



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *IO v Minister of Employment and Social Development*, 2020 SST 1035

Tribunal File Number: GP-19-240

BETWEEN:

I. O.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Antoinette Cardillo

Appellant represented by: Judith Hemming

Teleconference hearing on: June 11, 2020

Date of decision: June 27, 2020

DECISION

The Appellant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of February 2017.

OVERVIEW

[1] The Minister received the Appellant's disability application on January 10, 2018. She is 60 years old and has a grade 12 education and a Bachelor of Arts degree. The Appellant described her main disabling condition as a congenital heart defect of her bicuspid aortic valve with aortic stenosis, diastolic and systolic murmurs and an arrhythmia with palpitations. She indicated she was last employed in an export forwarding company from July 2015 to June 2016 when she stopped working because of a shortage of work.

[2] To qualify for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant 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 Appellant's contributions to the CPP. I find the Appellant's MQP to be December 31, 2017.

ISSUES

[3] Did the Appellant's condition result in the Appellant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2017?

[4] If so, was the Appellant's disability also long continued and of indefinite duration by December 31, 2017?

ANALYSIS

[5] 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

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

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 Appellant meets only one part, the Appellant does not qualify for disability benefits.

Severe disability

[6] I must assess the severe part of the test in a real world context². 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, past work and life experience.

[7] 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 is 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 work³.

i. Medical reports pre-MQP of December 31, 2017

[8] On October 3, 2017⁴, a report from Dr. Kilany, cardiologist, indicated she has early diastolic murmur as well consistent with aortic insufficiency.

[9] On November 3, 2017⁵, the Appellant had an exercise stress myocardial perfusion scan because of her complaints of chest pain. She also had an exercise stress echocardiogram, which showed no symptoms at a good workload; the myocardial perfusion scan was normal.

[10] A report dated December 15, 2017⁶ from Dr. Ochocinski, family physician, stated that the Appellant had severe chest pain in April 2017 and was found to have aortic valve stenosis and cardiac arrhythmia. She often had episodes of chest pain and shortness of breath, which

² *Villani v. Canada (A.G.)*, 2001 FCA 248

³ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁴ GD2-62

⁵ GD2-64

⁶ GD2-81

started to be more serious a few months prior. He reported she had better control of her heart rate with medication. Her prognosis was fair.

ii. Medical reports post-MQP of December 31, 2017

[11] The Appellant was assessed by Dr. Sabbagh in 2018 for snoring and insomnia. On January 16, 2018⁷, the sleep study showed the Appellant had mild obstructive sleep apnea and occasional arrhythmia. In August 2018⁸, Dr. Sabbagh noted she felt better since using a “PAP” (positive airway pressure), but she continued to have frequent awakenings.

[12] On May 29, 2018⁹, Dr. Kilany, cardiologist, noted the Appellant’s palpitations improved since starting on Bisoprolol (beta-blocker used to treat hypertension and heart disease), although she continued to have exertional chest pain, sometimes even at rest. Dr. Kilany added the findings of mild bicuspid aortic valve, mild aortic valve stenosis and regurgitation. He mentioned the Appellant could walk one kilometre at a slow pace and climb fourteen (14) stairs at a time without much difficulty. Dr. Kilany planned further evaluation as he questioned underestimating the Appellant’s aortic stenosis and regurgitation given her ongoing symptoms of palpitation, shortness of breath and occasional chest pain and possible heart valve replacement surgery in the future.

[13] On September 4, 2018¹⁰, Dr. Kilany noted the repeat echocardiogram showed the Appellant’s bicuspid aortic valve had moderate stenosis with mild regurgitation. He recommended she remain on the same medication and have an echocardiogram every six (6) months.

[14] On July 26, 2019¹¹, Dr. Muhammad, Psychiatrist, diagnosed the Appellant with an unspecified anxiety disorder, for which she was taking Mirtazapine (an anti-anxiety

⁷ GD2-43

⁸ GD2-50

⁹ GD2-67

¹⁰ GD2-42

¹¹ GD9-22

medication) at night.

iii. Testimony

[15] The Appellant testified that she was employed by an export company from 2015 to June 2016. She was a documentation specialist. She was laid off in 2016. She did try to search for work in the computer field but she was not hired.

[16] She explained that she had heart related symptoms in March 2017. She was hospitalized and saw many specialists. She was diagnosed with a congenital condition. She did have a heart condition before when she was 37 years old. She took medication and had no issues until 2017.

[17] She also suffers from sleep apnea and insomnia. She is able to sleep only four (4) to five (5) hours per night. She feels very tired and irritable because of the lack of sleep.

[18] She is also seeing a psychiatrist for depression and anxiety attacks. The symptoms started when she was 35, however, when she learned about her heart condition, she got even more depressed. In 2019, her psychiatrist prescribed medication. She continues to have feelings of sadness, fatigue and lack of energy. She also has concentration issues.

[19] She stated that with her ongoing symptoms, she does not feel she would be productive in a work environment.

[20] The Appellant currently lives with her son. She is not able to do much during the day other than some meal preparation.

iv. Residual capacity to work

[21] I find that the Appellant does suffer from a severe disability, as she is incapable regularly of pursuing any gainful occupation due to her ongoing limitations caused by bilateral epicondylitis.

[22] The Minister acknowledged the Appellant cardiac condition; however she describes her condition as congenital and she was not previously prevented from working. The cardiac tests revealed only mild to moderate findings related to her heart valve with the majority of her heart function being normal. Although she may have some limitations due to her cardiac function and sleep apnea, the findings do not support a severe medical condition at her MQP and continuously since. The Appellant has a good education with transferable skills and as such retains the capacity for suitable light or sedentary type work. The Minister added that the Appellant might have an unspecified anxiety disorder and obstructive sleep apnea; however, both are treatable conditions and should not preclude all types of suitable work. Moreover, a gradual return to suitable work was not medically precluded.

[23] I disagree with the Minister's submissions. The medical reports demonstrate that the Appellant continues to have chest pain, shortness of breath and heart palpitations despite taking medication and complying with therapy. She also suffers from depression.

[24] I base my determination on the following medical reports:

- Dr. Ochocinski's report of December 2017 stating that the Appellant had severe chest pain, was found to have aortic valve stenosis and cardiac arrhythmia, she often had episodes of chest pain and shortness of breath which started to be more serious a few months prior (Her prognosis was fair);
- Dr. Kilany's report of May 2018 stating that the Appellant continued to have exertional chest pain, sometimes even at rest. She could walk at a slow pace. He planned further evaluation as he questioned underestimating the Appellant's aortic stenosis and regurgitation given her ongoing symptoms of palpitation, shortness of breath and occasional chest pain. She would have ongoing cardiac follow-ups (every six (6) months) with possible heart valve replacement surgery in the future. In September 2018, Dr. Kilany noted the repeat echocardiogram showed the Appellant's bicuspid aortic valve had moderate stenosis with mild regurgitation; and
- Dr. Muhammad's report of July 2019 stating that the Appellant suffered from unspecified anxiety disorder.

[25] The Appellant also suffers from sleep apnea and insomnia.

[26] Although, the Appellant is 60 years of age, has a grade 12 education and a Bachelor of Arts, she suffers from episodes of chest pain, shortness of breath, heart palpitations, and depression.

[27] I am satisfied that the Appellant does not have the ability to function in a vocational setting. She therefore does suffer from a severe disability from June 2016 when she stopped working.

Prolonged disability

[28] I find that the Appellant has proven on a balance of probabilities that her disability is long continued and of indefinite duration.

[29] Based on the Appellant's testimony and the medical reports from 2017, it is evident that her condition has not improved despite taking medication and complying with doctors' recommendations.

CONCLUSION

[30] The Appellant had a severe and prolonged disability in June 2016, when she stopped working. 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 pension¹². The application was received in January 2018 so the deemed date of disability is October 2016. Payments start four months after the deemed date of disability, as of February 2017¹³.

[31] The appeal is allowed.

Antoinette Cardillo
Member, General Division - Income Security

¹² Paragraph 42(2)(b) *Canada Pension Plan*

¹³ Section 69 *Canada Pension Plan*