



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *LP v Minister of Employment and Social Development*, 2020 SST 812

Tribunal File Number: GP-19-1124

BETWEEN:

L. P.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Teleconference hearing on: August 19, 2020

Date of decision: August 24, 2020

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of September 2017.

OVERVIEW

[2] The Minister received the Claimant's application for the disability pension on August 21, 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, she must be found disabled as defined in the CPP on or before the end of her minimum qualifying period (MQP). The calculation of the MQP is based on her contributions to the CPP. I find her MQP to be December 31, 2019.

ISSUE(S)

[4] Did the Claimant's conditions result in her having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2019?

[5] If so, was her disability also long continued and of indefinite duration by December 31, 2019?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. The Claimant 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. She must prove on a balance of probabilities her disability meets both parts of the test, which means if she meets only one part, she does not qualify for disability benefits.

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

Severe disability

The Claimant's disability was severe by December 31, 2019.

[7] The Claimant was fifty-four years old at her MQP. She has a Bachelor of Arts and a Master's degree (epidemiology). She worked as a senior policy advisor for the federal government from May 31, 2000 until March 14, 2016. She has not worked since. She stopped working due to severe anxiety, depression, and caregiver burnout, with resultant fatigue, insomnia, panic attacks, and cognitive difficulties. Her conditions have not improved significantly, if at all, since. She previously worked as a hospital research assistant.

[8] The Claimant began suffering from anxiety and depression in 2007, following the birth of her daughter, her mother's diagnosis with dementia, and her husband lengthy work absences. She was unable to continue working fulltime hours. Her employer allowed her to reduce the days she worked from 5 to 4 and subsequently to 3, and permitted her to work from home.

[9] The Claimant's symptoms, including daily anxiety attacks, frequent crying spells, physical and mental exhaustion, and insomnia began progressively worsening in 2014. She was the sole giver for her elderly parents, and daughter, who began experiencing mental health issues in 2014/2015. She was unable to continue working due to the severity of her symptoms in December 2015. She was granted a leave of absence. She returned to work in early March 2016. She was unable to continue working beyond March 14, 2016, due to insomnia, fatigue, depression, anxiety with panic attacks, and cognitive difficulties. She has suffered from urinary incontinence since 2016. She must always be near a washroom. She has often not made it to the washroom on time. As a result she wears panty liners.

[10] The Claimant's treatment since she stopped working has included medications for anxiety, depression, and sleep, without benefit and with serious side effects, psychotherapy, naturopathic therapy, counseling, and acupuncture, all without significant benefit, if any. She has continued to experience insomnia, fatigue/exhaustion, cognitive difficulties, crying spells, and urinary incontinence since March 2016. She was distraught and crying during the hearing.

[11] The Claimant has not worked, or looked for work, since she last worked March 14, 2016. She has not done so as the severity of the multiple symptoms she experienced when she stopped

working, have not improved significantly, if at all since, despite compliance with treatment recommendations. Before she stopped working, her long-term employer permitted her to work reduced hours, work from home, and granted a leave of absence. Despite such accommodations, her symptoms continued, resulting in her being unable to work in March 2016, or any job since.

[12] Dr. Brisson, family physician, completed the initial medical report dated August 15, 2018². She reported the Claimant's diagnoses as major depressive disorder and generalized anxiety. Relevant medical history included work leave of absence in December 2015, return to work in early March 2016, increased anxiety and panic attacks, and stopping work March 14, 2016. Despite psychotherapy and pharmacotherapy, symptoms have not improved. She is not sleeping well, feels exhausted, is unable to concentrate on even small tasks, feels overwhelmed, and her anxiety remains high. Her mood is labile. She easily gets emotional. Her symptoms all contribute to her inability to work and focus on her job. She tried multiple medications in 2016 without success. She was unable to tolerate the side effects. Given the duration of her illness, a significant improvement that would make her able to work again is unlikely.

[13] Dr. Brisson's clinical record of the Claimant's attendance on August 21, 2018³ noted she was crying when seen, was still feeling exhausted, and was unable to work. Her clinical note dated October 15, 2019⁴ reported she was crying in the office, and is finding it hard to cope. She has more frequent urinary incontinence, and has to wear panty liners.

[14] Dr. Dy, the Claimant's then family physician, completed an Attending Physician's Statement dated August 5, 2016⁵. He recommended that she stop working March 14, 2016. Pertinent symptoms included worsening anxiety, sadness, insomnia, inability to focus and concentrate, and low energy, which have negatively affected work performance. Symptoms have progressively worsened since 2015. She had experienced similar symptoms in December 2013. At that time she requested work accommodations to allow her to work from home. Her conditions render her fatigued, forgetful, and anxious, with an uncontrolled sense of stress, difficulty doing tasks, and interacting with others. Dr. Dy's diagnoses were adjustment disorder,

² GD2 pages 108-112

³ GD3 page 4

⁴ GD3 page 5

⁵ GD2 pages 49-53

possible evolving major affective disorder, and hypertension. She is responsible for the care of her sick and elderly parents and child. She has seen a psychotherapist for counseling. She is compliant with treatment recommendations. She enjoys work, but presently does not have the physical or emotional capacity to perform her job responsibly.

[15] Dr. Dy completed an Emotional-Psychological Questionnaire dated October 23, 2016⁶. Significant symptoms including an inability to focus or calm down, fatigue, and increased feelings of sadness, hopelessness, and stress, persist. Psychotherapy was not helpful. She is currently unable to work. Her diagnosis is major affective disorder.

[16] Dr. Dy's report dated February 17, 2017⁷ noted the Claimant's symptoms have not changed since his October 23, 2016 report, and perhaps are even worse. Her current GAF score is 35-40, a score that is indicative of a major impairment in areas such as judgment, thinking, mood, and inability to work.

[17] Dr. Dy's Attending Physician's Statement dated May 10, 2018⁸ noted the Claimant's symptoms are unchanged since onset in early 2016. Diagnoses are major depressive disorder and generalized anxiety disorder. Complications include non-response/side effects to medications. She has not yet been able to access a psychiatrist. Her psychological impairment is severe. Functional limitations include chronic insomnia, severe anxiety, isolation, low energy, inability to relax, lack of motivation/drive, and global sense of unhappiness.

[18] Dr. Dy periodically reported to the Claimant's employer/LTD provider that she was unable to return to work, including reports dated July 13, 2016⁹, February 28, 2017¹⁰, and August 22, 2017¹¹. Numerous clinical notes of the Claimant's attendances with Dr. Dy during the period January 21, 2016 to June 12, 2017¹² confirm she was seen regularly with severe symptoms of anxiety, depression, and fatigue. He consistently reported she was unable to work.

⁶ GD2 pages 68-70

⁷ GD2 pages 71-73

⁸ GD2 pages 93-95

⁹ GD2 page 54

¹⁰ GD2 page 74

¹¹ GD2 page 86

¹² GD2 pages 55-88

[19] Dr. Dy's letter dated August 22, 2017¹³ reported the Claimant's diagnoses/symptoms as chronic anxiety, insomnia, and inability to work. His referral letter to Dr. O'Brien, psychiatrist, dated March 31, 2017¹⁴ reported the Claimant has been off work because of depression since March 2016. She has trialed medications which have been ineffective and poorly tolerated. She has seen a therapist regularly. She has anhedonia, chronic low energy, frequent crying, panic attacks, and low motivation. She is on a waiting list to see a psychiatrist.

[20] The Claimant was a credible witnesses. I accept her evidence describing the debilitating symptoms she has suffered from, and her difficulty functioning on a daily basis since March 2016. There was no indication of exaggeration in her presentation, and no mention of it in the medical reports, which I find support her evidence. None of her treatment providers suggested her symptoms did not exist, or are exaggerated, and none suggested she is malingering or has been able to work regularly since March 2016.

[21] I must assess the severe part of the test in a real world context¹⁵. 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. The Claimant was just 54 years old at her MQP, being several years younger than the traditional retirement age in Canada. She is well educated and proficient in English. She has transferable skills acquired through her education, work, and life experiences. I find her personal factors did not affect her residual capacity to work by December 31, 2019.

[22] 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 impairment¹⁶. The evidence substantiates she suffered from severe, debilitating, physical and mental conditions including anxiety, depression, caregiver burnout, insomnia, fatigue, urinary incontinence, and cognitive difficulties, prior to stopping work in March 2016. She has complied with treatment recommendations, without significant improvement, if any. I am satisfied the cumulative effect

¹³ GD2 page 90

¹⁴ GD2 pages 81-82

¹⁵ *Villani v. Canada (A.G.)*, 2001 FCA 248

¹⁶ *Bungay v. Canada (A.G.)*, 2011 FCA 47

of her multiple physical and mental conditions has rendered her incapable regularly of pursuing any substantially gainful occupation since March 2016. I find her disability severe since.

[23] 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 condition¹⁷. The evidence substantiates the Claimant's conditions have not improve significantly, if at all, since she was unable to continue working, despite being accommodated, in March 2016. I find no evidence of work capacity subsequent to March 2016.

Prolonged disability

The Claimant's disability was prolonged by December 31, 2019.

[24] The evidence substantiates the Claimant has suffered from anxiety, depression, caregiver burnout, insomnia, fatigue, and cognitive difficulties since March 2016 without improvement or expectation of improvement. I find her disability is likely to be long continued and of indefinite duration, and accordingly prolonged by December 31, 2019.

CONCLUSION

[25] The Claimant had a severe and prolonged disability in March 2016, when she was unable to continue working due to her above-noted multiple conditions. However, to calculate the date of payment of the pension, she cannot be deemed disabled more than fifteen months before the Minister received her application for the pension¹⁸. Her application was received in August 2018 so her deemed date of disability is May 2017. Payments start September 2017, being four months after the deemed date of disability¹⁹.

[26] The appeal is allowed.

Patrick O'Neil
Member, General Division - Income Security

¹⁷ *Inclima v. Canada (A.G.)*, 2003 FCA 117

¹⁸ Paragraph 42(2)(b) *Canada Pension Plan*

¹⁹ Section 69 *Canada Pension Plan*