



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *VS v Minister of Employment and Social Development*, 2020 SST 1193

Tribunal File Number: GP-20-135

BETWEEN:

**V. S.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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

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Decision by: Nicole Zwiers

Teleconference hearing on: June 23, 2020

Date of decision: July 23, 2020

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant is a registered nurse who was diagnosed with vitreous hemorrhage and diabetic retinopathy in both eyes in May 2018. The Claimant stopped working at that time due to her very poor vision as well as hemorrhaging in both eyes. The Minister received the Claimant's application for the disability pension on November 15, 2018. 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. I find the Claimant's MQP to be December 31, 2016.

## **ISSUE(S)**

[4] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2016?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2016?

## **ANALYSIS**

[6] Disability is defined as a physical or mental disability that is severe and prolonged<sup>1</sup>. 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 on a balance of

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

probabilities their disability meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

### **Severe disability**

#### **The Claimant did not have a severe disability as of her MQP**

[7] The Claimant testified that she worked for X full-time from 1991 through to October 2014. At that time she stopped working due to a workplace issue. The Claimant returned to work in January 2018 at another hospital but stopped working in May 2018 due to her significant vision loss and diagnosis. The Claimant testified that she was on a probation period for 3 months of her new job in 2018. She started having difficulty reading and had blurry vision. She had bleeding and hemorrhaging in eyes that she learned was caused by diabetes and hypertension. The Claimant testified that she did not have problems with her eyes or vision prior to this time.

[8] The Claimant testified that during the timeframe of October 2014, when she stopped working at X, and January 2018, when she found a full-time nursing job at another hospital, she was actively looking for work. The Claimant testified that she took a workshop through a community centre, applied to many jobs, had assistance with her resume and was able to talk to a social worker to assist with finding employment. The Claimant further testified that in this time she did a little nursing work through an agency but only received one call for a job. The Claimant testified that there was no health condition preventing her from working between October 2014 and January 2018. The Claimant testified that she had to stop working in May 2018 because she was unable to see.

[9] When asked about her health at the time of her MQP, the Claimant testified that she was trying to lose weight at that time and see her doctor but she did not expect or foresee that she would have to stop working because of her eyesight.

[10] The Claimant testified that she has suffered from depression and had seen a psychiatrist, Dr. Johnson, for her depression in 2002. The Claimant testified that she managed her depression with medication throughout the following years while working. The Claimant started seeing Dr. Johnson again in November 2019 as she continued to be depressed particularly after she left her job in 2014 at X. The Claimant testified that although she had depression she was able to work

at all times and her depression did not prevent her from working. The Claimant testified that in 2015 her depression was severe and she did not do much of anything as a result. The Claimant testified that by January 2018 she was feeling good and tried not to let her depression get in the way. She had regular attendance in her new job until she was diagnosed with her vision-related health problems in May 2018.

[11] Dr. Chow, of the Toronto Retina Institute, wrote a letter dated February 22, 2019 wherein he wrote that the Claimant was diagnosed with proliferative diabetic retinopathy in both eyes with a visual acuity score of 20/70 due to diabetic macular edema. Dr. Chow provided that the Claimant was receiving treatment of monthly Intravitreal Eylea Injections in both eyes. His prognosis for the Claimant was unknown as he indicated that the Claimant may need vitrectomy in future if the injections did not provide sufficient improvement.<sup>2</sup>

[12] A letter from Dr. Anosike dated March 25, 2019 provided that the Claimant is a patient in his practice and had depressive symptoms in 2014 following work place issues and difficulties up to her work discontinuation in October 2014.<sup>3</sup>

[13] The CPP Medical Report dated November 15, 2018, completed by Dr. Chow, indicates that he had been treating the Claimant for less than a year and that he did not recommend that the Claimant stop working.<sup>4</sup> In answer to the question whether Dr. Chow, from a strictly medical standpoint, expected the Claimant to return to any type of work in the future, Dr. Chow answered “unknown”. Dr. Chow explained that the Claimant’s current visual status is very poor based on visual acuity scores although he noted some improvement with the current treatment. Dr. Chow further provided that the Claimant may need surgical intervention if there is no further improvement. His diagnosis was dependent on the surgical outcome if surgery is necessary.<sup>5</sup>

[14] The evidence is that the Claimant was able to work as of the date of her MQP. The Claimant stopped working in October 2014 due to a workplace issue. Importantly, she did not stop working due to her health at that time. Although I accept the Claimant’s evidence that she became more depressed after she left her long-term employment in 2014, I do not find that the

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<sup>2</sup> GD2-138

<sup>3</sup> GD2-139

<sup>4</sup> GD2-154

<sup>5</sup> *Ibid*

evidence supports a finding that the Claimant was unable to work as of her MQP because of her depression. Further, the evidence regarding the Claimant's vision deterioration and very poor vision did not occur until May 2018, after her MQP of December 31, 2016. The evidence from Dr. Chow and from the Claimant do not support a finding that the Claimant was unable to work as of her MQP as a result of her eye condition. There is no evidence before me that demonstrates that the Claimant was unable to work as of December 31, 2016 and continuously after as a result of any health condition. To that end, I note that the Claimant actively looked for work in nursing after she left X in 2014 and she was able to work as a full-time nurse from January 2018 to May 2018.

[15] I must assess the severe part of the test 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. The Claimant was 49 years old at the time of the current CPP application and she has a nursing degree with many years experience as a nurse. The Claimant is well educated and there is no evidence that shows the Claimant was unable to work as a nurse as of the date of her MQP of December 31, 2016. This conclusion is supported by the Claimant's testimony that she was actively looking for work from October 2014 through to January 2018 and that she was able to work full-time as of January 2018.

[16] 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's 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 work<sup>7</sup>. I find that as of the Claimant's MQP she had capacity to work.

[17] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment<sup>8</sup>. As of her

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

<sup>7</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>8</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

MQP the Claimant did not have vision problems and her depression was being effectively managed.

[18] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition<sup>9</sup>. The Claimant was capable of working as of her MQP. She stopped working a year and a half after her MQP due to a health issue that she did not have as of her MQP.

[19] I find, on the evidence, that the Claimant has not shown that she had a severe disability as of her MQP and continuously thereafter. Having found that the Claimant did not have a severe disability, I do not need to address whether the Claimant had a prolonged disability as of her MQP.

## **CONCLUSION**

[20] The appeal is dismissed.

Nicole Zwiers  
Member, General Division - Income Security

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<sup>9</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117