



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CR v Minister of Employment and Social Development*, 2020 SST 1093

Tribunal File Number: GP-19-1560

BETWEEN:

**C. R.**

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: Virginia Saunders

Teleconference hearing on: November 3, 2020

Date of decision: November 9, 2020

## **DECISION**

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

## **OVERVIEW**

[2] The Claimant is now 61 years old. She has worked in service and hospitality jobs, as a labourer, and in administrative positions. Her last job ended in 2014. In 2016 she was diagnosed with emphysema. In 2017 she was diagnosed with lung cancer. She is now cancer-free, but she cannot work because she is on permanent oxygen. She has difficulty breathing, and is limited in almost all activities.<sup>1</sup>

[3] The Claimant applied for a CPP disability pension in August 2018. The Minister of Employment and Social Development Canada (the Minister) refused her application. The Claimant appealed to the General Division of the Social Security Tribunal.

## **WHAT THE CLAIMANT MUST PROVE IN THIS APPEAL**

[4] For the Claimant to succeed, she must prove that she has a disability that was severe and prolonged by December 31, 2009. This date is based on her contributions to the CPP.<sup>2</sup>

[5] If the Claimant was not disabled by December 31, 2009, she qualifies if she proves she became disabled between January 1, 2012, and November 30, 2012. That is because her earnings and contributions in that year can be pro-rated.<sup>3</sup>

[6] A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation. It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>4</sup>

## **THE REASONS FOR MY DECISION**

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<sup>1</sup> GD2-184-185

<sup>2</sup> The *Canada Pension Plan* calls this date the “Minimum Qualifying Period.” See subsection 44(2). The Claimant’s contributions can be found at GD4-27.

<sup>3</sup> Section 19 and subsection 44(2.1) *Canada Pension Plan*. The Claimant’s 2012 earnings and the calculation of the pro-rated date are at GD2-35-39.

<sup>4</sup> The definition is found in paragraph 42(2)(a) of the *Canada Pension Plan*. The legal test is that the Claimant must prove she is disabled on a balance of probabilities. In other words, she must show it is more likely than not that she is disabled.

[7] I find that the Claimant did not prove that she had severe and prolonged disability by December 31, 2009; or that she became disabled between January and November 2012. I reached this decision by considering the following issues.

### **The Claimant's contributions to the CPP**

[8] The Claimant is a status Indian who worked on reserve for First Nations bands in 1977, 1978 and 1983 through 1986. That kind of employment is exempt from the CPP, unless the employer or employee elects to participate and makes the required contributions.<sup>5</sup>

[9] The Claimant wanted to know if she could make those contributions now, to possibly give her a more recent qualifying date than 2009 or 2012. The Claimant did make CPP contributions in 1977, 1978 and 1983. I do not know if those were from her First Nations employment. Regardless, contributions in this period do not affect her eligibility for a CPP disability pension. Her qualifying dates are calculated by finding the most recent six-year period in which she made four years of contributions to the CPP. She had to be disabled by the end of that six-year period to qualify for a CPP disability pension.<sup>6</sup>

[10] For the Claimant, this six-year period began on January 1, 2004, and ended on December 31, 2009. If she uses her pro-rated 2012 earnings to qualify, the six year period started on January 1, 2007, and ended on November 30, 2012. Contributions made before 2004 do not affect this calculation

[11] The Claimant also asked if she would get credit for raising her children. In determining the last six year period where the Claimant had four years of CPP contributions, I can ignore or drop out the low-earning years when she received family allowance or child tax benefits for a child under the age of seven.<sup>7</sup> This is called the Child Rearing Provision. I can only drop out years where she received the benefit for the entire calendar year.<sup>8</sup>

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<sup>5</sup> Subsection 6(1) and paragraph 6(2)(j.1) *Canada Pension Plan*; Section 29.1 *Canada Pension Plan Regulations*

<sup>6</sup> Paragraph 44(1)(b) and subsection 44(2) *Canada Pension Plan*.

<sup>7</sup> Paragraph 44(1)(b) and subsection 44(2) *Canada Pension Plan*.

<sup>8</sup> *Abbott v. Minister of Social Development* (January 10, 2006), CP 21427, Pension Appeals Board

[12] The Claimant's children were born in March 1981, August 1985, and May 1991.<sup>9</sup> The latest possible year that could be dropped out would be 1997. For the same reasons that I explained above, dropping out any years before 2004 would have no effect on the Claimant's qualifying dates for a CPP disability pension.

**The Claimant did not have a severe disability when she was last eligible**

[13] My decision about whether the Claimant's disability is severe is not based on her diagnosis.<sup>10</sup> It is based on whether she has functional limitations that prevent her from earning a living.<sup>11</sup> I have to look at her overall medical condition and think about how the Claimant's health issues might affect her ability to work.<sup>12</sup>

[14] The Claimant has to provide objective medical evidence of her disability as of December 31, 2009; or between January and November 2012. If she does not prove that she had a severe disability by these dates, medical evidence dated after is irrelevant.<sup>13</sup>

[15] Neither the Claimant's evidence, nor the medical evidence, shows she was disabled when she last met the eligibility requirements.

[16] The Claimant's Statement of Contributions to the CPP shows she had low earnings after 2008.<sup>14</sup> She was honest in explaining the reasons for this. At the hearing, she told me that she stopped working for an auto parts store in 2008 because the manager was an alcoholic. She had temporary warehouse jobs after that, but they were difficult to find. That is why her earnings were low.

[17] The Claimant's last warehouse job ended in March 2012. She told me she was laid off because of a shortage of work. She did not look for work after that because her son and his three small children had moved in with her and her husband. The Claimant looked after the children – one year old twins and a three year old – for the next year or so. In September 2013 she started

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<sup>9</sup> GD2-20

<sup>10</sup> The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>11</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>12</sup> The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

<sup>13</sup> The Federal Court said this in *Canada (Attorney General) v. Dean*, 2020 FC 206, citing the Federal Court of Appeal in *Warren v. Canada (Attorney General)*, 2008 FCA 377; and the *Canada Pension Plan Regulations*.

<sup>14</sup> GD4-27

working as a receptionist at a retirement home. She was let go in January 2014 because she refused to take on cleaning tasks that she had not been hired to do.

[18] The Claimant told me she started to have breathing problems before 2008. The back pain her doctor noted in 2009 was probably from coughing.<sup>15</sup> However, she told me she could work and look after her grandchildren as long as she did not do anything too strenuous. She did not recall missing any work up to 2014 because of her health.

[19] The Claimant told me she started coughing more in 2013 or 2014. She did not know why she didn't see her doctor. She finally went in November 2016 because she had significant chest pain. She was diagnosed with emphysema, and then right lung cancer. She had part of her right lung removed. She had serious complications after that. She is cancer-free now, but she is still dependent on oxygen. She is weak and short of breath, which restricts what she can do.

[20] Dr. Li, the Claimant's family doctor for 30 years, confirmed what the Claimant told me about her health.<sup>16</sup>

[21] It is clear that the Claimant was able to work – and did work – after December 31, 2009. It is also clear that she did not become disabled between January and November 2012. Although her earnings were low after 2008, until 2016 this was due to economic and family reasons, not her health. I can't consider those factors in deciding if the Claimant is disabled.<sup>17</sup>

## CONCLUSION

[22] As much as I would like to help the Claimant, I can't. She did not have functional limitations that affected her ability to work by December 31, 2009, or that arose between January and November 2012. As a result, she did not prove that she had a severe disability by those dates.

[23] Because I found the Claimant's disability was not severe, I did not have to decide if it was prolonged.

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<sup>15</sup> GD2-76

<sup>16</sup> GD2-70-72; 154-157

<sup>17</sup> The Federal Court of Appeal said this in *Minister of Human Resources Development v. Rice*, 2002 FCA 47

[24] I am dismissing this appeal.

Virginia Saunders  
Member, General Division - Income Security