



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *R. R. v Minister of Employment and Social Development*, 2020 SST 702

Tribunal File Number: GP-19-2046

BETWEEN:

**R. R.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Jean Lazure

HEARD ON: May 15, 2020

DATE OF DECISION: June 4, 2020

## **DECISION**

[1] On May 1, 2018, the Appellant applied for a *Canada Pension Plan* (CPP) disability pension. The Minister of Employment and Social Development refused his application. The Appellant appealed that decision.

[2] The Appellant is not eligible to receive a disability pension under the CPP, and the appeal is dismissed for the following reasons.

## **OVERVIEW**

[3] At the time of the hearing, the Appellant was 60 years old. He had completed grade 12. He said that he completed four years of piano studies with a nun but that, otherwise, he is a self-taught musician.

[4] Most of the Appellant's work experience throughout his life is in music. The Appellant worked on several projects as a musician, including 58 film soundtracks. He even recorded and released his own album in 2008–2009. The Appellant then worked with his brother-in-law at his company, which he founded to promote the Appellant's musical career. As a result, the Appellant earned \$29,475 in 2008 and \$11,004 in 2009.

[5] The Appellant has worked very little since then, still in music, but very little.

## **ISSUE**

[6] To qualify for a CPP disability pension, the Appellant must meet the requirements set out in the CPP. In particular, the Appellant must have been found to be disabled under the CPP at or before the end of the minimum qualifying period (MQP).<sup>1</sup> The calculation of the MQP is based on the Appellant's contributions to the CPP. I find that the Appellant's MQP ended on December 31, 2006.

[7] Secondly, to be considered disabled, a person must have a severe and prolonged mental or physical disability. A person is considered to have a severe disability if incapable regularly of

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<sup>1</sup> *Canada Pension Plan* (CPP), s 42(1)(b)(i).

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.<sup>2</sup>

[8] Therefore, the issue is whether the Appellant's disability was severe and prolonged before December 31, 2006. The Appellant has the burden of proving this.<sup>3</sup>

### **Was the Appellant's disability severe and prolonged before December 31, 2006?**

#### **Appellant's Testimony**

[9] In his April 25, 2018, questionnaire, the Appellant indicated that the medical conditions that prevent him from working are post-traumatic stress disorder, depression, and an anal fissure. He also indicated that he has severe anxiety and concentration problems.

[10] First, I note that the anal fissure has not been the subject of any testimony or medical report since that of Dr. Crozier on March 1, 2018. I therefore find that it is resolved or that it is no longer an issue.

[11] Otherwise, the Appellant testified that the above medical conditions are the result of a difficult childhood. He was raised primarily by his grandmother, a devout Catholic who instilled fears in him from a very young age. From scary stories of demons under his bed to macabre paintings on his bedroom walls, the Appellant described a nightmarish childhood that caused him a lifetime of anxiety and fear.

[12] Practically speaking, the Appellant says that his fear prevents him from working because he cannot be alone. When he leaves his home, he is accompanied most of the time. The Appellant sometimes drives alone for short distances, but the fear is always there. He describes this fear as being constant, pervasive, and paralyzing.

[13] Not being able to be alone made the Appellant's professional life difficult. He testified that, for the most part, in 2008 and 2009, when he earned \$29,475 and \$11,004 respectively, he was always accompanied while he was working. The Appellant testified that he has had a

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<sup>2</sup> CPP, s 42(2)(a).

<sup>3</sup> The Applicant must prove, on a balance of probabilities, that his disability is severe and prolonged.

number of great opportunities during his career as a musician, but it was clear to him that he could never fully succeed in his career because of his mental health problems. He testified that he believes that he has been disabled his whole life and that he [translation] “qualified for a pension” his whole life.

[14] The Appellant also became an alcoholic to deal with his anxiety, but he stopped drinking around 14 years ago.

[15] As for treatment, the Appellant began seeing one of his teachers, V. D., for his anxiety when he was a teenager, and he saw her again as an adult between 1998 and 2000.

[16] The Appellant seemed to intensify his search for treatment starting in 2013, when he began seeing his family doctor (first Dr. LeBlanc until 2016, and then Dr. Saulnier as of 2017), and when he looked into psychotherapy and psychiatry. And even though the Appellant says that he thinks he [translation] “always took medication,” it seems that his experiments with medication also intensified during that time.

[17] The Appellant indicated that his family doctor had suggested to him, before December 31, 2006, that his family doctor had suggested [*sic*] that he go for a psychiatric consultation. He said he saw that as a condemnation.

[18] The Appellant has worked only very little or not at all since 2009, despite treatment in recent years.

Testimony and November 15, 2018, letter from R. P.

[19] R. P. is the Appellant’s friend, and he has known him for at least 20 years. He says that the Appellant has had a severe and prolonged disability since before 2006. R. P. says that the Appellant is a talented musician but that his career was difficult because of his mental health problems. The Appellant has always been anxious and could never be alone. He says that the Appellant was sometimes able to work, which makes his situation difficult. R. P. spent a good part of his testimony on the parliamentary report the Appellant filed, which I will summarize below.

Testimony and November 15, 2018, letter from A. B.

[20] A. B. is the Appellant's daughter. She says that her whole life her father has had problems with mental health, depression, and anxiety. She says that she or her mother always accompanied the Appellant when he traveled outside the home. Her father self-medicated with pot and alcohol before overcoming that addiction. She says that it took her father a while to seek help for his mental health. In approximately 2003, he allegedly saw his family doctor, who asked him to go see a psychiatrist. The Appellant refused and did not want to be diagnosed.

[Translation] "He didn't want to be mentally ill."

November 10, 2018, letter from I. F.

[21] I. F. is the Appellant's daughter. She says that he has depression and post-traumatic stress disorder and that he sees a psychiatrist. Her father's difficulties are the result of a difficult childhood, where he was traumatized by his grandmother who raised him and who was devoutly religious. She scared him with stories of demons and violent images. She says that her father was nervous and had repeated panic attacks. They grew up in poverty because her father could not leave home to go to work. He had a studio at home. She says that his mental health deteriorated with age and that he is afraid to leave his home and struggles with his daily activities.

November 16, 2018, letter from L. T.

[22] L. T. is the Appellant's sister. She notes that he has always been nervous and anxious. She remembers an incident that happened when he was around 16 years old. The Appellant ran away to Toronto, believing that people wanted to hurt him. She says that she has noticed a big change in him in the last few years and that he is getting worse. The Appellant cannot even go for a walk alone anymore. She says that music was his work and his therapy, but that his nerves and depression prevented the Appellant from succeeding.

November 10, 2018, letter from L. S.

[23] L. S. says that he and his wife have been good friends of the Appellant since 1990, although he says he was not in contact with the Appellant between 2004 and 2009. He notes that

the Appellant's post-traumatic stress disorder and anxiety got the better of R. R. in recent years. He notes a significant change at the beginning of the 2000s and that it deteriorated after 2012. L. S. notes significant impacts on the Appellant's professional, social, and personal life, as well as on his health. He says that he would have hoped that the Appellant's condition would improve with time and treatment, but that that was not the case, despite the Appellant's efforts.

November 22 letter from A. R.

[24] A. R. is the Appellant's mother. She says that the Appellant's anxiety and fear problems started when he was around 13 or 14 years old. She notes that his fears lasted his whole life. To this day, the Appellant is still afraid of being alone, and he needs someone to accompany him wherever he goes.

*Taking Action: Improving The Lives of Canadians Living with Episodic Disabilities – Report of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, dated March 2019*

[25] The Appellant filed this report from the standing committee, dated March 2019. The report notes an evolution of the concept of disability over the last 30 years and addresses the notion of episodic disability. The report indicates that the legislation and the mechanisms involved in Canada Pension Plan disability benefits are not adapted to these new realities. The report points to 11 recommendations to amend the legislation and its mechanisms to make Canada Pension Plan disability benefits more accessible to people with episodic disabilities.

[26] I must also weigh the objective medical evidence in support of the Appellant's claims.

**Medical Evidence**

[27] The medical evidence for the Appellant's disability and limitations is the following, and I will summarize the various medical reports below.

May 19, 2018, report from Dr. Mario Saulnier, family doctor

[28] Dr. Saulnier has been the Appellant's family doctor since February 2017. In terms of diagnosis, Dr. Saulnier indicates chronic post-traumatic stress disorder, chronic severe

depression, and panic attacks. He says the Appellant has had anxiety and depressive symptoms since early adulthood.

[29] In terms of limitations, Dr. Saulnier says that the Appellant avoids social interactions because of his anxiety and depression. It is difficult for him to leave his home and to find and keep a job. He says that the Appellant is being treated with medication and therapy. The prognosis is unknown, but he does not expect the Appellant's condition to improve significantly because it is chronic.

November 18, 2018, letter from Dr. Saulnier

[30] Dr. Saulnier says he reviewed the Appellant's medical file, particularly to see whether he could find something relevant before or in 2006. He says that the file contains multiple visits related to anxiety and depression, but that the effects on the Appellant's life were not well documented. He was also unable to find reports on his consultations in psychology and psychiatry.

March 3, 2019, letter from Dr. Saulnier

[31] Dr. Saulnier says he has been the Appellant's family doctor since February 2017. Dr. Saulnier says that the Appellant has had severe anxiety since he has known him; he is very nervous and paranoid, even during visits to his office. Dr. Saulnier says that the Appellant told him that he had not had regular employment since 2006, that his anxiety began before that, and that it has worsened over time. Dr. Saulnier says that he was unable to verify whether the Appellant worked before 2006 because his former family doctor did not document it. Finally, he says that the Appellant has struggled with anxiety since at least 2005.

Progress notes from Dr. Paulette LeBlanc, Appellant's former family doctor, from May 2, 2005, to September 20, 2016

[32] Dr. LeBlanc's notes indicate a visit on May 2, 2005, where the Appellant complained of insomnia, stress, and the desire to have two days off work. There are two other notes in 2005, from October 17 and December 6, which talk about the Appellant's medication and pain related to an ear infection.

[33] There are no notes after the December 6, 2005, visit until June 7, 2011.

[34] A note from June 7, 2011, indicates that the Appellant was seeing a therapist for marital stress and also notes anxiety and hyperlipidemia. An August 3, 2011, note indicates that the Appellant was doing well.

[35] There are no notes after the August 3, 2011, visit until September 10, 2013.

[36] From September 2013 to September 2016—that is, for three years—there are notes for nine visits, or an average of three per year. The notes talk about increased anxiety—most of the notes mention the word [translation] “anxiety”—and post-traumatic stress disorder, as well as insomnia. As of December 2014, there were [translation] “taking charge” sessions and other sessions to help with his anxiety. A note from February 29, 2016, indicates that the Appellant was referred to a psychiatrist. The last note, from September 20, 2016, talks about severe anxiety and the fact that the Appellant was increasingly afraid to leave his house.

April 25, 2017, report from Dr. Nachiketa Sinha, psychiatrist

[37] Dr. Sinha says that she has treated the Appellant since 2017 for severe recurrent depression and post-traumatic stress disorder. She notes the long-term struggles as being low concentration and energy, flashbacks, nightmares, hypervigilance, avoidance behaviours, and increased anxiety.

[38] In terms of treatment, Dr. Sinha notes that the Appellant takes medication and is in psychotherapy. Dr. Sinha’s prognosis is guarded. Dr. Sinha says that the Appellant has chronic, severe, persistent, and prolonged mental illness. She does not believe that he could return to any type of work in the foreseeable future, for at least a year—possibly longer—and she is of the same view about employment training.

[39] The file provided by Dr. Sinha also includes progress notes from April 20, 2017, to November 28, 2018, for nine visits over a period of about 20 months, or an average of one visit per two months. The notes are consistent with the above and mainly concern adjustments to the Appellant’s medication. Moreover, the notes from the June 8, 2017, visit reveal that the



Appellant was able to compose songs faster than before, while the notes from the September 27 visit note that the Appellant was experiencing more stress due to work-related deadlines.

Assessment by Dr. Mylène Poirier, psychiatrist, on October 7 and 14, 2014

[40] The Appellant saw Dr. Poirier after his family doctor, Dr. LeBlanc, referred him for severe anxiety and occasional paranoid ideas.

[41] As history, Dr. Poirier indicated that the Appellant had never seen a psychiatrist, had never been hospitalized, and had never attempted suicide. He attended psychotherapy for several months but was unable to continue for financial reasons. He tried Paxil and Effexor but stopped due to the side effects.

[42] Dr. Poirier outlined the history of of [*sic*] the Appellant's current illness, indicating the onset of paranoid anxiety at age 17. The Appellant got involved with drugs and criminals, and that exacerbated his paranoid ideas, so much so that the Appellant left Acadia for Ontario in his early twenties to escape for a while.

[43] The history indicates that this fear has remained since his adolescence but [translation] "has eased slightly over the years." Dr. Poirier says that the Appellant seems aware that [translation] "this fear is exaggerated" and wanted to try [translation] "exposing himself to more outings." She notes a recent increase in insomnia due to financial difficulties and moments of discouragement. Dr. Poirier also notes that, when the Appellant [translation] "works on his music, he is functional. He can still feel pleasure and have interests."

[44] Dr. Poirier notes the Appellant's difficult childhood, where he was instilled with fear of hell and demons, and his bedroom walls were covered in macabre religious pictures. Finally, she notes that the Appellant [translation] "was prone to addiction his whole life," including to alcohol.

[45] During her assessment, Dr. Poirier noted structured paranoid delusion but that it was [translation] "relatively contained, and he is capable of relative self-criticism regarding his beliefs." She therefore made the following diagnoses:

- Persecutory delusional disorder, in partial remission;
- Insomnia secondary to an adjustment disorder related to his financial difficulties;
- Alcohol dependence, in full remission;
- Absence of anxiety disorder (including PTSD); absence of suicide risk or hetero-aggression.

[46] In terms of recommendations, Dr. Poirier indicated that [translation] “regarding the delusional disorder, note that the trend is favourable, even without specific intervention.” She offered him various options for antipsychotic medication, indicating a mild to medium dose [translation] “given that his current psychotic condition is not severe.”

[47] Dr. Poirier also offered him psychotherapy intervention [translation] “to continue working on his self-criticism, reduce the strength of his delusional cognitions, and continue the exposure he has already started.” Finally, regarding the insomnia, the Appellant would be satisfied with his current medication.

November 27, 2018, report by Michel Drisdelle, psychotherapist

[48] Mr. Drisdelle says he treated the Appellant in 2016, for 15 psychotherapy sessions. He says that, from the beginning, it was clear that the Appellant had severe depression. He had been diagnosed with post-traumatic stress disorder, anxiety disorder, and had difficulty functioning socially.

[49] Mr. Drisdelle said that, over the course of their sessions, it became clear that the Appellant suffered from the long-lasting and significant effects of the trauma he had experienced. He says that the Appellant sincerely wanted to work at improving himself, but that his anxiety persisted. The Appellant was unable to continue the sessions due to a lack of income.

[50] Mr. Drisdelle is of the view that the Appellant has severe post-traumatic stress disorder. His depression is also a factor that makes functioning in a work environment difficult. He is also

of the view that the Appellant should be eligible for long-term disability benefits and supports his request in this regard.

December 12, 2018, letter from V. D.

[51] V. D. says she accompanied the Appellant as a teacher at the beginning of the 1980s and then in counseling between 1998 and 2000. She says that the Appellant had [translation] “deep-rooted anxieties that were sometimes hallucinatory” and that he consumed drugs. She says that the Appellant had [translation] “great musical talent” but that [translation] “his nervousness interfered with his concentration.”

[52] V. D. also saw the Appellant between 1998 and 2000 when he was married with children. The Appellant [translation] “still had the same anxieties.” He was part of a religion [translation] “that offered him some guidance,” but [translation] “his psychological instability always seemed to have the upper hand.”

[53] V. D. said that the Appellant left his wife for another woman, and she did not see him after that, [translation] “so, I don’t know his current situation.”

March 1, 2018 report from Dr. Michael Crozier

[54] The Appellant saw Dr. Crozier for a follow-up regarding an anal fissure. The Appellant was complaining of redness, and Dr. Crozier believed it was due to overly enthusiastic hygiene practices. He recommended stopping treatment (diltiazem cream) for a few weeks. He says that the Appellant was anxious about the idea of stopping treatment.

## **ANALYSIS**

### **Severe Disability**

[55] 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. The determination of the severity of the disability is not based on the person’s inability to perform

their regular job, but rather on their inability to perform any work, that is, “any substantially gainful occupation.”<sup>4</sup>

[56] Moreover, the Appellant must prove he was disabled under the CPP on or before December 31, 2006, the end of his MQP. The Appellant has the burden of proof, and he must prove the above on a balance of probabilities.

[57] In addition to subjective evidence—that is, the Appellant’s testimony about his disability and limitations—the Appellant must provide objective medical evidence of his disability.<sup>5</sup>

[58] I find that the Appellant has not met his burden of proof and that there is not enough evidence to make a finding of severe disability on or before December 31, 2006, for the following reasons.

[59] First, the Appellant’s testimony about his medical condition and limitations was not particularly specific to the period before December 31, 2006. The Appellant also testified that he believes he has been disabled his whole life. Although I had told the Appellant that he needed to focus on the period before December 31, 2006, I note that vague testimony in relation to certain periods is not necessarily unusual. In this case, medical evidence can often enlighten us.

[60] But I note that, in this file, there is not a lot of medical evidence, especially when we look at the evidence on or before December 31, 2006.

[61] The Appellant did not see his family doctor between December 6, 2005, and June 7, 2011—that is, no visit for five and a half years. And after a second visit in 2011, on August 3, 2011, there were no visits until September 10, 2013. As a result, from December 2005 to September 2013—that is, for nearly eight years—the Appellant visited his family doctor only twice. This does not tend to support a finding of severe disability.

[62] I believe that the Appellant has had mental health problems his whole life. However, many Canadians have varying degrees of mental health problems but are capable regularly of

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<sup>4</sup> *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>5</sup> *Warren v Canada (Attorney General)*, 2008 FCA 377.

pursuing a substantially gainful occupation. I repeat that it is not the diagnosis that is important, but the impact on the capacity to work.

[63] I believe that the Appellant has mental health problems, but I find that they worsened after his December 31, 2006, MQP, particularly after 2013.

[64] First, the Appellant started seeing his family doctor more frequently after September 2013.

[65] Also, he did not see any specialist before 2014. The first one he saw was psychiatrist Mylène Poirier, whose report is dated October 2014. I note that her findings are not as pronounced as those of later reports. She indicated persecutory delusional disorder, in partial remission. She talks about insomnia secondary to adjustment disorder related to financial difficulties. She notes the absence [translation] “of anxiety disorder (including PTSD), absence of suicide risk or hetero-aggression,” which contradicts the later reports and diagnosis of post-traumatic stress disorder.

[66] I do not find from this report that Dr. Poirier is right and the others are wrong, or vice versa. I believe that this report, in comparison with later reports, instead underlines that the Appellant’s condition deteriorated over time, especially after 2013. I believe it is this deterioration that led the Appellant to intensify his search for treatment. The Appellant then saw psychotherapist Michel Drisdelle in 2016 and psychiatrist Nachiketa Sinha in 2017.

[67] I also note that the March 3, 2019, letter from Dr. Mario Saulnier states that the Appellant told him that he had not had a regular employment since 2006, that his anxiety started before that, and that it worsened over time: “His anxiety started prior to this and worsened over time.”

[68] I note that several testimonies also seem to indicate a more recent deterioration of the Appellant’s condition:

- I quote L. S., the Appellant’s friend: “The anxiety of his PTSD has all but obscured the real R. R. in recent years. R. R. and I were out of touch for a few years around 2004-2009. However, we had noticed a marked change in the early 2000s, with a

further steep decline professionally and socially after 2012. He no longer travels, his basic sense of humour is now absent, and he is paralyzed by fears I confess I don't fully understand despite weekly and sometimes daily conversations. Shockingly, the composer whose first language was always music now rarely composes or plays."

- Also, L. T., the Appellant's sister: "I noticed a big change in him in the last few years. He is getting worse."
- Finally, I. F., the Appellant's daughter: "my dad's mental health is getting worst (*sic*) with age."

[69] There is R. P., the Appellant's friend, who wanted to support the Appellant's argument that he has been disabled his whole life by stating the following: "Prior to 2006 and since 2006, R. R. has suffered a great and prolonged disability." For the reasons explained above, I cannot accept the Appellant's argument.

[70] It is difficult to accept R. P.'s claim, which I find contradicts the bulk of the evidence before me. I believe that R. P., perhaps more than some of the other witnesses, wanted to serve as counsel for his friend. He argued several times for the application of the parliamentary report the Appellant filed.

[71] However, this parliamentary report on the notion of episodic disability, although an interesting read, currently has only political, not legal, value. Parliament may or may not follow up. I cannot assume that the act will be amended, and I cannot do it myself. And I cannot simply use it to set aside the criteria on which I based my decision.

[72] Also, the Minister noted the Appellant's earnings in 2008 and 2009—that is, \$29,475 and \$11,004, after his December 31, 2006, MQP. I agree, but I would also add that the Appellant had similar earnings from 2000 to 2003: \$11,042 in 2000; \$30,450 in 2001, \$15,950 in 2002; and \$11,200 in 2003. I believe this contradicts the Appellant's claim that he has been disabled his whole life, and instead supports the argument for a more recent deterioration of the Appellant's mental health problems, after 2013.

[73] As a result, the evidence, including the medical evidence and the Appellant's earnings in 2008 and 2009, does not lead to a finding of severe disability before December 31, 2006, but rather a condition that deteriorated after 2013—that is, well after the Appellant's MQP. Therefore, I cannot find that the Appellant's condition made him incapable regularly of pursuing any substantially gainful occupation on or before December 31, 2006.

[74] Finally, the severity requirement must be assessed in a real-world context.<sup>6</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.

[75] The Appellant was 47 at the end of his MQP. He made his living from music his whole life, being largely self-taught and, based on the opinion of several witnesses (including his own), was undeniably talented. The Appellant sometimes had earnings that exceeded the regulatory threshold of a substantially gainful occupation.

[76] Even [*sic*] his career may have been somewhat limited due to his mental health problems, he was therefore [*sic*] able to earn music-related income for a good part of his life, and I cannot find from the evidence before me, especially the medical evidence, that he could not regularly have pursued a substantially gainful occupation on or before December 31, 2006.

### **Prolonged Disability**

[77] Because I have found that the Appellant's disability was not severe before December 31, 2006, I do not need to make a finding on the prolonged criterion.

### **CONCLUSION**

[78] The Appellant is not eligible to receive a disability pension under the CPP. The appeal is dismissed.

Jean Lazure  
Member, General Division – Income Security

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<sup>6</sup> *Villani v Canada (Attorney General)*, 2001 FCA 248.