



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. K. v Minister of Employment and Social Development*, 2020 SST 610

Tribunal File Number: GP-18-2883

BETWEEN:

S. K.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Jackie Laidlaw

Claimant represented by: Tre'Vien Teer

Teleconference hearing on: March 13, 2020

Date of decision: March 25, 2020

DECISION

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

OVERVIEW

[2] The Claimant is a 43-year old woman who worked in sales throughout her life. She stopped working December 22, 2016 due to depression, anxiety and migraines. At the hearing, she stated that the anxiety is not the issue preventing her from working but her depression. She is currently on long-term disability (LTD) benefits from work. The Minister received the Claimant's application for the disability pension on December 28, 2017. 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's MQP to be December 31, 2019

ISSUE(S)

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

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

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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

¹ Paragraph 42(2)(a) *Canada Pension Plan*

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

There is no objective evidence indicating a severe disability

[7] The Claimant testified to being unable to function, feeling withdrawn and having only minimal communication with friends. She did provide some medical evidence; however, the material evidence is not enough to show a severe disability that would prevent her regularly from pursuing any substantially gainful occupation.

[8] I agree with the Minister's submissions that there is no additional clinical evidence to show a severe mental status, treatment, or regular active care by a psychiatrist. The Minister cannot conclude the Claimant is disabled by a mental health condition, nor can I.

[9] A claimant must provide some objective medical evidence of his or her disability.²

[10] Objective evidence is noted in *MHRD v. Angheloni*, 2003 FCA 140 as, "might be opposed to the subjective evidence given by the claimant". *Angheloni* goes on to determine that, "[H]is or her suffering, however, is not an element on which the test of "disability" rests".

[11] The Claimant has testified to a debilitating depression that has caused her to stop working December 22, 2016. At the hearing, she refused to state what caused the depression but allowed that it was personal issues. She stated that now she is trying to mentally cope with things. In her questionnaire of December 28, 2017, she notes that it began three weeks before leaving work. Her family physician, Dr. Greenwood, noted in his medical report of February 12, 2018 that she had a marital breakdown in November 2015 that caused the depression. She stated that the incident that made her leave work had not resolved.

² *Warren v. Canada (A.G.)*, 2008 FCA 377

[12] She saw a psychologist Suzanne Dumais from February 1, 2017 to July 1, 2017. She has never seen her since. She stated that she moved around that time and stopped seeing Ms. Dumais. Suzanne Dumais' records or notes have not been provided as evidence.

[13] She did not seek any treatment for another year and a half. In the meantime, she received "talk" therapy from Dr. Greenwood, her family physician. In her questionnaire of December 2017, she notes that while she is getting help with Dr. Greenwood, he would like her to see a therapist. She was not seeing a therapist at the time, and did not seek out another therapist for almost a year. She also did not return to Suzanne Dumais.

[14] The Claimant overdosed in September 2018 by taking the pain medications she was prescribed for neck pain. At the time, she was also taking Ativan for her anxiety. She stated she overdosed due to depression and just wanted to sleep. There is no medical evidence provided which explains the reason for the overdose, its severity or aftermath. She did not stay in the hospital overnight.

[15] It was in September 2018, almost two years after leaving work, that she finally saw clinical psychologist Shelagh Jamieson. Given the timing, it is reasonable that she was sent to Dr. Jamieson because of the overdose. Dr. Jamieson's letter of June 13, 2019³ indicates she has seen the Claimant "a number of times since September 2018". Her accompanying notes show she only saw the Claimant four times in those 10 months: September 2018, February 2019, May 2019 and June 2019. I do not consider four appointments in 10 months to be "a number of times". Dr. Jamieson indicated that she had severe major depressive disorder and was advised to seek psychological treatment on a more continuous and intensive basis to address the depression. The doctor's diagnosis was mainly based upon tests that rely upon the statements of the patient, the Claimant.

[16] In July 2019, Dr. Greenwood's notes indicate she is seeing a psychologist monthly, presumably, he means Dr. Jamieson, as she was not seeing any other psychologists at the time. Dr. Jamieson has only treated the Claimant six times since 2018, and not on monthly basis. Dr. Jamieson shows one more session in October 31, 2019 for a "low mood". The Claimant stated at

³ GD 6 3 psychological consultation June 13, 2019

the hearing in March 2020 that after October 2019 she saw Dr. Jamieson one more time in November or December 2019. She has not seen her since.

[17] There is nothing to indicate she has monthly appointments with Dr. Jamieson. The Claimant testified that she tries to see her every two months but does not have a scheduled appointment. She stated it is due to her husbands work schedule and finances. This either shows a condition that does not require regular treatment, or that she is not compliant with Dr. Jamieson's recommendations of continuous and intensive treatment.

[18] Dr. Greenwood noted in September 2019⁴ that her severe major depressive disorder is resistant to treatment of a clinical psychologist. Six appointments over one and a half years is not aggressive treatment. Nor is there objective evidence from Dr. Jamieson to show she has been resistant to treatment. Dr. Greenwood's clinical notes⁵ in March, April, July and November 2019 indicate situational depression-related incidents of a death in the family and her husband's trust issues.

[19] Despite Dr. Jamieson's opinion that she has severe major depressive disorder, and Dr. Greenwood's guarded prognosis and his recommendation she receive more therapy, the Claimant has not been receiving any crisis management, regular psychiatric intervention or intensive psychological care .

[20] To date the Claimant has not received any continuous and intensive treatment with Dr. Jamieson, or anyone else.

[21] She stated that she told Dr. Greenwood a year ago she did not need the Ativan anymore for her anxiety. There is only one prescription for lorazepam 1 mg (which can be for anxiety or sleep) in November 2019, prescribed by Dr. Greenwood before retiring in December 2019, and it was only for 30 pills. She has not received any further prescriptions.

[22] The Claimant testified she is not taking any medications for her depression.

⁴ GD 62 letter Dr. Greenwood September 29, 2019

⁵ GD 6-4

[23] The lack of ongoing regular treatment, psychiatric intervention or anti-depressants does not indicate a severe mental health condition.

The Claimant has been non-compliant with treatment and may have prolonged her ability to return to work

[24] The Claimant has not sought continuous and intensive psychological treatment as advised by Dr. Jamieson and therefore may have prolonged a resolution of her condition and her ability to return to work.

[25] I must assess the severe part of the test in a real world context⁶. 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] The Claimant is a young woman with over 20 years before retirement age. She would not be prevented from finding suitable employment, or retraining because of her age, language skills (fluent in English) and education (completed high school Grade 12). She has had jobs in sales for many years at various companies. She also ran a home cleaning company with her husband for two years from 2012 to 2014. They closed the company because, as the Claimant testified, it was too much work juggling her three children, running the household and having the job. She has a variety of transferable skills.

[27] Until Dr. Jamieson's opinion in 2018, there was no evidence provided to indicate why she was unable to work due to her mental health. There was no medical evidence provided regarding her treatments from Suzanne Dumais, her progress with treatment or of her health condition from the time she left work. Therefore, there is no medical evidence indicating her capacity to work before, during or after treatment with the Ms. Dumais. Dr. Greenwood's

⁶ *Villani v. Canada (A.G.)*, 2001 FCA 248

medical report of February 12, 2018 does not give details on her treatment at the time, or her capacity to work.

[28] The only mention of her capacity to work is by Dr. Jamieson, who wrote in June 2019 that she is not advised to return to work for the foreseeable future and advised to seek psychological treatment on a more continuous and intensive basis in order to address the depression and anxiety. Dr. Jamieson's opinion implies that she may be able to return to work once she gets the treatment.

[29] The "real world" context also means the Tribunal must consider whether the Claimant's refusal to undergo treatment was reasonable and what impact that refusal might have on the claimant's disability status.⁷

[30] The Claimant stated she only sees Dr. Jamieson every few months when she can get an appointment and does not see her more due to her husband's work schedule and finances. She stated she does pay for Dr. Jamieson through her husband's benefits. I accept the benefits are usually minimal. Finances are a real concern for many people; however, there are treatments available through community centres and other treatments funded by provincial health care. There is no indication she has asked Dr. Jamieson or Dr. Greenwood to recommend treatment options that would suit her budget. As for her husband's work schedule, the Claimant has failed to provide any evidence as to how his irregular work schedule would affect her ability to go to a regularly scheduled appointment. Her children are 19, 16 and 14 and she stated they take care of themselves. She also stated also that she does not see Dr. Jamieson regularly because the doctor is booked. This is not an acceptable excuse. Dr. Jamieson recommended regular and intensive treatments, so it is quite reasonable the doctor would make regular bookings for the Claimant.

[31] In a real world context, her non-compliance with treatment is unreasonable. She may have been able to better her condition and potentially return to work if she had followed Dr. Jamieson's recommendations and scheduled regular, intensive treatment.

⁷ *Lalonde v. Canada (Minister of Human Resources Development)*, 2002 FCA 211

[32] I accept that the Claimant is experiencing depression brought on by family issues as she stated. However, she is not on any medication for depression at this time, nor is she receiving any regular or intensive psychological treatments.

[33] I find the Claimant has failed to prove a severe condition that renders her incapable regularly of pursuing any substantially gainful occupation.

CONCLUSION

[34] The appeal is dismissed.

Jackie Laidlaw
Member, General Division - Income Security