



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. H. v Minister of Employment and Social Development*, 2020 SST 734

Tribunal File Number: GP-19-1123

BETWEEN:

S. H.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Teleconference scheduled on: July 2, 2020

Date of decision: July 4, 2020

DECISION

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

OVERVIEW

[2] The Claimant was 48 years old when she applied for a CPP disability pension in October 2018. In her disability questionnaire, she stated that she last worked as a labourer and that she stopped working in October 2013¹ because of “broken bones.” She also stated that she had been unable to work because of bipolar and schizoaffective disorders.² The Minister denied the application initially and upon reconsideration, and the Claimant appealed to the Social Security Tribunal.

[3] This is the Claimant’s fifth application for a CPP disability pension. Her previous applications were in October 1996, March 2008, November 2013, and October 2015. The Minister denied the first two applications both initially and after reconsideration. The Claimant did not appeal the reconsideration decisions. The Minister initially denied the last two applications, and the Claimant did not request reconsideration.

[4] The Minister acknowledges that the Claimant has been disabled since April 1994 because of her severe mental health condition. However, its position is that there is no medical evidence to establish that she was severely disabled within the meaning of the CPP when she last qualified for CPP disability at the end of December 1991 or in January 1993.³

[5] For the purposes of the CPP, a disability is a physical or mental impairment that is severe and prolonged.⁴ The Claimant’s disability was severe if it caused her to be incapable regularly of pursuing any substantially gainful occupation. Her disability was prolonged if it was likely to be long continued and of indefinite duration.

¹ The Claimant testified that in 2013, that she worked for a short period as a labourer in a sheltered workplace but she wasn’t able to continue working because of pain.

² GD2-1700 to 1707

³ Minister’s submissions: GD4, para 31

⁴ Paragraph 42(2)(a) *Canada Pension Plan*

[6] For the Claimant to succeed, she must prove that it is more likely than not that she became disabled by the end of her Minimum Qualifying Period (MQP).⁵ Her MQP – the date by which she has to prove she was disabled – is December 31, 1991.⁶

[7] The Claimant had earnings of \$419 in 1993. This was below the level of earnings to help her meet the contributory requirements; however, if she became disabled in 1993 before the end of January 1993, she will qualify for CPP disability.⁷

ISSUES

1. Did the Claimant's mental health conditions result in her being incapable regularly of pursuing any substantially gainful employment by December 31, 1991?
2. Alternatively, did her mental health conditions result in her being incapable regularly of pursuing any substantially gainful employment beginning in 1993 and before the end of January 1993?
3. If so, is her disability long continued and of indefinite duration?

FORM OF HEARING

[8] In her notice of appeal the Claimant requested that the hearing proceed by written questions and answers. In view of this, on March 4, 2020 I sent a notice of hearing setting out questions for the Claimant to answer.⁸ The Tribunal received the Claimant's answers on March 27, 2020.⁹

[9] After reviewing the Claimant's answers, I determined that an oral hearing was required in order for me to assess properly the Claimant's condition as at the end of December 1991 and in January 1993. This was because the Claimant answered that she stopped working in 1993 because of her mental health conditions, and that she was no longer able to work after 1993. However, she had not indicated when in 1993 she stopped working. In addition, she had also not provided any description of the circumstances under which she stopped working.

⁵ Paragraph 44(1)(b) CPP

⁶ Earnings Details: GD2-71

⁷ Worksheet: GD2-72

⁸ GD0-1

⁹ GD6

Severe Disability

Although the Claimant has been disabled since April 1994, there is no medical evidence to establish that she was disabled as of the MQP

[10] I must focus on the Claimant's condition as of December 31, 1991 or alternatively, in the month of January 1993.

[11] The CPP is a social insurance regime based on contributions.¹⁰ The CPP covers the Claimant only for conditions that became severe by her MQP. It does not cover her for conditions that became severe afterwards.

[12] To succeed, a claimant must provide objective medical evidence of their disability at the time of her MQP. 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.¹¹

[13] The medical evidence establishes that the Claimant has suffered from severe mental health conditions since April 1994, when she had a psychotic breakdown. However, there is no medical evidence to establish that she was severely disabled by the end of December 1991, or that she became severely disabled in January 1993.

[14] The Claimant testified that she was working as a housekeeper for a nursing home in 1991. She stopped working because she broke her kneecap and fractured her tailbone. She stated that she wasn't able to work because she was stressed out and unable to focus. However, she acknowledged that she didn't have any treatment for mental health issues at that time. She also acknowledged that she did not see a psychiatrist until she saw Dr. Tobin in April 1994.

[15] Dr. Harding was the Claimant's family doctor from January 1992 to May 1995. His office notes reveal eight office visits during 1992 and 1993, but none of those relate to mental health issues. The first mention of a mental health issue is the April 11, 1994 office note. It refers to "delusional thinking", and states that the Claimant is being referred to Dr. Tobin.¹²

¹⁰ *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28, para 9

¹¹ *Canada (A.G.) v. Dean*, 2020 FC 206, citing *Warren v. Canada (A.G.)*, 2008 FCA 377; *Gilroy v. Canada (A.G.)*, 2008 FCA 116; and *Canada (A.G.) v. Hoffman*, 2015 FC 1348; and CPP Regulations

¹² GD2-1829, 1834 to 1836

[16] The Claimant was admitted to a hospital on April 11, 1994, and discharged on April 25, 1994. In the discharge summary, Dr. Tobin stated that the Claimant had been admitted because of multiple hallucinations and delusions. Dr. Tobin also stated that her symptoms had been present for three to four weeks, and she had no past psychiatric history. Dr. Tobin diagnosed schizophreniform psychosis, possibly aggravated by substance abuse.¹³

[17] In her August 2008 letter to Service Canada, R. Annette Surette, the Claimant's mental health support worker, stated that the Claimant has a long history of psychiatric illness dating back to 1994.¹⁴

[18] Since there is no medical evidence to establish that the Claimant suffered from a severe disability as of the MQP, it is not necessary for me to apply the "real world" approach.¹⁵ I recognize that the Claimant has a limited education and a narrow work history involving only unskilled physical work. She has a life-long learning disability, only completed grade nine, and required special education classes. However, in the absence of medical evidence as of MQP, I cannot consider those factors.

[19] I am sympathetic to the Claimant's situation but the CPP provisions bind me. The Tribunal is a statutory decision-maker. I am required to interpret and apply the provisions as they are set out in the CPP. I have no authority to make exceptions to the provisions of the CPP. Nor can I render decisions because of fairness, compassion, or extenuating circumstances.

[20] The Claimant has failed to establish that it is more likely than not that she suffered from a severe disability in accordance with the CPP requirements.

[21] Since she has failed to establish a severe disability, I do not need to make a determination on the prolonged criteria.

¹³ GD2-1847

¹⁴ GD2-1826

¹⁵ *Giannaros v. Canada (Minister of Social Development)*, 2005 FCA 187

CONCLUSION

[22] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security