



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. M. v Minister of Employment and Social Development*, 2020 SST 547

Tribunal File Number: GP-19-1985

BETWEEN:

**L. M.**

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: Connie Dyck

Teleconference hearing on: April 15, 2020

Date of decision: May 12, 2020

## **DECISION**

[1] L. M. is the Claimant. I have decided that she is entitled to a *Canada Pension Plan* (CPP) disability pension. Payments start September 2017. Following are the reasons why I made this decision.

### **Overview**

[2] The Claimant was 40 years old when she stopped working as an educational assistant. She said that she is unable to return to work because of her limited capacity to stand, walk and use her hands. She has numerous conditions including Type 1 diabetes, hand and joint swelling and pain, leg pain, Lemierre Syndrome and anxiety/depression. She applied for a CPP disability pension in August 2018. The Minister denied her application. The Claimant appealed the decision to the Social Security Tribunal. I am the Tribunal member who heard her appeal.

### **Issue in this appeal**

[3] A person who applies for a disability pension has to meet the requirements. The first requirement is regarding “minimum qualifying period”<sup>1</sup>. The Claimant meets this first requirement. Her minimum qualifying period is December 31, 2017.

[4] The second requirement is that the Claimant must have a disability that is “severe and prolonged”<sup>2</sup> on or before the minimum qualifying period. This is what I must decide.

### **What does “severe and prolonged” mean?**

[5] For most people “severe” means something that is “really bad” or “really significant”. Similarly, most people think of prolonged as something that takes a long

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<sup>1</sup> It is found at Section 44(1)(b) of the *Canada Pension Plan* (CPP).

<sup>2</sup> This requirement is found at Section 42(2)(a) of the CPP.

time. But, the words “severe” and “prolonged” have special meanings in this area of law.

[6] Severely disabled is not about the nature of a disability. Severely disabled is about whether the disability impacts a person’s capacity to work. If a disability is so severe that it prevents a person regularly from working at a job, then they are severely disabled. It is important to note that this does not mean a former job or a job with a comparable wage. This means any job that is substantially gainful, even if the pay is lower than previous jobs.

[7] 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 Minister’s Argument**

[8] The Minister acknowledges the Claimant has limitations as a result of her medical condition. However, the Minister believes the evidence does not show these conditions are severe. This means that the Claimant would have capacity to work. That is why her application was refused.

[9] The Tribunal’s file indicates that the Claimant has numerous conditions. She has suffered with Type 1 Diabetes Mellitus for more than 30 years. She has also has a significant mental illness since she was a teenager.<sup>3</sup> Dr. Steiger began treating the Claimant in July 2010. She said that controlling the Claimant’s blood sugars has been exceedingly challenging. It was Dr. Steiger’s opinion that this likely contributed to the Claimant’s other medical conditions. In 2014, the Claimant had a life threatening condition, which required emergency neck surgery. She was diagnosed with Lemierre’s

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<sup>3</sup> The family doctor provided a history of the Claimant’s medical conditions at GD 2-41

condition. Because of this traumatic event, the Claimant developed Post Traumatic Stress Disorder and underwent a psychiatric admission to the hospital in 2016. Dr. Steiger noted that the Claimant also suffers from chronic pain and stiffness in her joints and muscles. She was assessed by a rheumatologist but there was no clear diagnosis. She also has migraines and difficulty walking.

[10] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment<sup>4</sup>. However, 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.<sup>5</sup> If the Claimant is able to regularly do some kind of work that is substantially gainful<sup>6</sup>, then she is not entitled to a disability pension.

[11] Although the Claimant has numerous health issues, she said she is unable to work primarily because of the swelling and pain in her hands, leg cramps and pain, which cause limited capacity to walk and stand. I find that the medical evidence supports that these two conditions would render the Claimant disabled and unable to work in any capacity.

**i) Leg cramps and nerve pain**

[12] The medical evidence shows a steady decline in the Claimant's capacity to walk and stand. In August 2015, she was able to climb two flights of stairs without stopping and she walked about 45 minutes a day.<sup>7</sup> By April 2016, she could only walk one block on flat ground and climb 4-5 steps.<sup>8</sup> In February 2017, the Claimant had calf burning and cramping just below her knee. She was only able to walk across the street before

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<sup>4</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

<sup>5</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>6</sup> This is explained in a Federal Court of Appeal decision called *Klabouch v Canada (MSD)*, 2008 FCA 33

<sup>7</sup> This information is at GD 2-213

<sup>8</sup> This is at GD 2-234

developing severe calf symptoms.<sup>9</sup> At the time of her MQP (December 2017), she was also experiencing tightening and swelling of both of her calves, which made walking more difficult. She also had pain on the left side up the back of her calf. Dr. Steiger said that since 2016, the Claimant had “marked impairment in walking at least 90% of the time as complication of diabetes causing nerve pains with sharp pains/cramping of calf muscles with walking”.<sup>10</sup> She said that the Claimant took an “inordinate amount of time” to walk. She expected this situation to be permanent.

[13] The Claimant was seen by Dr. Edwards at the Diabetes Centre in January 2019.<sup>11</sup> He said that the Claimant had leg pains which were likely neuropathic in nature. The Claimant had pain in her lower legs. Dr. Edwards said the Claimant may have small-fibre painful neuropathy. This was quite commonly associated with poor glycemic control. The Claimant’s capacity to walk and stand has not increased since she stopped working. At the hearing, she told me she needs to use a cane to help her walk.

[14] I find the evidence supports the Claimant’s testimony of her inability to walk or stand for more than a few minutes. This would prevent her for working in a job that required frequent walking or standing. I considered whether she would have capacity for a sedentary type job that did not require standing or walking for more than a few minutes. Although her leg cramps and nerve pain would not prevent her from sedentary work, I find that the swelling of her joints in her hands and her chronic pain would. When the Claimant’s leg cramp and nerve pain conditions are considered in conjunction with the swelling and pain on the joints in her hands, I find that she is disabled.

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<sup>9</sup> This is at GD 2-99

<sup>10</sup> Dr. Steiger’s information is at GD 2-388

<sup>11</sup> The report is at GD 2-281

**ii) Hand and joint swelling and chronic pain**

[15] The medical evidence also supports that the Claimant has had a longstanding issue with joint and hand swelling and pain.

[16] The Claimant testified that when she was last working in June 2016, her hands were swollen and painful. She could not write for more than 5 minutes. Her employer (the principal) told her that she needed to take time off work because of her health. She was aware of the Claimant's limitations with writing and the additional time it would take her to write. In May 2017, the Claimant continued to have pain and swelling in her finger joints.<sup>12</sup> In December 2017, she had morning stiffness and swelling in her hands. This remained the situation one year later in December 2018<sup>13</sup> and in September 2019. Her condition has continued to worsen. The Claimant testified that presently after using her hands for 3-5 minutes, they start to hurt. She needs to stop for about 15 minutes and run hot water over them. She is unable to hold a cup, open a bottle or make a fist.

[17] Although the objective evidence has minimal findings, there is no evidence from the caregivers that the Claimant is exaggerating her symptoms. In January 2019, she was assessed by Dr. Brown (plastic surgeon).<sup>14</sup> Although this is well after the Claimant's MQP (December 2017), the Claimant's symptoms have remained consistent although their intensity has continued to increase. It was Dr. Brown's impression that most likely the Claimant's stiffness and some of the altered sensation she was suffering is secondary to her diabetes despite not seeing any obvious changes on the nerve conduction studies. Dr. Brown said with regard to the pain and tenderness, he did not have much to offer the Claimant. He suspected that this most likely was associated with her diabetes.

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<sup>12</sup> The clinic notes are at GD 2-104

<sup>13</sup> The clinic note is at GD 2-122

<sup>14</sup> Dr. Brown's report is at GD 2-334

[18] The Claimant testified that Dr. Brown told her she has a thickening of the skin and her hands would not improve. She said she tried physiotherapy and a small stress ball, but her function did not improve. She is unable to use anti-inflammatories because of her kidneys.

[19] Even if the Claimant's leg, calf and foot pain allowed her to work in a sedentary job, the swelling and pain in her hands would not. She is unable to write or type for more than a few minutes. She is unable to grasp a phone or other items. I am hard-pressed to think of any occupation in a real world setting for which the Claimant has capacity.

### **Real world context**

[20] I must assess the severe part of the test in a real world context<sup>15</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.

[21] Although the Claimant was only 42 years old at the time of her MQP (December 2017), she would not be a candidate to retrain. She is unable to write or type and has limited use of her hands. She has some transferable skills, but they would require the Claimant to have capacity to walk, stand and write or type or use her hands. She is not a reliable employee. Her last employer asked her to stop working because of her limitations with walking, standing and using her hands.

[22] To her credit, she did attempt to work at home taking care of two school aged foster children. Unfortunately, both her physical and mental condition prevented her from doing this for more than a few months.

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<sup>15</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

[23] Despite advantages in age, education and work experience, her medical condition would not allow her to be a reliable employee. She would not be a predictable employee for a real world employer. The Claimant testified that her hours were frequently reduced because of economic reasons, but even with reduced hours, she still required time off from work because of her pain. I find the Claimant proved she experienced a severe disability as defined in the CPP when assessed in a real world context.

### **The Claimant's disability is prolonged**

[24] A disability is prolonged if it goes on for a long period of time and looks like it will continue indefinitely, or will result in the person dying.<sup>16</sup>

[25] I do not find any evidence that would reasonably lead me to assume that the Claimant's condition will be resolving in the foreseeable future. The Claimant continues to suffer from chronic pain, leg and hand pain and swelling. Her condition has not improved enough to allow her to return to gainful employment. There is no expectation that her condition will improve and no further treatment options planned.

[26] It is the opinion of her family doctor, who has treated her for 10 years that the Claimant suffers from multiple medical conditions that impair her ability to work. It is her opinion that the Claimant is a disabled person.<sup>17</sup>

[27] The Claimant has done what her doctors told her to do, but she has not improved. Dr. Brown said he had nothing to offer the Claimant to improve the function and pain in her hands. There is no expected improvement in the function of her hands or her capacity to walk and stand. This indicates to me that her condition will continue indefinitely. For this reason, I conclude that her disability is prolonged, as well as severe.

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<sup>16</sup> This requirement is found at Section 54(2)(a)(ii) of the CPP

<sup>17</sup> The family doctor's report is at GD 2-42



## CONCLUSION

[28] The Claimant had a severe and prolonged disability in June 2016, when she last had capacity to work. 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>18</sup>. The application was received in August 2018 so the deemed date of disability is May 2017. Payments start four months after the deemed date of disability, as of September 2017<sup>19</sup>.

[29] The appeal is allowed.

Connie Dyck  
Member, General Division - Income Security

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<sup>18</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>19</sup> Section 69 *Canada Pension Plan*