can be deemed to be disabled is 15 months before the date of application[66]. The Claimant's date of application is September 2017 and so he is deemed to be disabled in June 2016. Payments start four months after the deemed date of disability[67]. Four months after June 2016 is October 2016.

[55] The appeal is allowed.

Shannon Russell
Member, General Division - Income Security

[66] Paragraph 42(2)(b) of the *Canada Pension Plan*
[67] Section 69 of the *Canada Pension Plan*