



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. P. v Minister of Employment and Social Development*, 2020 SST 715

Tribunal File Number: GP-19-821

BETWEEN:

M. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Claimant represented by: Geoffrey Hume

Teleconference hearing on: June 17, 2020

Date of decision: July 8, 2020

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of June 2017. My reasons are as follows.

OVERVIEW

[2] The Claimant last worked as a part-time cashier from May 2013 until December 2016. She indicated that she could no longer work as of that time because of fibromyalgia and depression. The Minister received her application for the disability pension on May 18, 2018. The application was denied 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, she 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 that the Claimant's MQP is December 31, 2018.

ISSUES

[4] Did the Claimant's condition result in her having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2018?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2018?

ANALYSIS

[6] 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. The Claimant must prove that it is more likely than not that their disability meets both parts of the test. That means if the Claimant meets only one part, she does not qualify for disability benefits.

[7] I found the Claimant to be credible. Her testimony was straightforward in answering questions related to her work and health history. I have placed equal weight on the Claimant's oral testimony and on the evidence contained in the Hearing File.

Severe disability

The Claimant suffers from a serious cumulative health condition.

[8] I must assess the Claimant's condition in its totality. To do that, I need to consider all of her impairments, not just her biggest or main impairment².

[9] The Claimant's long-time family doctor submitted in May 2018 that she suffers from fibromyalgia and depression. It was longstanding and resistant to treatment. It was also unpredictable and made worse by her chronic pain. Dr. Nichols had no other investigations or referrals planned.

[10] The Minister submitted that the Claimant has not seen a mental health specialist or attended therapy for her depression. Her doctors have also reported that the severity, frequency, and duration of her symptoms is intermittent.

[11] In terms of treatment, the Claimant has attended physiotherapy, chiropractic, and massage therapy for pain. She has not been able to afford those treatments on an ongoing basis because of the cost. She has tried multiple medications for both pain and depression. At the time of the MQP she was taking Gabapentin, Tylenol Arthritis, and Effexor. Naproxen, Lyrica, Ability, Zopiclone, and Celebrex have been tried in the past, but they had to be stopped because

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

² *Bungay v. Canada (A.G.)*, 2011 FCA 47

of side effects. The Claimant has also attended an education program for fibromyalgia as recommended.

[12] According to the Claimant, Effexor has helped to decrease her depression by up to 45%. Her pain medications can take her pain level to 6/10, but her pain can go as high as 9/10. She is able to function, but her pain is always there. Until the coronavirus restrictions began, the Claimant swam twice each week. She described that it helped. On days she did swim, however, she could not do anything else at home because it completely exhausted her.

[13] The Claimant did consult with a psychiatrist 7 or 8 years ago. She also attended counselling for 6 to 7 months around that time. Since then, Dr. Nichols has taken on the role of managing her depression through counseling and medications. He has not made any other treatment or specialist recommendations. The Claimant did consult with a rheumatologist in 2018, but the only recommendations made were to continue swimming and taking her medications for fibromyalgia.

[14] In addition to fibromyalgia and depression, the Claimant submitted has been suffering from symptoms of inflammatory bowel. At the time of the MQP, there were many days that she could not leave her house. She needed to be close to a washroom. Taking probiotics has helped her symptoms to a degree, but she still can have bowel urgency 2 to 6 times per day.

[15] I do not fault the Claimant for any lack of specialist referrals or for not being able to participate in certain treatments because of the associated cost. I find that she has been compliant with recommended treatment to the best of her ability. Despite her efforts, I find that the combination of her depression, fibromyalgia, and irritable bowel precludes her regularly from any substantially gainful work.

The Claimant's condition has a big impact on her daily life.

[16] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether the disability prevents them from earning a living. So, it's not a

question of whether a person is unable to perform their regular job, but rather their inability to perform any substantially gainful work³.

[17] The Claimant described that at the time of the MQP she had 2 really bad days and 1 good day each week. Bad days meant that she had a really hard time organizing her thoughts, her pain was worse, and she was completely exhausted. Bad days could be caused by stress or even just walking around a grocery store the day before. About 3 days each week her depression symptoms were also worse. That meant not showering, eating very little, and not leaving the house. A good day might have meant completing a few tasks around the house.

[18] The Claimant has learned what her activity tolerances are. Her symptoms dictate what she can or cannot do each day. She is not able to predict when she might get shooting pain in her legs and back or drop something that she is holding. Her exercise tolerance has decreased substantially. At the time of the MQP, she could not walk more than half a city block before having to return home. She used to love curling 3 times each week, but she had to stop completely in about 2018 because of pain. In addition to only being able to stand for 5 minutes, she can also only sit for 5 to 10 minutes.

[19] The Claimant has a hard time remembering names and dates. She cannot focus for long enough to read. In terms of sleep, she might have one good night each week. Other nights, she wakes up several times because of muscle cramping. On those nights she might get a total of 3 hours sleep.

[20] Because of her fibromyalgia and irritable bowel, the Claimant has missed family events, social gatherings, and travel. Again, she can't plan anything. Even going to a hockey game is out of the question because it would mean having to walk around the arena to get to her seat.

[21] The Claimant's husband does the majority of the cooking and cleaning at home. She does what she can to help as her symptoms allow.

[22] I accept the Claimant's condition has had a big impact on her daily life. Her symptoms are unpredictable and fluctuate day to day. She has had to make big changes to her lifestyle in an

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

attempt to control her symptoms. I recognize that there have been some improvements since she stopped working, but only because at home she can control her environment at home. She can lay down and rest whenever she needs to, and on bad days she does not have to do anything at all.

The Claimant is not realistically employable.

[23] I also have to assess the severe part of the test in a real world context⁴. This means that when deciding whether a person's disability is severe, I need to keep in mind factors like age, level of education, language proficiency, and past work and life experience.

[24] The Claimant was 55 years old and fluent in English at the time of the MQP. She finished grade 11 and a 1-year college diploma in nursing assisting. She has only worked as a nursing assistant and cashier. She has few computer skills. I find that the Claimant has very limited transferable skills and many functional and psychological limitations. Because of her age, limited education, lack of transferable skills, and condition limitations, I find that she would not be a good candidate for re-training or for accommodated work.

[25] The Claimant attempted to continue working for as long as she could by gradually reducing her hours. Unfortunately, sustaining any position for more than a few minutes is out of the question. That has not improved since December 2016. I accept that the Claimant would return to work if she could.

[26] I have concluded that it is more likely than not that the Claimant was suffering from a severe disability, as defined in the CPP, by December 31, 2018.

Prolonged disability

[27] I find that the Claimant's disability was also long continued and of indefinite duration by December 31, 2018. Despite several medication trials and consulting with specialists, her symptoms have been ongoing since 2016. Given the chronicity of her condition and the lack of new treatment options presented to her, I find that there is little prospect for improvement to the point that she could regularly return to any substantially gainful work.

⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

CONCLUSION

[28] The Claimant had a severe and prolonged disability in December 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 pension⁵. The application was received in May 2018 so the deemed date of disability is February 2017. Payments start four months after the deemed date of disability, as of June 2017⁶.

[29] The appeal is allowed.

Tyler Moore
Member, General Division - Income Security

⁵ Paragraph 42(2)(b) *Canada Pension Plan*

⁶ Section 69 *Canada Pension Plan*