



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. B. v Minister of Employment and Social Development*, 2020 SST 626

Tribunal File Number: GP-18-2747

BETWEEN:

S. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Teleconference hearing on: June 1, 2020

Date of decision: June 5, 2020

DECISION

[1] The Claimant is not entitled to a *Canada Pension Plan* (CPP) disability pension. These reasons explain why.

OVERVIEW

[2] S. B. (Claimant) applied for the disability pension on May 14, 2018. She described her main disabling condition as breast cancer with right arm lymphedema. She indicated she was last employed as a labourer until around 2002, when she stopped working due to a plant closure¹. She felt she could no longer work because of her medical condition as of November 2013. 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.² I find the Claimant's MQP to be December 31, 2004.

ISSUES

[4] Did the Claimant's conditions, breast cancer with right arm lymphedema, result in her having a severe disability, so that she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2004?

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

¹ GD2-78

² GD4-10/11

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged³. 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 that it is more likely than not that their disability meets both parts of the test, which means if the Claimant meets only one part, she does not qualify for disability benefits.

Severe Disability

There is no medical evidence to show the Claimant's medical condition limited her capacity to work by her December 31, 2004 MQP

[7] The Minister submits that while the Claimant feels she cannot work currently, the medical evidence does not show any severe pathology or impairment that would have prevented her from working at her MQP in December 2004 and continuously thereafter.⁴

[8] The family doctor diagnosed the Claimant with invasive ductal breast cancer in 2013. Her prognosis was guarded.⁵ In November 2017, her oncologist wrote that the Claimant was negative for any recurrent cancer. Other conditions that the doctor thought might warrant further investigation were poor sleep issues and some right hand finger tingling.⁶

[9] The file contains no medical evidence prior to the Claimant's MQP, or for many years afterwards. The Claimant testified that before 2004, her health conditions were nerves and carpal tunnel syndrome. She said there was no medical evidence on file regarding these conditions and she was unable to recall any details. As I have no medical evidence to consider, other than the

³ Paragraph 42(2)(a) *Canada Pension Plan*

⁴ GD4-6

⁵ GD2-47/50

⁶ GD2-77

medical reports between 2013 and 2017, I gave the Claimant an opportunity to obtain additional medical evidence related to conditions at the time of her MQP, but she declined.

[10] There is no medical evidence to support a finding that the Claimant suffered from health conditions that interfered with her ability to work by December 31, 2004.

The Claimant's disabling condition did not arise until after December 31, 2004

[11] The Claimant's testimony was straightforward and sincere. I found her to be credible. She was laid off from her factory work after 35 years. The Claimant has a daughter with Down Syndrome. The Claimant's mother looked after her daughter. Her mother became ill at about the same time as the Claimant was laid off, so she didn't look for further work, but stayed home to look after her daughter. The Claimant said she said she had the capacity to work prior to November 2013. She could no longer work after her breast cancer diagnosis in 2013.

[12] There is evidence that the Claimant was able to work after her MQP. She stopped working for non-medical reasons. She testified that she would have looked for work, but she needed to stay home to care for her daughter when her mother became ill. She was diagnosed with breast cancer only in 2013, some 11 years after her MQP.

[13] As a member of the Tribunal, I must follow decisions of the Federal Court. In this case, I must follow a Federal Court decision that decided that in order to succeed, a claimant must provide objective medical evidence of their disability at the time of their MQP. In addition, medical evidence dated after the MQP is irrelevant when a claimant fails to prove that they suffered from a severe disability prior to the MQP.⁷

[14] When I consider if a medical condition is severe at the time of the MQP and continuously thereafter, I consider such factors as the Claimant's age, education level, language proficiency, and past work and life experiences when determining her "employability". These requirements are set out in a decision called *Villani* and are sometimes called the "*Villani* factors." Looking at the claimant's employability based on these factors is known as a "real world" approach.⁸

⁷ *Canada (A.G.) v. Dean*, 2020 FC 206,

⁸ *Villani v. Canada (A.G.)*, 2001 FCA 248

[15] Different decision makers have considered whether the “real world” approach is necessary where there is no medical evidence to establish that the claimant suffered from a severe disability. Recently, in a case called *Ferris*, the AD member of the Appeal Division of this Tribunal found that it is necessary to take into account a claimant’s “real world” circumstances, even when there is no medical evidence for several years prior to the MQP.⁹ However, the Federal Court of Appeal, in decisions called *Giannaros* and *Sharma*, established that where a claimant has failed to prove a severe disability, it is not necessary to consider the *Villani* factors.¹⁰

[16] Since there is no medical evidence to establish the Claimant suffered from a severe disability by December 31, 2004, it is not necessary for me to apply the “real world” approach.¹¹

[17] While I acknowledge the Claimant's difficult circumstances and that she needed to stay at home and take care of her daughter, I am required to interpret and apply the law. I cannot make exceptions to the provisions of the CPP or grant a disability benefit based on compassion or special circumstances.

[18] The Claimant has failed to prove that it was more likely than not that she had a severe disability by December 31, 2004 and continuously thereafter.

[19] As I found the disability was not severe, it is not necessary for me to consider if it was prolonged.

CONCLUSION

[20] The appeal is dismissed.

Kelly Temkin
Member, General Division – Income Security

⁹ *Ferris v. MESD*, AD-19-554, a decision that is not binding on me.

¹⁰ *Sharma v. Canada (Attorney General)*, 2018 FCA 48; *Giannaros v. Canada (Social Development)*, 2005 FCA 187. I must follow decisions of the Federal Court of Appeal. See also *Park .v. MESD*, GP -19-135 at paragraphs 17-26

¹¹ *Giannaros v. Canada (Minister of Social Development)*, 2005 FCA 187