



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SC v Minister of Employment and Social Development*, 2020 SST 937

Tribunal File Number: GP-20-839

BETWEEN:

S. C.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Claimant represented by: R. L.

Videoconference hearing on: September 28, 2020

Date of decision: September 30, 2020

DECISION

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

OVERVIEW

[2] The Claimant is 60 years old and lives with her husband R. L. She has not worked formally since 2014. On January 22, 2018, she suffered a bithalamic ischemic stroke.¹ The Minister received the Claimant’s application for the disability pension on April 16, 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 set out in the CPP. More specifically, she must be found disabled (as defined in the CPP) on or before the end of the minimum qualifying period (“MQP”). The MQP calculation is based on the Claimant’s CPP contributions. I find the Claimant’s MQP to be December 31, 2017.

PRELIMINARY MATTERS

[4] Although R. L. is listed as the Claimant’s Representative, I allowed him to give evidence at the hearing. He is the Claimant’s husband, and was acting as an administrative representative only. He is not a legal professional. He is listed as the Claimant’s representative because the Claimant is not capable of advocating on her own behalf. She did not even attend the hearing, because she would be unable to participate meaningfully.

[5] The Minister filed an updated record of earnings and CPP contributions (indexed as “GD5”) on September 14, 2020. Although filed only two weeks before the hearing, I admitted GD5 because it was potentially highly relevant to the appeal. It confirmed that the Claimant had not worked since the previous record of earnings and CPP contributions had been filed.²

ISSUES

¹ I noted some references to a stroke date of January 21. While the one-day difference is ultimately immaterial, I rely on the contemporaneous hospital record (dated January 22, 2018) at GD2-64.

² The previous record of earnings and contributions is at page GD4-8.

[6] Can the Claimant's MQP date be extended beyond December 31, 2017?

[7] Was the Claimant severely disabled by her MQP date?

[8] If so, was her disability also prolonged by her MQP date?

ANALYSIS

[9] Disability is defined as a physical or mental disability that is severe and prolonged.³ The Claimant has a severe disability if she is 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. The Claimant must prove, on a balance of probabilities, that her disability meets both parts of the test by the MQP date. If she meets only one part, she does not qualify for disability benefits.

[10] The Claimant's MQP date is critical in this case. The Claimant suffered a devastating stroke only three weeks after December 31, 2017. The Minister accepts that the stroke disabled her from working by January 22, 2018⁴, but denies she was severely disabled by her MQP date.

Can the Claimant's MQP be extended beyond December 31, 2017?

[11] I find that the Claimant's MQP cannot be extended beyond December 31, 2017.

[12] The Claimant has not made any valid CPP contributions since 2014. Before that, she had valid CPP contributions yearly between 1978 and 2014.⁵ As she has more than 25 years of contributions, her MQP continues as long as she has valid contributions in at least three of the six most current years.⁶ She only met this requirement until December 31, 2017. By January 1, 2018, the Claimant only had contributions in two (2013 and 2014) of the six most current years (2013, 2014, 2015, 2016, 2017, and 2018).

[13] The Claimant's MQP cannot be extended beyond the end of 2017, because she does not meet any of the extension criteria. She did not receive a CPP disability pension between January

³ See paragraph 42(2)(a) of the *Canada Pension Plan*.

⁴ GD4-3, GD4-6 and GD4-7

⁵ GD4-8 to GD4-9, and GD5-3 to GD5-4

⁶ See paragraph 44(2)(a) of the *Canada Pension Plan*.

2015 and January 2018.⁷ She had no formal employment earnings in 2018 that might allow a proration of her MQP into January 2018.⁸ She did not earn post-2014 income in another country that could count as CPP contributions through an international agreement.⁹ Nor did she qualify for the Child Rearing Dropout (“CRDO”) after 2014.¹⁰

Was the Claimant severely disabled by December 31, 2017?

[14] For the reasons set out in the following paragraphs, I find that the Claimant was not severely disabled by December 31, 2017.

[15] I accept that the Claimant is severely disabled now. In September 2018, Dr. Kennie (Family Physician) said the Claimant remained very dependent on her caregivers.¹¹ In October 2018, Dr. Kennie prepared a Certificate of Incapacity. The Claimant did not understand time, had impaired judgment due to altered intellectual functions, could not keep track of decisions, and could not manage her affairs. She could not cook or drive, and was with R. L. 24 hours per day.¹² In January 2020, Dr. Kennie said she was unable to function on her own, and needed help with independent activities of daily living.¹³ In May 2020, Dr. Kennie confirmed she could not work at any occupation. R. L. had to help with her advanced activities of daily living. Dr. Firestone (Physiatry) said she could not do any work.¹⁴

[16] R. L. gave similar evidence. In January 2020, he said the Claimant had permanent memory loss and did not know the day, month, or year. Taking care of her was like taking care of a six-year-old, as she could not operate anything herself.¹⁵ In May 2020, he said she could not remember her grandchildren’s names. She always asked if tomorrow was Saturday. She could not remember where she put things. If he is late coming home from work, she starts crying

⁷ See s. 44(2)(b)(iii) of the *Canada Pension Plan*.

⁸ See s. 19 of the *Canada Pension Plan*. Her lack of income in 2018 is confirmed at GD5-3 to GD5-4.

⁹ Section 107 of the *Canada Pension Plan* explains reciprocal international agreements.

¹⁰ See s. 44(2)(b)(iv) of the *Canada Pension Plan*.

¹¹ GD2-68

¹² GD1-10

¹³ GD2-130

¹⁴ GD1-16 and GD3-2

¹⁵ GD2-14

because she thinks he is not coming back to her.¹⁶ As noted above, the Minister admits that the Claimant is now disabled from working.

[17] However, R. L. has also repeatedly admitted that the Claimant was only disabled after she suffered her stroke on January 22, 2018.¹⁷ He maintained this at the hearing, as did D. S. (a family friend). While the Claimant had not worked formally since 2014, she still informally babysat two children for a friend.¹⁸ At the hearing, R. L. and D. S. said the Claimant could work before the stroke and was still looking for work up to 2018. However, job options in the area are limited. Objective medical records show no history of stroke or other significant disabling conditions before the stroke itself.¹⁹

[18] Both R. L. and D. S. were exceptionally honest and credible witnesses. I fully accept their descriptions of the Claimant's limitations. I find that the Claimant was severely disabled upon suffering the stroke on January 22, 2018, and has remained severely disabled since.²⁰ The problem is that her MQP ends on December 31, 2017. I find that she still had work capacity by that date. When there is evidence of work capacity, the Claimant must show that efforts at obtaining and maintaining work have been unsuccessful because of her health condition.²¹ The Claimant has not shown this, for any period before she suffered her stroke.

The special circumstances in this case

[19] The Claimant's current challenges are formidable. However, R. L.'s challenges are also significant. His life has turned upside down. His wife suddenly became a completely different person. She constantly asks the same questions, because her memory is so poor. She does not even remember their marriage. It is difficult to have a conversation with her. She used to shop, cook, do laundry, cut the grass, and do tasks such as painting the house. She can no longer do

¹⁶ The Claimant used to go to R. L.'s workplace during the day: she would do crossword puzzles in his office while he went about his duties. However, since COVID-19 started, she has not been allowed to go with him to work.

¹⁷ See GD1-4, GD2-93, and GD2-109.

¹⁸ This babysitting continued into January 2018: see GD2-64 and GD3-5.

¹⁹ See GD1-10, GD2-64, GD2-68, GD2-80, GD2-86, and GD2-130 to GD2-132

²⁰ As required by *Villani v. Canada (A.G.)*, 2001 FCA 248, I assessed severity in a real-world context, considering the factors such as age, level of education, language proficiency, and past work and life experience. She had a Grade 12 education, spoke English, had food handling certification, and had work experience in child care and food preparation. In the "real world", without considering her medical condition, her background would have prepared her for work in those two areas. She clearly could not have worked in those two areas after her stroke.

²¹ *Inclima v. Canada (A.G.)*, 2003 FCA 117

any of those things. R. L. must do them all, in addition to his full-time employment. He needs help caring for the Claimant, but cannot afford it on his income. He must drive her everywhere, and she cries whenever he leaves the home or does not return promptly. If she is alone, she will just stay in bed all day. This makes it even harder for R. L. to leave.

[20] Both R. L. and D. S. acknowledged that the Claimant's MQP was the main hurdle. However, they asked that I exercise discretion because of the relatively short time that passed between the end of the Claimant's MQP and her debilitating stroke.

[21] I have considerable sympathy for R. L. and the Claimant. Her most recent job ended involuntarily, because her employer shut down the business.²² No one could have anticipated her January 2018 stroke, or that the effects would be so extensive. Their remote location complicates her care, and likely contributed to her lack of formal employment after 2014.

[22] However, despite the compelling personal circumstances, I cannot ignore the provisions of the *Canada Pension Plan*. The Tribunal was created by legislation. This means that the Tribunal only has the powers granted to it by its governing statute. As a Tribunal member, I must interpret and apply the provisions as they appear in the *Canada Pension Plan*. I cannot change or waive them, even if they seem unfair or harsh in this case. I cannot contradict Parliament's intent.²³ Nor can I make decisions on a compassionate basis. The Claimant's MQP ends on December 31, 2017, and the evidence simply does not support a severe disability by then. As a result, the appeal cannot succeed.

Was the Claimant's disability also prolonged by December 31, 2017?

[23] As the Claimant's disability was not severe by December 31, 2017, it is not necessary to answer this question.

CONCLUSION

[24] The appeal is dismissed.

Pierre Vanderhout

²² GD2-91

²³ See *R. v. Conway*, 2010 SCC 22, at paragraph 101.

Member, General Division - Income Security