



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RM v Minister of Employment and Social Development*, 2020 SST 996

Tribunal File Number: GP-20-667

BETWEEN:

R. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Shannon Russell

Teleconference hearing on: September 15, 2020

Date of decision: October 5, 2020

DECISION

[1] The Claimant is not eligible for Canada Pension Plan (CPP) disability benefits. This decision explains why I am dismissing the appeal.

OVERVIEW

[2] The Claimant is a 59-year-old woman who was laid-off in 2008 from her long-time job at a bank. She applied for disability benefits in January 2019, and in her application she reported that she is unable to work because of tinnitus, fibromyalgia, tension headaches, high blood pressure, neck, ear and head pain, and weak legs and arms. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

WHAT THE CLAIMANT MUST PROVE IN THIS APPEAL

[3] For the Claimant to succeed, she must prove that she has a disability that was severe and prolonged by December 31, 2012. This date is based on the Claimant's contributions to the CPP¹.

[4] A disability is severe if it renders a person 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 death².

ANALYSIS

The nature of the disability

[5] The Claimant currently has several medical conditions, including fibromyalgia, chronic pain, tinnitus, and vertigo. However, some of her conditions arose after her MQP and so they are not relevant to her application for benefits.

¹ The *Canada Pension Plan* calls this date the "Minimum Qualifying Period". See subsection 44(2) of the *Canada Pension Plan*. The Claimant's contributions are found at pages GD4-10 to GD4-11.

² The definitions are found at paragraph 42(2)(a) of the *Canada Pension Plan*

[6] The Claimant says that the conditions that disabled her in 2012 are a mental health condition, menopause symptoms and fibroids.

[7] With respect to the mental health condition, the Claimant testified that when she worked at the bank she experienced an incident of sexual harassment. One week later, she was laid-off. She did not sue the bank because she was already undergoing a lot of stress as she had just broken up with her fiancé. On top of all this, the harassment incident triggered memories of a previous trauma she had experienced when she was just four years old.

[8] As for the menopause, the Claimant testified that between 2009 and 2012, she experienced swollen hands and feet, weight gain, lumps on her forehead, difficulties with sleep, and back and neck pain. She has also experienced hemorrhaging due to painful fibroids. Eventually, the menopause symptoms improved. The hemorrhaging improved too because the fibroids decreased in size.

The Claimant's disability was not severe by December 31, 2012

[9] The Claimant's disability may well be severe now. However, I am unable to find that it was severe by December 31, 2012. I say this for five reasons. I will explain each reason now.

1. The evidence does not support a finding that the Claimant's mental health condition(s) affected her ability to work by December 31, 2012.

[10] I acknowledge that by December 2012, the Claimant had experienced stress and trauma. However, the evidence does not support a finding that the Claimant's mental health condition(s) prevented the Claimant from working by December 31, 2012.

[11] First, when the Claimant applied for disability benefits in 2019, she did not say she was disabled by reason of a mental health condition. In fact, the only medical conditions she listed in her application were physical conditions³. I am not saying that the Claimant did not have a mental health condition when she applied for disability benefits. She clearly did. For example, her family physician reported in 2019 that she has anxiety⁴. My point is simply that the

³ Page GD2-26

⁴ Page GD2-171

Claimant's mental health condition appears not to have been a significant contributor to her disability in 2019 otherwise she presumably would have mentioned it in her application. I acknowledge that I am not assessing the Claimant's disability as of 2019; however, I asked the Claimant if her mental health condition worsened or improved or stayed about the same between 2012 (her MQP) and 2019 (her application), and the Claimant said it stayed the same.

[12] Second, I asked the Claimant if she was undergoing any treatment for a mental health condition by December 31, 2012, and the only treatment the Claimant mentioned was a rhinoplasty that she had in 2013. I do not consider the rhinoplasty significant because the Claimant explained it was done for cosmetic purposes. The absence of treatment for a mental health condition (such as counselling and/or medication) suggests to me that the Claimant was managing the condition on her own. Moreover, I asked the Claimant about counselling specifically, and she said her doctor asked her if she wanted to talk to someone, but she declined. She explained that her stress was about her sister (who would just not leave her alone about things) and she did not see the point in talking to a psychiatrist unless her sister attended too. The Claimant did not mention any need to see a mental health practitioner for reasons related to her previous trauma and/or harassment.

[13] Third, the Claimant saw a psychiatrist, Dr. Maunder, in August 2019, and although Dr. Maunder acknowledged that the Claimant had experienced a number of stressful life events and conflicts in her life, he did not see evidence for depression, PTSD or other primary psychiatric disorders⁵. This is significant because the assessment was several years after the MQP and, as I mentioned previously, the Claimant told me that her mental health condition stayed about the same between 2012 and 2019.

[14] Fourth, although Dr. Maunder identified a link between the Claimant's previous traumas and her physical conditions⁶, the evidence does not show that the Claimant's physical conditions were disabling by December 31, 2012. I will say more about this later on in this decision.

⁵ Pages GD2-153 to GD2-155

⁶ Dr. Maunder said the Claimant has had at least three functional syndromes over her adult life (IBS, fibromyalgia, prolonged vertigo and tinnitus) as well as chronic headaches and possible TMJ pain. He explained that the co-occurrence of several functional syndromes is often associated with a history of psychological trauma (pages GD2-154 and GD2-155).

[15] Fifth, the Claimant told me that she was actively looking for work in and around the time of her MQP and she said that, at times, she was in fact working. The Claimant also gave evidence showing that she stopped working for reasons that were unrelated to her disability. For example, the Claimant testified that after being laid-off from the bank in 2008, she immediately started looking for a job. In 2009, she worked for a couple of months as a secretary for a broker. That job ended because the broker shut down her office and began working from home and so she did not need the Claimant any longer. In 2010, the Claimant worked for one day at a paint / wallpaper factory. She stopped working because there were mousetraps all over the office and because she was allergic to the paint. In 2013 (after the MQP), the Claimant worked for a month at a company that sold water tanks and furnaces. She stopped working there because she believes the company was scamming people, which resulted in a disgruntled customer entering the office with a knife (while the Claimant was outside taking a break). Police arrived at the building and the whole thing scared the Claimant.

[16] I acknowledge that the Claimant has not worked since 2013, but the Claimant also said that she was limiting her job search to jobs that were within 20 miles of her home. She did not want to work at a job that was further than 20 miles away because it would take her too long to get to and from work. The fact that there may not have been any suitable jobs within the Claimant's job search area is not a factor I can consider. This is because socio-economic factors, such as labour market conditions in the community where the applicant resides, are irrelevant in determining whether an applicant is disabled⁷.

[17] Sixth, the Claimant testified that she has always lived with her parents, and in 2012 she was (as she had been for some time) her parents' primary caregiver. She said that both of her parents had medical conditions, and so the Claimant helped with things like cooking, cleaning, and taking her parents to medical appointments. This suggests to me that the Claimant was demonstrating good and reliable levels of functionality in 2012.

2. The Claimant's IBS, menopause and fibroid symptoms improved

⁷ *Canada (Minister of Human Resources Development) v. Rice*, 2002 FCA 47

[18] Fortunately, some of the Claimant's health conditions have improved with time. In August 2019, the Claimant told Dr. Maunder that she had IBS for two years in her early 20s, but that condition eventually resolved spontaneously⁸. As for the symptoms associated with menopause and fibroids, the Claimant acknowledged during the hearing that these improved with time. The improvement is important because the Claimant must show that her disability was severe by December 31, 2012 and that it remained severe *continuously* through to the date of her application for benefits in 2019.

3. The Claimant's other physical conditions would not have prevented the Claimant from working by December 31, 2012

[19] The Claimant testified that her overall physical condition was not bad in 2012. The medical evidence supports what the Claimant told me. The medical evidence shows that most of the Claimant's physical conditions either worsened after the MQP or began after the MQP.

[20] For example, the medical evidence shows the Claimant experienced a limited period of vertigo in 2007⁹, and that she fully recovered¹⁰. Indeed, the Claimant worked until the spring of 2008. Then, in either August or September 2016, the Claimant experienced a sudden onset of dizziness following intense head / ear pain¹¹. Around the same time, the Claimant also began experiencing ringing in the ears and general weakness¹². This was well after the MQP.

[21] The Claimant reported that her fibromyalgia began around 2008¹³. Although this was before her MQP, the condition appears to have either been mild or it improved. I say this because the Claimant's family physician reported that the fibromyalgia began in December 2015¹⁴ (well after the MQP).

⁸ Page GD2-153

⁹ Page GD2-154

¹⁰ Page GD2-126

¹¹ Pages GD2-126 and GD2-153

¹² Page GD2-101

¹³ Page GD2-154

¹⁴ Page GD2-171

[22] The medical evidence also refers to left knee pain, but the pain appears to have started in June 2016¹⁵ (after the MQP).

4. The totality of the Claimant's conditions were not disabling by December 31, 2012

[23] 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.

[24] The evidence does not show that the Claimant's conditions, in their totality, would have prevented her regularly from pursuing any substantially gainful occupation by December 31, 2012. Again, the Claimant was actively looking for work while at the same time providing care to both of her parents. She also acknowledged that her physical health was not bad in 2012 and that she was not undergoing any treatment for her mental health. All of this is not consistent with a severe disability. I also find it significant that both the Claimant and her family physician reported dates of disability that are well after the MQP. When the Claimant applied for disability benefits, she said that it was September 2016 when she could no longer work because of her medical condition¹⁷. The Claimant's family physician recommended that the Claimant stop working as of January 2017¹⁸.

5. The Claimant was employable in the real world

[25] When I am deciding if the Claimant can work, I must consider more than just her medical conditions and how they affect what she can do. I must also consider her age, level of education, language proficiency, and past work and life experience. These factors help me decide if the Claimant can earn a living in the real world¹⁹.

[26] In 2012, the Claimant was employable in the real world. She was only 51 years of age and thus had several years ahead of her before the standard age of retirement. She was (and is)

¹⁵ Page GD2-65

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

¹⁷ Page GD2-26

¹⁸ Page GD2-172

¹⁹ *Villani v. Canada (A.G.)*, 2001 FCA 248

proficient in at least one of Canada's two official languages. She had a good level of education (two years of college)²⁰ and she had years of office experience as an administrative assistant.

Prolonged disability

[27] Given my finding that the Claimant's disability was not severe by December 31, 2012, it is not necessary for me to assess whether the disability was prolonged.

CONCLUSION

[28] The appeal is dismissed.

Shannon Russell
Member, General Division - Income Security

²⁰ Page GD2-35