



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *WW v Minister of Employment and Social Development*, 2020 SST 933

Tribunal File Number: GP-19-1047

BETWEEN:

W. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

DECISION

General Division – Income Security Section

Decision by: Adam Picotte

Date of decision: September 29, 2020

Hearing Method Teleconference
and Hearing September 10, 2020
hearing on:

DECISION

Canada 

[1] W. W. is the Claimant in this case. She applied for a Canada Pension Plan (CPP) disability pension. The Minister of Employment and Social Development Canada (the Minister) denied the application. The Claimant appealed to the General Division of the Social Security Tribunal.

[2] I have decided that the Claimant is not eligible for a Canada Pension Plan (CPP) disability pension. This written decision explains why I am dismissing the appeal.

OVERVIEW

[3] The Claimant worked in customer service for most of her adult life. Most recently, she worked as a cashier at X in Fredericton, New Brunswick. That work lasted from November 2016 until January 2018. She stopped working because of complications with her Crohn's Disease.

[4] The Claimant applied for a CPP disability pension on March 2, 2018. The Minister denied her application because her limitations did not prevent her from doing some type of substantially gainful employment.

THE ISSUES IN THIS CASE

[5] A person who applies for a disability pension has to meet the requirements set out in the Canada Pension law. First, you have to pay contributions into the CPP that meet minimum requirements. The legal term for this is the "minimum qualifying period."¹

[6] I find the Claimant's minimum qualifying period ended on December 31, 2018. I have to decide if the disability was both "severe" and "prolonged," as the law defines these terms, by December 31, 2018.

[7] The law says that a person has a severe disability if she cannot regularly pursue any substantially gainful occupation. That means that the disability must prevent her

¹ This term is found in s 44(1)(b) of the *Canada Pension Plan*.

from earning a living at any type of job.² It is up to the claimant to prove this is more likely than not.³

WAS THE CLAIMANT'S DISABILITY SEVERE?

[8] I find that the Claimant did not prove that she had a severe disability by December 31, 2018. My decision is not based on her diagnosis. It is based on whether she had functional limitations by December 31 2018 that prevented her from working.⁴ I have to look at her overall health issues and think about how they affect her ability to work.

How the Claimant sees her condition

[9] I had an oral hearing with the Claimant. She was able to give details about the ways her Crohn's disease leaves her struggling. She told me that she wakes up in the middle of every night experiencing pain. She ends up on her hands and knees for hours. She feels like something is cutting its way out of her body. She also told me that she is losing weight and cannot find food that does not hurt her.

[10] She wrote in her application that she had difficulties with most activities in her daily life. She detailed that walking, sitting, standing, and maintaining her house were all challenging. She also wrote that she had to give up hobbies such as music because she could not predict when her Crohn's disease would flare up, causing her too much pain to function.

[11] The Claimant also told me that she was unreliable and that prevented her from continuing to work. Stress would lead her to getting sick and unable to work. She also told me that she is on anti-depressants and has anxiety.

² *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

³ This is a clear-language paraphrase of the legal requirement to decide "on a balance of probabilities."

⁴ *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

The medical reports do not support a severe disability by December 31, 2018

[12] It is clear that the Claimant is now limited in her daily activities by her Crohn's disease. However, the medical reports do not show that her condition was severe by December 31, 2018.

[13] In a July 11, 2018 consultation report, Dr. Martin, Gastroenterologist, wrote that the Claimant was improving, with almost no abdominal pain and improved bowel movements. He wrote that the Claimant functioned better than 90% of the population.⁵

[14] In an August 29, 2018 consultation report, Dr. Martin wrote that her Crohn's disease was stable. She was not having diarrhea, rectal bleeding, nocturnal problems, or abdominal pain.⁶

[15] From August 2018 to January 2019, the Claimant saw her family doctor, Dr. MacMullin, six times. There are no chart notes showing complications with her Crohn's disease.⁷ I would have expected the Claimant to have made at least some complaints during these visits about the serious problems she described during the oral hearing.

[16] In February 2019, Dr. Martin again saw the Claimant. He noted that in January of that year she had to go to the emergency room for a blockage. However, by the time of her consultation, the Claimant was having regular bowel movements, was feeling well, had no abdominal pain, and was not having rectal bleeding.⁸

[17] I did see some medical notes that referred to the Claimant's depression and anxiety. However, the notes indicate that following a prescription of Ativan, she was doing well and had returned to work. This was back in 2016.⁹

[18] I explained to the Claimant during the oral hearing how the lack of evidence of a severe disability may affect her claim. She told me that she had more medical

⁵ GD2-91

⁶ GD2-87

⁷ GD2-77

⁸ GD2-84

⁹ GD2-82

information that would help her appeal that had not been submitted yet. I gave her the opportunity to send more records in. She did not provide any more records or contact the Tribunal to say that there would be a delay.

[19] The medical evidence that I have leading up to and right after December 31, 2018 does not support a finding of a severe disability.

Did the Claimant have some capacity to work?

[20] When I am deciding if the Claimant was able to work, I must look at more than her medical conditions and their effect on how she can function. I must also think about her age, level of education, language proficiency, and past work and life experience. These factors help me to get a 'real world' picture of the Claimant's capacity to work.¹⁰

[21] The Claimant is relatively young and has a good work history. Leading up to and right after December 31, 2018, she does not appear to have any other factors that would affect her ability to work.

THE CLAIMANT'S DISABILITY WAS NOT SEVERE

[22] I find the Claimant's disability was not severe by December 31, 2018. Because I have made this finding, I do not need to decide whether the Claimant's disability was prolonged.

[23] I am dismissing this appeal.

Adam Picotte
Member, General Division – Income Security