



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. G. v Minister of Employment and Social Development*, 2020 SST 327

Tribunal File Number: GP-19-171

BETWEEN:

**M. G.**

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: George Tsakalis

Claimant represented by: Kenneth Brooks

Teleconference hearing on: February 26, 2020

Date of decision: February 28, 2020

## **DECISION**

[1] M. G. is the Claimant in this case. She applied for a Canada Pension Plan (CPP) disability pension in May 2018. The Minister of Employment and Social Development (the Minister) denied her application. She appealed the Minister's decision to the Social Security Tribunal (the Tribunal). I am allowing her appeal. These reasons explain why.

## **OVERVIEW**

[2] The Claimant was born in 1968. She finished high school. She worked on the family farm after high school. She completed an executive administrative assistant program in college. She began working at a municipal parks and recreation department for about 1.5 years. She then worked as a heavy equipment operator for about 8 years. But she began experiencing health problems. She went on sick leave in 2010 because of back pain. While on sick leave, she discovered that she had a brain tumour in August 2010. She had surgery to remove most of her brain tumour. She went off work until 2013. She got a new job as an airport attendant. She had to refuel airplanes and perform custodial duties. Her airport attendant job also had a sedentary component. She performed administrative duties. But she had a set back. Her brain tumour returned. She had radiation treatment in April 2015. She had complications from her brain tumour, which included hypopituitarism and glaucoma. Her back pain also remained an issue. She had back surgery in February 2017. She has not worked since September 2016. The Claimant argues that she cannot work at any type of job because of her medical conditions.

[3] The Minister argues that the medical evidence did not show that the Claimant had a severe disability under the CPP.<sup>1</sup>

## **ISSUES**

[4] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2019?

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<sup>1</sup> See GD6-8

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2019?

## **ANALYSIS**

[6] 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, 2019.

[7] Disability is defined as a physical or mental disability that is severe and prolonged<sup>2</sup>. 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.

### **The Claimant proved that she had a severe disability by December 31, 2019**

[8] 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's not a question of whether a person is unable to perform their regular job, but rather the person's inability to perform any substantially gainful work<sup>3</sup>.

[9] I am satisfied that the evidence shows that the Claimant could not perform any substantially gainful work at the time of her MQP because of her medical conditions.

[10] The Claimant completed a questionnaire in support of her disability application. She stated that she could not work as of September 2016.<sup>4</sup>

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

<sup>3</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>4</sup> See GD2-17

[11] The Claimant's legal representative submitted that the Claimant could not work because of the following medical conditions:

- Chronic low back pain
- Disc herniation
- Grade 1 meningioma
- Hypopituitarism secondary to radiation and surgery
- Asthma
- Glaucoma right eye
- Reflux
- Migraine headaches
- Diplopia
- Leg and foot pain.<sup>5</sup>

[12] The Claimant testified that she had health problems before she went off work in September 2016. She performed office work as an airport attendant, in addition to physical work. Her pre-existing back pain kept getting worse. She eventually had back surgery in February 2017. Her employer dismissed her in June 2017 and gave her a severance package. She has had no income since.

[13] The Claimant testified that she began suffering from severe back pain in about 2010. She went on sick leave and then found out she had a brain tumour. She worked as a heavy equipment operator at that time. She could not return to this job. When she returned to work in January 2013, she was placed at an airport. She had to refuel planes. Using the fuel hose made her back pain worse. She experienced shooting pains down her legs. She performed administrative work at the airport. She answered telephones and processed bill payments. But performing sedentary work posed a challenge. She could not sit for long periods.

[14] She had back surgery in February 2017, after she went off work in September 2016. The surgery helped her leg pain somewhat. But it did not relieve her back pain. Her back pain affected her ability to drive. She could only sit in a car for about 10 minutes without pain.

[15] The Claimant also testified about the impact of brain tumour. She found out about the tumour in August 2010. She underwent surgery that month remove most of her tumour. It took her more than two years to return to work. However, a MRI in 2014 showed that her tumour was

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<sup>5</sup> See GD4-7

growing. She had to undergo radiation about 27 radiation treatments in April 2015. Her tumour is not growing any longer. But she suffered complications from radiation therapy. She has lost hair. She experiences headaches. She suffers from double vision and glaucoma in her right eye. She has an adrenal insufficiency and problems with her pituitary gland and thyroid because of the radiation treatment. Her adrenal insufficiency and hypopituitarism always leave her tired. She took 11 different medications at the time of her MQP.

[16] The Claimant's medical conditions affected her memory and mood. She was quick to get angry and upset. She suffers from depression and anxiety. She received counselling after her brother died in 2011. She gets daily headaches. She has to wear glasses because of her double vision. Looking at computer screens is hard for her. She can only sit and read in front of a computer for 30 minutes. She thought of taking online courses, but she has difficulty concentrating. She experiences chest pain. She has asthma. She also has migraines that she attributes to her brain tumour.

[17] The Claimant testified that her medical conditions have affected her activities of daily living. She has difficulty performing housekeeping tasks. She has a hard time lifting a vacuum cleaner. She can only perform her housekeeping tasks for 30 minutes before having to stop. She can only stand for about 30 minutes because of her back pain. She has difficulty doing the dishes and needs her husband's help. She does not lift heavy items when she grocery shops. She cannot walk far. She is not able to get in and out of a bathtub. She uses a handrail to get out of bed. Her husband helps her get dressed. She can only garden for about 25 minutes.

[18] The Claimant testified that she does not believe that she can work at any job. She does not believe that she would be a reliable employee. Her pain levels are different everyday. She is in constant pain.

***The medical evidence supports a finding that the Claimant had a severe disability by December 31, 2019***

[19] I find that the medical evidence showed that the Claimant could not work at any job at the time of the MQP.

[20] The medical evidence showed that the Claimant had problems with fatigue and short-term memory after her April 2015 radiation therapy. She was diagnosed with post-radiation hypopituitarism.<sup>6</sup> She also suffered from headaches.<sup>7</sup> A MRI showed that the tumour abutted her pituitary gland. She suffered from migraines and glaucoma.<sup>8</sup> Her right optic nerve was impinged by her brain tumour and she experienced blurred vision.<sup>9</sup> She experienced insomnia.<sup>10</sup> She had depression and asthma. She also experienced chest pain prior to her MQP.<sup>11</sup> She has tinnitus.<sup>12</sup> She experienced shortness of breath with walking.<sup>13</sup> She got tired performing simple tasks.<sup>14</sup>

[21] The medical records also show that the Claimant suffered from severe back pain that affected her ability to work. A MRI of her lumbar spine taken on August 15, 2016 had positive findings. She saw an orthopaedic surgeon on December 7, 2016. The orthopaedic surgeon recommended back surgery.<sup>15</sup> She had sciatica because of a disc herniation. She received an epidural steroid injection from an anesthesiologist.<sup>16</sup> She had back surgery on February 2, 2017.<sup>17</sup> But her back pain did not go away. She continued to experience back and leg pain after her surgery.<sup>18</sup>

[22] The Claimant saw an occupational therapist in 2016 to assist her with return to work efforts. The Claimant went off work after undergoing radiation treatment in April 2015. The occupational therapist completed a report on March 11, 2016 that identified barriers for a successful return to work. These barriers included low back pain, headaches, and fatigue. The report also noted word finding difficulty.<sup>19</sup>

[23] The Claimant's family physician completed a Medical Report for the Minister on April 18, 2018. She provided an opinion that the Claimant could not work because of constant and

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<sup>6</sup> See GD4-72-74

<sup>7</sup> See GD2-63

<sup>8</sup> See GD2-70-73

<sup>9</sup> See GD4-80-81

<sup>10</sup> See GD2-98-100

<sup>11</sup> See GD4-67-68

<sup>12</sup> See GD4-36

<sup>13</sup> See GD5-16

<sup>14</sup> See GD5-63-66

<sup>15</sup> See GD2-79

<sup>16</sup> See GD2-80-82

<sup>17</sup> See GD2-90

<sup>18</sup> See GD2-93

<sup>19</sup> See GD2-58-62

chronic lower back pain. She stated that the Claimant had restrictions with sitting, standing, walking, lifting, and bending.<sup>20</sup>

[24] The Claimant's family physician stated in an April 3, 2019 clinical note that the Claimant experienced shortness of breath on exertion. The Claimant's mind would shut down when she tried to do things.<sup>21</sup>

***The Claimant had no work capacity by December 31, 2019***

[25] I must assess the severe part of the test in a real world context<sup>22</sup>. 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.

[26] I disagree with the Minister's submission that the Claimant could perform some time of work at the time of her MQP.<sup>23</sup>

[27] I find that the Claimant could not work in a real world context prior to her MQP. The Claimant was 51 years old at the time of her MQP. She has some post-secondary education. She understand English. But I do not believe that she could work at any substantially gainful occupation by December 31, 2019. Her chronic back pain prevented her from performing any type of physical work. While her complications from radiation therapy led to severe fatigue that prevented her from performing any type of sedentary work.

[28] I do not believe that the Claimant could perform any type of physical work at the time of her MQP because of her restrictions with sitting, standing, and bending. I do not believe that she could perform any type of sedentary work because of severe fatigue and difficulty concentrating resulting from hypopituitarism. I do not believe that she could upgrade her education because of severe fatigue and difficulty concentrating. She also cannot sit for a long enough period to perform coursework competitively. She actually tried an online writing course in 2016. She eventually stopped taking it for financial reasons. But she struggled with completing it because

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<sup>20</sup> See GD2-50-53

<sup>21</sup> See GD5-21

<sup>22</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>23</sup> See GD6-7

of concentration difficulties. I do not believe that the Claimant can work competitively in front of a computer because of vision problems that arose from her brain tumour.

[29] I do not believe that the Claimant could have handled a driving job at the time of her MQP. She could only sit in a car for about 10 minutes without pain. I accept that her ability to perform her activities of daily living were impaired at the time of her MQP, and it took her longer to complete her housekeeping tasks. I accept her evidence that she can only sustain activities for about 30 minutes before having to stop. I am satisfied that the Claimant cannot sustain activities for a long enough period to be employable in a real world context.

[30] The Minister submitted that the Claimant had work capacity. She advised the Minister in a September 2018 telephone conversation that she wanted to pursue either clerical or receptionist work.<sup>24</sup> But I attach little weight to this submission. I agree with the Claimant's legal representative that the Claimant engaged in wishful thinking when she had this telephone conversation. Her comments were not a realistic reflection of her ability to work.

[31] 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 condition<sup>25</sup>. The Minister argued that the Claimant had work capacity because she performed physical work and she never "tried alternate work more suitable to her limitations."<sup>26</sup> But I find that the Claimant did not have capacity to perform sedentary work at the time of her MQP. Her pain levels differed each day and she suffered from severe fatigue. I am satisfied that she would not have been able to work on a regular and consistent basis at the time of her MQP.

[32] I am also satisfied that the Claimant has not had work capacity since she last worked in September 2016. The Claimant confirmed that she earned income in 2017. But that income was due to a severance package that she received from her employer. I am satisfied that the Claimant has not and could not engage in any type of substantially gainful occupation since September 2016.

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<sup>24</sup> See GD6-7

<sup>25</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

<sup>26</sup> See GD6-8



[33] I also found the Claimant to be a credible witness. I do not believe that she exaggerated her symptoms. The medical evidence confirmed her testimony that she had severe functional limitations at the time of her MQP. She had a good work ethic. She made several return to work efforts in the past after going on sick leave. But I believe that her chronic low back pain and her hypopituitarism made work an unrealistic option after September 2016.

***The Claimant pursued and complied with reasonable treatment options***

[34] I find that the Claimant did all that she could to seek and follow all reasonable recommended treatment options. The Claimant has been followed by her family physician. She had back surgery with an orthopaedic surgeon. She saw oncologists because of her brain tumour complications. There is a reference to the Claimant being reluctant to try medications to relieve her fatigue.<sup>27</sup> But she explained at her hearing that she was reluctant to try these medications because she was already taking multiple medications that left her with side effects. The Claimant tried a pain injection that did not help her. She tried physiotherapy. That did not help her. The Minister noted that the orthopaedic surgeon suggested that the Claimant try a pain clinic, but she never went to one.<sup>28</sup> I do not place much weight on this submission. The Claimant tried many treatments that she would have received at a pain clinic, including pain medications, injections, and physiotherapy. But these treatments had never worked in the past. She is still under the care of a specialist for her hypopituitarism. I also find that she has been proactive in pursuing treatment. She is trying to obtain a specialist appointment to explore the possibility that she has an acquired brain injury. She also had a sleep study done, which did not show sleep apnea. She continues to take her medications.

**Prolonged disability**

[35] I find that the Claimant has a disability that is likely to be long continued and of indefinite duration.

[36] The Claimant continues to suffer from chronic pain and hypopituitarism, despite surgery and treatment.

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<sup>27</sup> See GD2-69

<sup>28</sup> See GD6-6

[37] Her family physician provided her with a poor prognosis in her Medical Report to the Minister.<sup>29</sup>

## **CONCLUSION**

[38] The Claimant had a severe and prolonged disability in September 2016, when she last worked. However, to calculate the date of payment of the pension, a person cannot be deemed disabled more than fifteen months before the Minister received the application for the pension<sup>30</sup>. The application was received in May 2018 so the deemed date of disability is February 2017. Payments start four months after the deemed date of disability, as of June 2017<sup>31</sup>.

[39] The appeal is allowed.

George Tsakalis  
Member, General Division - Income Security

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<sup>29</sup> See GD2-53

<sup>30</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>31</sup> Section 69 *Canada Pension Plan*