



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. T. v Minister of Employment and Social Development*, 2020 SST 544

Tribunal File Number: GP-19-400

BETWEEN:

T. T.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: George Tsakalis

Claimant represented by: Robert Tyre

Date of decision: May 15, 2020

DECISION

[1] T. T. is the Claimant in this case. She applied for a Canada Pension Plan (CPP) disability pension in February 2018. The Minister of Employment and Social Development (the Minister) denied her application. The Claimant appealed the Minister's decision to the Social Security Tribunal (the Tribunal). I am allowing her appeal.

[2] These reasons explain why.

OVERVIEW

[3] The Claimant was born in 1986. She finished high school. She has one year of post-secondary education. But she did not complete her program. She worked in retail from 2005 to 2010. She worked at floral shop, grocery store, and a lawn and garden nursery. She has not worked regularly since May 2010. The Claimant alleges that she cannot work at any job because of her medical problems. She suffers from Crohn's disease, irritable bowel syndrome (IBS), depression, and anxiety.

PRELIMINARY MATTERS

[4] The Claimant requested a hearing by written questions and answers or an on the record hearing. She made this request because it would be the best way to manage her anxiety. I have decided to make a decision on the record based on information submitted to the Tribunal. After reading the file, I found that there is sufficient evidence to show that the Claimant had a disability under the CPP.

ISSUES

[5] 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, 2011?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2011?

ANALYSIS

[7] 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, 2011.

[8] 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 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, 2011.

[9] 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 work².

[10] 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 condition.

[11] The Claimant submitted that she stopped working in 2010. She had been diagnosed with Crohn's disease in 2008, which led to surgery. She had struggled with anxiety since childhood and had been left with panic attacks. She did not complete her post-secondary education because of anxiety.

[12] The Claimant worked as a store clerk from March to August 2008. She left that job because of worsening Crohn's disease. She had severe abdominal pain and needed to be close to

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

² *Klabouch v. Canada (A.G.)*, 2008 FCA 33

a washroom. Her anxiety and depression worsened. She missed many days of work. She had panic attacks. She felt afraid in social situations. She tried to work again as a greeter at a large retail store from November 2008 to February 2009. But she had to leave this job because of her physical and mental health condition. She then tried working as a cashier at a garden nursery that her family operated. Her family accommodated her. She was allowed to work when she could and on light duties. However, she had to leave this job in May 2010 because of her medical problems.

[13] The Claimant signed up to volunteer at an animal shelter in 2010. But she did not end up volunteering because of anxiety. She volunteered to become a scout leader in 2015. She led a few meetings but had to stop because of IBS.

[14] She tried to return to work in 2016. She was offered a store clerk position. She was to start this job in two weeks. But she experienced anxiety. Her gastrointestinal symptoms worsened. She quit this job before she started.

[15] The Claimant tried working as a cashier in 2017. She felt anxious before starting this job. She was tearful and had panic attacks. She started her shift and had initial training. She left after 30 minutes after having a panic attack.

[16] The Claimant submitted that she has a reduced ability to handle unfamiliar situations. Her anxiety can be aggravated by tasks with deadlines, time pressures, and high productivity expectations. She continues to be most comfortable in her home trying to manage her medical conditions, which includes getting enough sleep and following an appropriate diet for IBS and Crohn's disease.

[17] The Claimant collected disability assistance from a provincial government from October 2011 to July 2013. Her eligibility for this program ended when her family income increased.

[18] The Claimant lived in a residential mental health group home from August 2010 to June 2011 and in early 2013. Her physical and mental health problems never went away. She has managed her mental health problems with the assistance of her family doctor since about 2016. But her physical and mental health never improved to the point where she could resume regular

work. She remains nervous in unfamiliar situations, driving in busy areas, being alone, and interacting with people she does not know.³

The file documents show that the Claimant had a severe disability by December 31, 2011.

[19] A Record of Employment showed that the Claimant took a leave of absence from a job in 2009.⁴

[20] The Claimant's gastroenterologist completed a report for the provincial government in February 2011, discussing her employment. The gastroenterologist stated that the Claimant suffered from Crohn's disease, depression, and anxiety attacks. He placed no physical restrictions on the Claimant, but her chronic abdominal pain impacted her productivity.⁵

[21] The medical records show that the Claimant had at least 10 overnight hospital admissions from 2009 to 2011 because of her physical and mental health difficulties. Some of her hospital stays were for more than one week.

[22] The Claimant was diagnosed with Crohn's disease in 2009. She had part of her intestines and colon removed in March 2010.⁶

[23] She took numerous medications to deal with Crohn's disease before her MQP. These medications included Morphine⁷, Prednisone⁸, Dilaudid⁹, Graval¹⁰, Gabapentin¹¹, and Humira¹².

[24] The Claimant suffered from abdominal pain because of Crohn's disease before her MQP.¹³ She had a small bowel obstruction and constipation.¹⁴ She experienced nausea.¹⁵ She had numerous colonoscopies.¹⁶ She also experienced frequent bowel movements at times.¹⁷

³ The Claimant's submissions can be found at GD2-21, GD4-1-2 and GD7-1

⁴ See GD7-5

⁵ See GD5-4

⁶ See GD4-13

⁷ See GD4-686

⁸ See GD7-163

⁹ See GD7-8

¹⁰ See GD7-8

¹¹ See GD4-13

¹² See GD4-13

¹³ See GD7-206

¹⁴ See GD7-60 and 65-66

[25] The medical records also showed severe mental health difficulties before her MQP. The Claimant struggled with anxiety and dependant behaviour since her childhood.¹⁸ She struggled in school. She dropped out in Grade 11, but returned to finish high school. She quit her applied business technology program two weeks short of graduating because she thought a teacher belittled her.¹⁹

[26] The Claimant's psychiatrist completed several medical certificates for involuntary admissions to a hospital prior to her MQP.²⁰ She had a possible suicide attempt where she overdosed on Clonazepam.²¹ She also took Lithium, Effexor, and Trazodone to deal with her mental health condition.²²

[27] The medical records show that the Claimant had a history of overusing medications.²³ The Claimant's psychiatrist noted that she was a danger to herself and she needed to go to the hospital for psychiatric evaluation and treatments.²⁴ She had difficulty sleeping.²⁵ Her psychiatrist said that her depression was chronic and treatment resistant.²⁶ The Claimant had a severe mixed personality disorder.²⁷ She also had an opioid dependency.²⁸ She was suicidal on several occasions.²⁹ She was also noted to have anxiety seeking drug behaviour.³⁰

[28] The Claimant's psychiatrist believed that the Claimant's chronic pain arising from Crohn's disease and IBS complicated her mental health problems.³¹

[29] The Claimant's physical and mental health problems continued after her MQP.

¹⁵ See GD4-432

¹⁶ See GD7-233

¹⁷ See GD4-35

¹⁸ See GD4-672

¹⁹ See GD2-74-78

²⁰ See for example GD7-107

²¹ See GD7-112

²² See GD4-686

²³ See GD4-493

²⁴ See GD4-492

²⁵ See GD4-492

²⁶ See GD4-456

²⁷ See GD4-456

²⁸ See GD4-456

²⁹ See for example GD4-469

³⁰ See GD4-445

³¹ See GD4-456

[30] Her gastrointestinal problems never went away. She continued to receive Humira.³² A colonoscopy in 2012 showed that she suffered more from IBS rather than Crohn's disease.³³ She had a colonoscopy in 2013.³⁴ She had a hospital stay in 2014 because of Crohn's disease.³⁵ The medical records showed that she continued to receive treatment for her gastrointestinal problems into 2018, when she had treatment at an irritable bowel disease research clinic.³⁶

[31] The Claimant's mental health problems continued after her MQP. She had several hospitalizations in 2012, 2013, and 2014. She experienced hallucinations.³⁷ She was diagnosed with mixed personality traits.³⁸ She continued to be suicidal.³⁹ She worried about overdosing on Graval.⁴⁰ She continued to suffer from anxiety and a panic disorder.⁴¹ She stayed at a group home in 2013.⁴²

[32] The Claimant's family doctor completed a medical report for the Minister in May 2018. He stated that the Claimant suffered from Crohn's disease, anxiety, and depression. She had frequent episodes of tearfulness and sadness. She also suffered from frequent diarrhea urgency and incontinence with severe abdominal pain. He described her IBS as being active.⁴³

[33] I accept that the Claimant's medical problems did not appear to be as severe as they were before her MQP. She did not have as many hospitalizations. But I accept that her conditions never improved to the point where she could return to work. Although she has not seen mental health professionals for a few years, she continued to see her family doctor for anxiety and depression.⁴⁴

³² See GD4-432

³³ See GD4-20

³⁴ See GD4-23

³⁵ See GD4-166

³⁶ See GD2-57-65

³⁷ See GD2-74-78

³⁸ See GD2-74-78

³⁹ See GD4-366

⁴⁰ See GD4-360

⁴¹ See GD4-346

⁴² See GD2-71-72

⁴³ See GD2-92-95

⁴⁴ See GD2-49

The Claimant had no work capacity by December 31, 2011.

[34] I must assess the severe part of the test in a real world context⁴⁵. 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.

[35] I find that the Claimant could not work in a real world context by December 31, 2011. The Claimant was only 25 years old at the time of her MQP. She has some post-secondary education. There is no evidence that she did not understand English. The Minister argued that the Claimant could have pursued alternate employment or retrain.⁴⁶

[36] I am naturally reluctant to award a disability pension to someone as young as the Claimant. I am aware that many people with Crohn's disease and IBS are capable or working productively. I am also aware that many people with depression and anxiety are capable of working productively. But 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 impairment⁴⁷. I am satisfied that the Claimant has a severe disability under the CPP after considering her combined impairments arising from Crohn's disease, IBS, depression, and anxiety.

[37] I do not believe that the Claimant could have handled any type of occupation at the time of her MQP because of her impairments. She worked at sedentary jobs prior to her MQP, but she had to leave these positions because of her medical conditions. She could not even handle significant accommodated employment that her family provided. I believe that the Claimant was too anxious to work productively. Her Crohn's disease and IBS meant she had to be near a washroom, which increased her anxiety. I do not believe that the Claimant could have worked from home on a computer. I accept that the Claimant would have had difficulty performing work that would have required her to comply with deadlines and where she would have to work productively. I do not believe that the Claimant could have upgraded her education. She had difficulty with school because of her mental health condition. I do not believe that she would

⁴⁵ See *Villani v. Canada (A.G.)*, 2001 FCA 248

⁴⁶ See GD6-14

⁴⁷ See *Bungay v. Canada (A.G.)*, 2011 FCA 47

have been able to handle a driving job because of her severe anxiety. I also not believe that she was capable of performing any type of physical work because of Crohn's disease. Her gastroenterologist acknowledged that her chronic abdominal pain would have impacted her productivity.

[38] 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 condition⁴⁸. I am satisfied that the Claimant stopped working at a store clerk job in 2008 because of her health condition. She stopped working as a greeter in 2009 because of her health condition. I am also satisfied that the Claimant stopped working at her family's garden nursery in May 2010 because of physical and mental health problems. There is reference to the Claimant volunteering and working at the family business in 2013.⁴⁹ But I do not believe that the Claimant engaged in substantially gainful employment after her MQP. Her Record of Earnings shows no income after 2010.⁵⁰ She was scheduled to return to work as a store clerk, but she did not even start this position because of anxiety. She also did not finish even one shift when she tried working as a cashier in 2017. All of her volunteer efforts after 2010 also ended in failure. I do not believe that the Claimant has had work capacity since May 2010, when she last engaged in regular employment.

The Claimant pursued and complied with reasonable treatment options.

[39] I am satisfied that the Claimant sought and complied with treatment. She followed up with her family doctors. She had numerous colonoscopies. She underwent surgery to remove part of her intestine and colon. She saw numerous specialists and tried multiple medications to treat her Crohn's disease and IBS. She also saw psychiatrists for her mental health condition. She had numerous hospitalizations. She also had treatment at a mental health group home. She tried numerous anti-depressant and anti-anxiety medications. There was mention in the records that the Claimant did not always comply with her psychiatric treatment.⁵¹ However, many people with psychiatric problems do not often comply with all their treatments. I cannot say that the

⁴⁸ See *Inclima v. Canada (A.G.)*, 2003 FCA 117

⁴⁹ See GD4-606 and 644

⁵⁰ See GD2-28

⁵¹ See GD4-673

Claimant neglected her mental health issues. She tried extensive treatments to deal with her depression and anxiety without any significant success.

Prolonged disability

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

[41] The Claimant's family physician stated that the Claimant's IBS, depression, and anxiety would likely continue.⁵²

[42] I am satisfied that the goal of the Claimant's treatments are to manage her medical condition, as opposed to relieving to the point where can return to substantially gainful work.

CONCLUSION

[43] The Claimant had a severe and prolonged disability in May 2010, when she last engaged in regular employment. 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 pension⁵³. The application was received in February 2018 so the deemed date of disability is November 2016. Payments start four months after the deemed date of disability, as of March 2017⁵⁴.

[44] The appeal is allowed.

George Tsakalis
Member, General Division - Income Security

⁵² See GD2-95

⁵³ Paragraph 42(2)(b) *Canada Pension Plan*

⁵⁴ Section 69 *Canada Pension Plan*