



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. R. v Minister of Employment and Social Development*, 2020 SST 304

Tribunal File Number: GP-19-1019

BETWEEN:

**J. R.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Raymond Raphael

Claimant represented by: Terry Kirby

Minister represented by: Jennifer Hurley

Teleconference hearing on: December 5, 2019 and January 21, 2020

Date of decision: January 30, 2020

## DECISION

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

## OVERVIEW

[2] The Claimant was 48 years old when he applied for a CPP disability pension in December 2016. He worked as a self-employed window cleaner. He stated that he had been unable to work since June 2015 because of asthma and depression.<sup>1</sup> The Minister denied the application initially and upon reconsideration, and the Claimant appealed to the Social Security Tribunal.

[3] In November 2018, the General Division allowed the appeal. The General Division found that the Claimant had a severe and prolonged disability as of June 2015. The Minister appealed. In June 2019, the Appeal Division allowed the appeal and referred this matter back to the General Division for determination. The Appeal Division found that the General Division had made two erroneous findings concerning the Claimant's acceptance of treatment.

[4] For the purposes of the CPP, a disability is a physical or mental impairment that is severe and prolonged.<sup>2</sup> The Claimant's disability is severe if it causes him to be incapable regularly of pursuing any substantially gainful occupation. His disability is prolonged if it is likely to be long continued and of indefinite duration.

[5] For the Claimant to succeed, he must prove that it is more likely than not that he became disabled on or before the end of his Minimum Qualifying Period (MQP), which is calculated based on his contributions to the CPP. His MQP ended on December 31, 2018.<sup>3</sup>

## ISSUES

1. Did the Claimant's medical conditions result in his being incapable regularly of pursuing any substantially gainful employment by December 31, 2018?

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<sup>1</sup> GD6-11

<sup>2</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>3</sup> Record of Contributions: GD2-83

2. If so, is his disability long continued and of indefinite duration?

## **PRELIMINARY ISSUES**

[6] In order to avoid unnecessary duplication, I used the recording of the evidence from the initial General Division hearing as part of the evidence at this hearing. The Claimant provided further oral evidence at the hearing before me.

## **ANALYSIS**

### **The Claimant's mental health conditions interfered with his ability to work at December 31, 2018**

[7] The Claimant's suffers from longstanding depression and anxiety. He stated that he has been depressed since he was five years old. Although he was "pretty smart" in school, he was often too "scared and nervous" to go. He recalls hiding in the woods while he was in public school. Sometimes he would starve himself and be in bed for several days. His mother took him to see a psychiatrist when he was in grades 9 and 10. His older brother suffers from schizophrenia and lives in a group home. He recalls an incident when his older brother was forcibly taken back to a group home from their house in handcuffs. Both his father and grandmother suffered from severe depression.

[8] He initially worked at several jobs that didn't last for more than a week because of disputes he had with his managers. He then worked for a year holding flags for construction. He also worked for a summer driving a tram. In 2003, he opened his own window cleaning business. He went door to door in malls. The business "took off" and he was cleaning 150 storefronts. His friend N. worked with him in the business. In 2010 he suffered several set backs. He discovered that N. was cheating on him, his father died, and he lost his two biggest customers. He fell apart and went to a walk-in clinic. The doctor called an ambulance to take him to the hospital emergency department. He wasn't admitted. The hospital released him the same day. There are no records of this 2010 emergency hospital visit in the hearing file.

[9] Although he continued to be depressed, he was able to work three days a week. In May 2014, he saw Dr. Pallen, a psychiatrist at the hospital psychiatric in patient ward. The Claimant's mother had taken him to the emergency department because he wasn't eating. The Claimant

reported poor sleep, poor appetite, fatigue, poor energy, and poor concentration. He also reported anxiety and panic attacks. Dr. Pallen diagnosed major depression. He stated that the Claimant also had symptoms of generalized anxiety disorder and panic disorder, as well as some obsessive traits.<sup>4</sup>

[10] The Claimant stated that he closed his window cleaning business in June 2015 because he “couldn’t do it anymore.” At the time of the first hearing in November 2018, he was working two days a month, earning about \$400 per month. By the time of the hearing before me, he was no longer working at all. At the first hearing, the Claimant stated, “depression affects my memory ... I can’t think straight ... I get confused ... it takes away a lot of my energy.” At the hearing before me, he stated, “depression stops me from working ... on some days I am paralyzed ... I have no energy ... I can’t do anything ... I can’t decide what to do ... I just stand there ... I can’t handle any stress ... I can’t work for anyone.”

[11] In the December 2016 CPP medical report, Dr. Lee, the Claimant’s family doctor, diagnosed depression, anxiety, asthma, and low back pain. He stated that because of his depression the Claimant had no interest or ambition to do anything.<sup>5</sup> In July 2017, Dr. Lee reported to Service Canada that the Claimant had difficulty climbing ladders when cleaning windows because of low back pain. In addition, the Claimant had difficulty breathing on exertion because of allergies and asthma. He also had difficulty concentrating and a lack of motivation because of depression.<sup>6</sup>

[12] In a self-employment questionnaire, signed in July 2017, the Claimant stated that he closed his business in June 2016 because of depression, asthma, and lower back pain. He was no longer physically or mentally able to continue running the business.<sup>7</sup>

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<sup>4</sup> GD2-77 to 78

<sup>5</sup> GD2-73 to 74

<sup>6</sup> GD2-63

<sup>7</sup> GD2-58 to 59. At the initial hearing, the Claimant stated the date was an error. He had closed his business in June 2015.

[13] When asked to describe his present depressive symptoms, he stated, “I am really down ... lonely... no energy ...can’t move ... can’t think...can’t eat...in a deep hole ... no interest in things.”

[14] I am satisfied that the Claimant’s long-standing depression and anxiety interfered with his ability to work as of December 2018. Although he also suffered from asthma and low back pain, I am not satisfied that they were significant factors. While the Claimant mentioned them in his written correspondence,<sup>8</sup> he placed little emphasis on them in his oral evidence. Further, there is no medical evidence to establish that these were serious conditions.

**The Claimant has failed to establish a severe disability because he has not taken a proactive approach to his health care**

[15] The Claimant is required to take a proactive approach to his health care, and demonstrate that any treatment refusal is reasonable.<sup>9</sup>

[16] For the reasons that follow, I have determined that the Claimant failed to do so. He has failed to pursue medical attention on a regular basis. When he has sought medical attention, he has unreasonably refused to take medications.

[17] At the initial hearing, the Claimant stated he didn’t want to take medications and he was not under any psychiatric care. At the hearing before me, he stated that he did not want to take anti-depressants because he had once suffered bad side effects when he took a low dose anti-depressant. In a November 2017 letter, he stated he doesn’t take anti-depressants because he believes in natural products.<sup>10</sup> He prefers natural medicine and takes vitamin drops for his depression.

[18] The Claimant acknowledged that he did not follow up with his doctor about alternative anti-depressants. He also acknowledged that he didn’t see any mental health professionals in

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<sup>8</sup> GD1-3 and GD2-10

<sup>9</sup> *Warren v. Canada (A.G.)*, 2008 FCA 377; *Lalonde v. Canada (MHRD)*, 2002 FCA 211; *K.C. V. MESD*, 2019 SST 656

<sup>10</sup> GD2-10

2019. He stated he is always embarrassed to go to doctors. In his notice of appeal, he stated he doesn't go to doctors or hospitals unless he is dying.<sup>11</sup>

[19] The medical evidence confirms the Claimant's failure to follow treatment recommendations:

- In May 2014, Dr. Pallen stated that the Claimant had stopped taking CipraleX (an anti-depressant) after one day because he did not like taking medications.<sup>12</sup>
- In his December 2016 CPP medical report, Dr. Lee stated that the Claimant's prognosis was poor and he was not interested in taking medications.<sup>13</sup>
- In his July 2017 letter to Service Canada, Dr. Lee stated that although the Claimant had a history of low back pain, he was not taking pain medications because he didn't want to take pills. Although Dr. Lee recommended that the Claimant take medications, he did not want to do so. Although Dr. Lee also recommended that the Claimant follow up with a psychiatrist, the Claimant acknowledged at the hearings that he wasn't under psychiatric care.<sup>14</sup>

[20] Mr. Kirby argues that the Claimant's lack of treatment is a symptom of his depression and anxiety. His anxiety prevents him from taking anti-depressants because of his experience with a low dose anti-depressant and his observations of other persons who take anti-depressants.<sup>15</sup> Ms. Hurley submitted that there is no evidence to establish that the Claimant's refusal is a symptom of his mental health conditions.

[21] I find that the Claimant has unreasonably refused to follow treatment recommendations. His refusal is based on his preference for natural medicines rather than prescribed medications. This is a choice that the Claimant has made – not a symptom of his medical conditions. He is obligated under the CPP to follow the reasonable recommendations of his treating physicians, and he has failed to do so.

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<sup>11</sup> GD1-3

<sup>12</sup> GD2-78

<sup>13</sup> GD2-76

<sup>14</sup> GD2-63

<sup>15</sup> The Claimant testified that anti-depressants made other people act like zombies

[22] I must also consider what effect the Claimant's failure to follow treatment recommendations had on his disability status.<sup>16</sup>

[23] Dr. Lee recommended that the Claimant take medications for his conditions and follow up with a psychiatrist. He concluded that the Claimant's prognosis was poor because he was not compliant with the treatment plan.<sup>17</sup> Dr. Pallen made similar recommendations in May 2014.<sup>18</sup> These doctors would not have made these recommendations unless they believed there was a significant chance that they would be helpful. There is no evidence to support that the Claimant would not have benefited from complying with the recommendations. I am satisfied that if the Claimant had been compliant, it would be reasonable to have expected a significant improvement in his depression and anxiety. Similarly, pain medication might well have led to an improvement in his low back pain.

[24] I find that the Claimant has failed to take a proactive approach to his health care. He has refused to follow recommendations that he take anti-depressants and he has failed to pursue psychiatric treatment. He has failed to demonstrate that this compliance is reasonable. Taking medications and regularly pursuing mental health treatment might reasonably be expected to have improved his disability status.

[25] Since I have found that the Claimant has failed to take reasonable steps to manage his medical conditions, it is not necessary for me to analyse his personal circumstances.<sup>19</sup>

[26] Because the Claimant has failed to meet his duty to take a proactive approach to his health care, he has failed to establish that it is more likely than not that he suffers from a severe disability in accordance with the CPP requirements.

[27] Since he has failed to establish a severe disability, I do not need to make a determination on the prolonged criteria.

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<sup>16</sup> *Lalonde v. Canada (Minister of Human Resources Development)*, 2002 FCA 211

<sup>17</sup> GD2-63

<sup>18</sup> GD2-78

<sup>19</sup> *M.M v Minister of Employment and Social Development*, 2019 SST 526 at para 12, citing *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 15.

**CONCLUSION**

[28] The appeal is dismissed.

Raymond Raphael  
Member, General Division - Income Security