



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SB v Minister of Employment and Social Development*, 2020 SST 1206

Tribunal File Number: GP-20-888

BETWEEN:

S. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Adam Picotte

Teleconference hearing on: October 15, 2020

Date of decision: October 21, 2020

DECISION

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

OVERVIEW

[2] The Claimant last worked full time from April 2008 until November 25, 2011 as a tile setter with X. He stopped working when he developed difficulty kneeling and walking.

[3] The Minister received the Claimant's application for the disability pension on November 29, 2018. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. More specifically, the Claimant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The calculation of the MQP is based on the Claimant's contributions to the CPP. I find the Claimant's MQP to be December 31, 2013.

ISSUE(S)

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2013?

ANALYSIS

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

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

Severe disability

Did the Claimant's functional limitations result in him being incapable regularly of pursuing any substantially gainful occupation?

[7] I have determined that the Claimant had significant impairments at his MQP and continuously after. However, the Claimant has not made reasonable efforts to follow the treatments recommended by his physicians. As a result, I have decided that he is not entitled to a CPP disability benefit.²

[8] I must assess the severe part of the test in a real world context³. 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, and past work and life experience.

[9] The Claimant was 46 years at the time of his MQP in December 2013. He detailed that he had worked in the trades for most of his life. He had a grade 10 education and no technical or trade training. It is evident by his MQP; the Claimant was no longer working, and had significant issues with walking, squatting, standing and other such activities.

[10] The Minister's representative made submissions that there was no evidence on file to indicate a medical condition of such severity as to have prevented the Claimant from performing some type of suitable work within his capacity at the end of December 2013 and continuously thereafter.⁴ However, my review of the file materials is that the Claimant certainly had impairments. The issue as I see it is that the Claimant has not followed reasonable recommendations for treatment of his impairments.

[11] The Claimant wrote in his application for benefits that he could no longer work as of 2014 because of low back pain and sciatica, total right knee replacement, and COPD.⁵ He wrote that because of these conditions he had to use a cane and CPAP machine all the time.

[12] The Claimant indicated that he had significant impairments in his ability to walk, stand, take stairs, and kneeling. He also noted difficulties with household chores.

² The requirement to follow medical advice is explained in *Sharma v. Canada (Attorney General)*, 2018 FCA 48

³ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁴ GD4-11

⁵ GD2-32

[13] Dr. Aljafari provided a medical report setting out the nature of the Claimant's medical conditions and the functional impairments he suffered from.

[14] Dr. Aljafari detailed the Claimant had osteoarthritis of both knees since 2005. As a result, he was not able to stand for too long or sit for long periods.

[15] The Claimant was also noted to have chronic back pain since 1998. As a result, he was not able to walk long distances, sit or stand for prolonged periods.⁶

[16] In a chart note from January 22, 2014 Dr. Alhassan detailed that the Claimant was classified as Obese Class 3, had a body mass index of 49.5, was a heavy smoker, had osteoarthritis and obstructive sleep apnea.⁷ At that time, the Claimant had been prescribed naproxen.⁸

[17] I am satisfied that the Claimant's non-compliance with treatment options was unreasonable and likely affected his disability.⁹

[18] In a 2008 medical report made for a previous CPP disability benefit application, his physician at the time recommended weight loss as a treatment.¹⁰

[19] In April 2018, the Claimant underwent a total left knee replacement.¹¹

[20] In a November 6, 2018 consultation report, Dr. Strosescu detailed the Claimant had a 10-year history of worsening back pain followed by bilateral knee pain¹² He noted that he had an extensive discussion with the patient educating him about the importance of weight loss in chronic back pain and osteoarthritis of the knees.

⁶ GD2-19

⁷ GD2-86

⁸ GD2-87

⁹ The reasonableness requirement is explained in *Lalonde v. Canada (MHRD)*, 2002 FCA 211

¹⁰ GD2-159

¹¹ GD2-121

¹² GD2-118

[21] In a January 9, 2019 consultation, Dr. Pacin recommended that the Claimant reduce his weight and stop smoking.¹³

[22] In an April 7, 2020 consultation, Dr. Sommer detailed the Claimant had clinical presentation consistent with radicular pain and claudication. His condition is adversely affected by numerous risk factors including morbidly increased BMI (estimated at 52 or Obese Class HI), chronic smoking of tobacco and cannabis and lack of regular exercise. All of these were discussed with him. Dr. Sommer explained to the Claimant that he needed to modify his risk factors.¹⁴

[23] The Claimant for at least 12 years had been advised that he needed to lose weight because it was having a significant impact on his level of function. The medical evidence on file detailed that the Claimant had not followed the advice of his physicians to exercise regularly and stop smoking. It is reasonable for a Claimant to attempt exercise and other recommended programming but to not succeed in reducing his functional impairments. However, it is not reasonable for a Claimant to fail to follow medical treatment for a 12-year period.

[24] During the oral hearing, I asked the Claimant about his efforts to follow the recommended treatment of exercise and smoking cessation. He told me that he could not attend aquatic exercise because of Covid19. That is certainly reasonable since the onset of the pandemic but does not account for the 11 years prior that he did not engage in such activity. I asked him about that and the Claimant told me that his doctor had never recommended that he exercise at a pool. I did not find that as a reasonable basis to not have exercised.

[25] The Claimant had available to him any number of options for exercise during the 12 years from 2008 to present and he did not do so. Only recently has he started to walk a block or two a day with the aide of a walking device. His lack of exercise in her period leading up to 2020 shows that the Claimant was not compliant with reasonable medical recommendations that would likely resulted in his improved condition.

¹³ GD2-117

¹⁴ GD1-19

[26] While his physicians recommended smoking cessation there is less of an explanation as to how this would benefit his knee and back pain. As such, I have not placed weight on his lack of smoking cessation. I do not that the Claimant advised me that he has reduced his smoking to only five cigarettes a day and has done so for approximately three to four months.

[27] Given my findings that the Claimant has not followed the reasonable medical recommendations from his physicians to improve his level of function, I have decided that the Claimant does not have a severe disability as set out in the Canada Pension Plan.

CONCLUSION

[28] The appeal is dismissed.

Adam Picotte
Member, General Division - Income Security