



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MP v Minister of Employment and Social Development*, 2020 SST 810

Tribunal File Number: GP-20-280

BETWEEN:

**M. P.**

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: George Tsakalis

Teleconference hearing on: August 5, 2020

Date of decision: September 8, 2020

## DECISION

[1] M. P. is the Claimant in this case. He applied for a Canada Pension Plan (CPP) disability pension on June 11, 2019. The Minister of Employment and Social Development (the Minister) accepted his application. The Minister granted him a disability pension with the maximum retroactive date for the onset of his disability, which was March 2018. The Claimant began receiving disability pension payments as of July 2018.<sup>1</sup>

[2] The Claimant is appealing the start date of his disability pension payments. He alleges that he had incapacity under the CPP since July 2010, when he was found not criminally responsible (NCR) on account of mental disorder for various offences under the *Criminal Code* that he committed in July 2009. The Claimant wanted a 2010 start date for his disability pension payments. He alleges that he was incapable of applying for a CPP disability pension before June 2019.

[3] I am dismissing the Claimant's appeal. I am satisfied that he suffers from a serious mental health disorder, but I find that he did not have incapacity under the CPP before June 2019.

## ISSUE

[4] Was the Claimant incapable of forming or expressing an intention to make an application for a disability before June 11, 2019?

## ANALYSIS

[5] To satisfy the CPP's incapacity test, claimants have to show on a balance of probabilities that they lacked the capacity to form or express an intention to apply for a benefit.<sup>2</sup> The capacity

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<sup>1</sup> Under paragraph 42(2)(b) of the CPP in order to calculate the date of payment of the pension, a person cannot be deemed disabled more than 15 months before the Minister received the pension application. The Minister received the Claimant's disability application in June 2019, so the Claimant's deemed date of disability was March 2018. Under section 69 of the CPP, disability pension payments start four months after the deemed date of disability, which in this case was July 2018. Therefore, the Minister in this case awarded the Claimant maximum retroactive payments under the CPP.

<sup>22</sup> See subsection 60(8) CPP

to form or express an intention to apply for benefits is similar to the capacity to form or express an intention with respect to other choices in life.<sup>3</sup>

[6] Capacity is to be considered in light of the ordinary meaning of the term and determined on the basis of the medical evidence and on the individual's activities. The CPP's incapacity provision is precise and focused. It does not require consideration of the capacity to make, prepare, process or complete an application for benefits but only the capacity of forming or expressing an intention to make an application.<sup>4</sup> I have to consider the Claimant's capacity to make decisions.

[7] I have to look at both the medical evidence and the relevant activities of the Claimant between the date he claims he became incapable of applying and the date he actually applied for the disability benefit which cast light on his capacity during that period of time to form or express the intent to apply for a disability benefit.<sup>5</sup>

[8] In this case, the incapacity period to be considered is between July 2010 (when the Claimant's alleged incapacity began) and June 2019 (when the Claimant applied for the CPP disability pension).

[9] The CPP incapacity provisions also require the Claimant to show that he was **continuously** incapable of forming or expressing an intention to make a CPP disability application during the entire period of the alleged incapacity.<sup>6</sup>

**The Claimant failed to prove that he had incapacity under the CPP from July 2010 to June 2019.**

[10] The Claimant testified that he worked hard when was young. He was born in 1984. He worked from 2004 to 2007 as a computer technician, as an internet technical support person, and as a sales representative.<sup>7</sup> But he began having problems with drugs. He suffered from depression and schizophrenia. He began hearing voices and seeing things. He could not

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<sup>3</sup> See *Sedrak v. Canada (Social Development)*, 2008 FCA 86

<sup>4</sup> See *Canada (Attorney General) v. Danielson*, 2008 FCA 78

<sup>5</sup> See *Slater v. Canada (Attorney General)*, 2008 FCA 375

<sup>6</sup> See subsection 60(10) CPP and *Flaig v. Canada (Attorney General)*, 2017 FC 531

<sup>7</sup> See GD2-140 and 151

concentrate, watch television or read a book. He tried going back to school after July 2010, but he found it very difficult. He needed accommodation from his teachers to pass his courses.

[11] The Claimant has been confined at psychiatric hospitals since July 2010. He testified that he did not comply with treatment. His illness grew worse. He was moved from a medium to a maximum-security psychiatric hospital, where he met a good doctor and his health improved. He became capable of applying for a CPP disability pension and he was eventually transferred to a minimum-security psychiatric hospital. He said that he could not apply for a CPP pension before June 2019 because of his poor mental health. He also suffered from back pain after a car accident.

[12] The Claimant testified that he did little in terms of activities of daily living when he was in poor health. Staff did his laundry and prepared his meals. Staff often confined him to his room. He shaved and showered on his own. File records showed that he had applied for the Ontario Disability Support Program (ODSP) in 2011, but he has no memory of making the application. A social worker completed the application for him. He has not driven for more than 10 years because of his medical condition. He was allowed to live in the community with his mother at certain times. But he never lived alone or independently after July 2010. Psychiatric hospital staff carefully monitored his activities with frequent visits. He only provided his mother with a little bit of help with the housekeeping when stayed with her. He was allowed to go into the community to grocery shop and exercise at the gym, but only with supervision. He relied on his mother to manage his money. He also could not consent to treatment. He relied on his mother to make medical treatment choices for him.

[13] However, I do not believe that the Claimant's hearing evidence showed that he had incapacity under the CPP from July 2010 to June 2019. Some of the evidence that he provided supported a finding that he was capable of making decisions on his own behalf.

[14] The Claimant testified that he appealed his confinement at the psychiatric hospital to the Ontario Review Board. He stated that he was delusional when he made this decision and he had had been misguided by his peers when he made this choice. But I find that this incident showed that he had capacity to make decisions.

[15] The Claimant also finished his GED after July 2010. He did this with difficulty and with significant accommodation. But I believe that his attendance at school showed evidence of capacity to make decisions of some kind.

[16] The Claimant also worked very briefly in 2015 for a marketing company with the permission of the psychiatric hospital. He could not perform this job because of his medical condition and ended up working for only a few days. But I believe that this showed that the Claimant had some capacity to make decisions.

**The medical records do not support a finding that the Claimant had incapacity under the CPP from July 2010 to June 2019.**

[17] The Claimant provided the Tribunal with extensive medical records. After reviewing the medical records, I agree that the Claimant suffered from a debilitating mental illness since at least July 2010. The Claimant's mental illness had a devastating affect on his life. I accept that there were times that the Claimant was delusional because of schizophrenia. The Claimant's delusions affected his ability to make decisions at certain times. However, the medical records do not show that the Claimant was always incapable of making decisions. I agree with the Minister's submissions that the medical records did not show that the Claimant was continuously incapable of forming or expressing an intent to make an application before the day on which he actually made the CPP disability application.<sup>8</sup>

[18] A psychiatrist completed a Declaration of Incapacity for the Minister. The psychiatrist stated that the Claimant's incapacity started in 2009 and ended in June 2019. The main medical condition that caused the incapacity was schizophrenia.<sup>9</sup> However, I do not place much weight on this report. The psychiatrist did not begin treating the Claimant until 2018.<sup>10</sup>

[19] The psychiatrist also completed a medical report for the Minister on June 13, 2019. She noted that the Claimant became psychotic with delusions and hallucinations when he was unwell. He also became physically aggressive because of his schizophrenia.<sup>11</sup> But after reviewing the medical evidence, I find that the Claimant did not always suffer from delusions and

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<sup>8</sup> See GD4-7

<sup>9</sup> See GD2-12

<sup>10</sup> See GD2-191

<sup>11</sup> See GD2-188-200

hallucinations. There were periods when he showed the ability to engage in his activities of daily living, work, and make decisions on his own behalf. He may have had periods of incapacity, but he was not continuously incapacitated under the CPP from July 2010 to June 2019.

[20] For the purposes of clarity, I will review the Claimant's medical evidence on an annual basis.

***June 2010 to December 31, 2010***

[21] The medical records showed that the Claimant had capacity to make decisions during this period. He participated in activities like going to the gym. He attended therapy. He saw a dietician. He exercised and played pool.<sup>12</sup>

***January 1, 2011 to December 31, 2011***

[22] The medical records showed that the Claimant had capacity to make decisions in 2011. He attended outings outside the psychiatric hospital. He went to the gym. He went to social outings such as bingo and bowling. He went shopping with the help of staff. He complied with his medication regime. He was allowed to attend medical appointments outside the psychiatric hospital. He began taking a Grade 11 English correspondence course. He also expressed a desire to apply for ODSP.<sup>13</sup> This showed that the Claimant had capacity to express an intention to make an application, which means that he did not have incapacity under the CPP.

***January 1, 2012 to December 31, 2012***

[23] The Claimant's mental health deteriorated in 2012. He did not want to take his medications. He was deemed incapable of consenting to treatment in November 2012. He attended an art course at an adult learning centre. He had difficulty concentrating, but he eventually passed the course.<sup>14</sup> The Claimant seemed to have periods of ill health during this period, but I do not see that he had a continuous incapacity under the CPP because he went to school.

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<sup>12</sup> See GD2-22

<sup>13</sup> See GD2-25-29

<sup>14</sup> See GD2-29-44

***January 1, 2013 to December 31, 2013***

[24] The medical evidence in 2013 did not show that the Claimant had a continuous incapacity under the CPP. He made the decision to appeal the November 2012 finding that he was incapable of consenting to treatment. He had behavioural problems in 2013. He began refusing medications. He was detained for suspected theft from a liquor store. He needed help from occupational therapist to improve his shopping skills. But he went to school in 2013 and eventually completed a Grade 11 computer course.<sup>15</sup>

***January 1, 2014 to December 31, 2014***

[25] The medical evidence in 2014 did not show that the Claimant had a continuous incapacity under the CPP. His mother was appointed as his substitute decision maker. But he attended to his activities of daily living independently. He took another Grade 11 course and completed it with a 98% average.<sup>16</sup>

***January 1, 2015 to December 31, 2015***

[26] The medical evidence did not show a continuing incapacity under the CPP in 2015. The Claimant spent time outside the hospital. The Claimant showed that he had the ability to prepare a meal plan within a budget. He made great gains with his grocery shopping skills. He finished his GED. He thought of going to hairdressing school before deciding not pursue that option. He was deemed capable of managing his property. He also prepared his own meals and did grocery shopping with his mother. He got a job at a telemarketing company.<sup>17</sup> His Record of Earnings showed little income in 2015.<sup>18</sup> But the fact that he worked showed capacity under the CPP.

***January 1, 2016 to December 31, 2016***

[27] The Claimant had a difficult year in 2016. The Claimant was deemed not suitable for community living outside the hospital. He was impulsive and showed poor judgment. He left the hospital without leave in May 2016. He unsuccessfully challenged his treatment incapacity. His

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<sup>15</sup> See GD2-45-56

<sup>16</sup> See GD2-57-69

<sup>17</sup> See GD2-69-78

<sup>18</sup> See GD2-162

mother eventually withdrew her consent for treatment and the Public Guardian and Trustee office began making his treatment decisions. However, I do not believe that the Claimant had a continuing incapacity under the CPP in 2016. The medical records show that his mental health status fluctuated. He was not always delusional. He was also deemed capable of managing his own property.<sup>19</sup>

***January 1, 2017 to December 31, 2017***

[28] The Claimant's health deteriorated in 2017. He engaged in violent and unpredictable behaviour. He assaulted another patient while he was in a delusional state. He had to be transferred to a maximum-security facility. But he showed some capacity to make decisions in 2017, including appealing a finding that he was incapable of managing his own treatment.<sup>20</sup>

***January 1, 2018 to December 31, 2018***

[29] The Claimant's health improved in 2018. He was eventually deemed capable of making his own treatment decisions in September 2018. He was also deemed capable of managing his property and consenting to the disclosure of his personal information. He worked in vocational services at a copy shop. He ended up working in a higher skilled area where patients developed their computer and business skills, as well as learning to operate machines.<sup>21</sup>

***January 1, 2019 to June 10, 2019***

[30] The medical evidence showed that the Claimant had capacity to make decisions in 2019, before the date of his application. The Claimant's health improved to the point that his physicians did not believe that he had to continue staying in a maximum-security psychiatric hospital.<sup>22</sup>

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<sup>19</sup> See GD2-78-87

<sup>20</sup> See GD2-88-91

<sup>21</sup> See GD2-117-129

<sup>22</sup> See GD2-129



***Being found not criminally responsible (NCR) on account of mental disorder under the Criminal Code is not the same as having incapacity under the CPP.***

[31] Under the *Criminal Code*, no person is criminally responsible for an act committed or an omission made while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission, or of knowing that it was wrong.<sup>23</sup>

[32] The test for a NCR finding under the *Criminal Code* is a very specific test that focuses on the mental state of the accused at the time of an alleged criminal offence.<sup>24</sup>

[33] The fact that a court found the Claimant NCR in July 2010 does not mean that he had incapacity under the CPP. The NCR finding would have been based on his mental state when he committed criminal offences in July 2009. The NCR finding does not bind me because I have to focus on the issue of whether the Claimant had a continuous incapacity to form or express an intention to apply for a benefit during his alleged incapacity period. The evidence did not support such a finding.

**CONCLUSION**

[34] The appeal is dismissed.

George Tsakalis  
Member, General Division - Income Security

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<sup>23</sup> See subsection 16(1) *Criminal Code*

<sup>24</sup> See *R. v. Bouchard-Lebrun*, 2011 SCC 58