



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *TA v Minister of Employment and Social Development*, 2020 SST 1088

Tribunal File Number: GP-19-1508

BETWEEN:

**T. A.**

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: George Tsakalis

Teleconference hearing on: November 10, 2020

Date of decision: November 16, 2020

## **DECISION**

[1] The Claimant, T. A., is eligible for a Canada Pension Plan (CPP) disability pension. Payments are to start May 2017. This decision explains why I am allowing the appeal.

## **OVERVIEW**

[2] The Claimant was born in 1977. The Claimant has community college diplomas in counselling and as an educational assistant. She studied psychology in university, but she did not finish her program because she found a full-time job. The Claimant last worked as an addictions counsellor. She has not worked since October 2015. She alleges that she has not been able to work at any job since October 2015 because of multiple sclerosis (MS).

[3] The Claimant applied for a CPP disability pension on April 11, 2018. The Minister of Employment and Social Development Canada (the Minister) refused her application because the Claimant's neurologist provided an opinion that she could work.<sup>1</sup> The Claimant appealed to the General Division of the Social Security Tribunal.

## **WHAT THE CLAIMANT MUST PROVE**

[4] For the Claimant to succeed, she must prove that she has a disability that was severe and prolonged by December 31, 2017. This date is based on her CPP contributions.<sup>2</sup>

[5] 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>3</sup>

## **THE REASONS FOR MY DECISION**

[6] I find that the Claimant has a severe and prolonged disability as of October 2015. I reached this decision by considering the following issues.

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<sup>1</sup> See GD2-5

<sup>2</sup> The *CPP* calls this date the "Minimum Qualifying Period." See s. 44(2).

<sup>3</sup> The definition is found in s. 42(2)(a) of the *Canada Pension Plan*. The legal test is that the Claimant must prove they are disabled on a balance of probabilities. In other words, they must show it is more likely than not that they are disabled.

## WAS THE CLAIMANT'S DISABILITY SEVERE?

### *The Claimant has functional limitations that affect her capacity to work*

[7] My decision about whether the Claimant's disability is severe is not based on her diagnosis. It is based on whether she has functional limitations that prevent her from working.<sup>4</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>5</sup>

[8] The Claimant has to provide objective medical evidence of her disability as of December 31, 2017. If the Claimant fails to prove that she suffered from a severe disability prior to this date, medical evidence dated after is irrelevant.<sup>6</sup>

[9] The Claimant argues that MS resulted in functional impairments in the areas of sitting, walking, memory, and concentration. She had difficulty performing her activities of daily living. MS affected her vision, which affected her driving ability. Medications caused severe bowel urgency and she had a neurogenic bladder because of MS. She also had problems completing her household tasks because of severe fatigue.<sup>7</sup>

[10] The Claimant testified that she used to work as an educational assistant after finishing her education. She assisted children who had cognitive and physical disabilities with their classwork. She helped her husband with his property management business. She performed yard work and property inspections on a casual basis from January to October 2015. She worked as an addictions counsellor full-time from July 2007 to October 2015.

[11] The Claimant's health problems began in around 2012 or 2013. She was diagnosed with MS. She woke up one morning and her body was numb from her feet to her chest. She ended up spending one week in the hospital. She eventually returned to work after being off for about two

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

<sup>5</sup> *Bungay v. Canada (A.G.)*, 2011 FCA 47

<sup>6</sup> *Canada (A.G.) v. Dean*, 2020 FC 206, citing *Warren v. Canada (A.G.)*, 2008 FCA 377; *Gilroy v. Canada (A.G.)*, 2008 FCA 116; and *Canada (A.G.) v. Hoffman*, 2015 FC 1348; and *Canada Pension Plan Regulations*

<sup>7</sup> See GD2-87-88

months. She still experienced numbness and tingling sensations, but she would get up and walk at work as needed to relieve these symptoms.

[12] In October 2015, the Claimant did not feel right while attending a work meeting. She felt disconnected from what was going on around her. She experienced vertigo and had reduced peripheral vision. She ended up in the hospital. She was diagnosed with optic neuritis, which is a complication from MS. She went off work and has not worked since. She continues to receive disability benefits from Canada Life. Canada Life has not suggested training her for an alternative career.

[13] The Claimant testified that her fatigue has increased since her MS diagnosis. She had difficulty getting dressed and showering before December 31, 2017. The act of dressing and showering caused severe fatigue. She experienced fatigue with simple tasks, such as brushing her teeth. She had difficulty with doing the laundry, dishes and cooking. She would have difficulty standing after walking long distances. Her memory became an issue even before she went off work in October 2015. Her vision never fully recovered.

[14] The Claimant testified that she had good days where she could perform household tasks and drive her children to their activities. But she would experience severe fatigue the next day. She constantly had urinary issues and unpredictable bowel movements to the point where she soiled herself. She needs to be close to a washroom.

[15] Her employer offered her an opportunity to return to work part-time. But the Claimant declined. She cannot predict how she would feel on a daily basis. She testified that she could work from home on a computer but she does not believe that she can keep a regular schedule and meet productivity deadlines.

[16] Stress affected the Claimant's eyesight and sitting for long periods was problematic by December 31, 2017. Standing was problematic because it caused fatigued. She had unpredictable falling episodes because of MS. She avoided driving at night. Her health is getting worse with time.

[17] The medical evidence supports the Claimant's argument that she has not been able to work at any job since October 2015.

[18] The Claimant's neurologist confirmed that the Claimant had been diagnosed with MS in 2012 or 2013. He diagnosed her with relapsing MS and neurogenic bladder dysfunction. The Claimant told her neurologist that she had several falls that occurred without warning and experienced bowel urgency. She suffered from fatigue and insomnia.<sup>8</sup>

[19] The Claimant's family doctor confirmed that the Claimant experienced urinary frequency and had suffered from optic neuritis.<sup>9</sup>

[20] The Minister argued that the medical evidence did not support a finding of a severe disability. A brain MRI report from January 29, 2017 showed no evidence that her MS had progressed. Her family doctor also noted that the Claimant did not have cognitive issues, mobility issues or a neurological deficit.

[21] The Minister focused on a January 11, 2019 report from the Claimant's neurologist to argue that the Claimant did not have a severe disability. The Claimant's neurologist noted that the Claimant volunteered 15 hours a week. He believed that the Claimant's fatigue was not severe enough to stop her from working at any job. He provided an opinion that the Claimant could work 20 to 39 hours per week. He also noted that the Claimant had a history of unprovoked falls and she should not work in a hazardous environment. The Minister therefore argued that the Claimant had work capacity and could not collect a CPP disability pension.<sup>10</sup>

[22] I disagree with the Minister's arguments. The fact that the neurologist thinks that the Claimant can work does not bind me. It is up to me to decide whether the Claimant has a severe disability under the CPP based on all of the evidence before me, which includes the Claimant's testimony.<sup>11</sup>

[23] I asked the Claimant about her neurologist's comments. The Claimant explained that she lives in a small, rural, and isolated community. It is a six-hour drive to her neurologist's office.

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<sup>8</sup> See GD2-48-49, 50-51 and 54-55

<sup>9</sup> See GD2-75-78

<sup>10</sup> See GD3-8-10

<sup>11</sup> *Canada (Attorney General) v. Rinaldis*, 2010 FCA 46

She only sees her neurologist once a year. The appointment only lasts about 15 minutes. She did not discuss her ability to work with her neurologist at her appointments.

[24] The Claimant testified that she does not volunteer for 15 hours a week. She told her neurologist that she does some activities with her teenage children. The Claimant lives in a rural community where parents are expected to volunteer. But she does not volunteer for 15 hours a week. She does not have any consistent or regular volunteer activities. She picks volunteer roles that are flexible and that do not involve much work. She volunteered as a treasurer for her son's minor hockey team. She worked two hours a month writing cheques and balancing a ledger on occasions when she felt well. She tried coaching synchronized swimming for one year for two hours a week, but she missed many weeks because of fatigue. I accept that the Claimant volunteers occasionally and performs housekeeping tasks when she feels well enough to do so. But I do not equate these occasional activities with having the regular capacity to engage in a substantially gainful occupation.

[25] The Claimant also testified that her community has difficulty retaining family physicians. She has had six or seven family doctors since her MS diagnosis and now sees a nurse practitioner. The family doctor who drafted the medical report for the Minister had only seen her on two occasions, and is no longer her family doctor. I am satisfied that he did not have detailed knowledge of the Claimant's impairments. I am also satisfied that her neurologist did not have detailed knowledge of the extent of the Claimant's impairments because of the brevity and infrequency of the Claimant's visits. I therefore place more weight on the Claimant's evidence than some of the comments contained in the medical records.

[26] I also found the Claimant to be a credible witness. The medical evidence confirms that she suffers from impairments because of MS. I believe that she is motivated to work. She is only 43 years old. She has two young children. She earned a good income before she went off work. Her Record of Earnings showed that she earned Maximum Pensionable Earnings from 2008 to 2015.<sup>12</sup> I believe that the Claimant would work if she could, but she simply cannot. I accept her evidence that MS has had a devastating impact on her life, including her ability to work.

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<sup>12</sup> See GD2-33

***The Claimant does not have work capacity***

[27] When I am deciding if the Claimant is able to work, I must consider more than just the Claimant's medical conditions and their effect on functionality. 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 work in the real world.<sup>13</sup>

[28] I find the Claimant has no capacity to work in the real world. The Claimant was only 40 years old as of December 31, 2017. She has post-secondary education. She understand English. She has experience working with computers. The Claimant's background suggests that she has transferable skills in the labour market. But I still find that she was incapable regularly of pursuing any substantially gainful occupation by December 31, 2017.

[29] I am satisfied that the Claimant could not perform any type of physical work by December 31, 2017 because her MS led to fatigue and problems with lifting and standing.

[30] I do not believe that the Claimant could have handled any type of sedentary work by December 31, 2017 because of her impairments. Her neurologist mentioned that she had to work in a safe environment because of her propensity to suddenly fall. But I do not believe that the Claimant could have worked from home on a computer. She could not sit for long periods and she fatigued easily. I do not believe that she could have worked in an office setting or with the public because of her tendency to fall without warning. I do not believe that she could perform any type of sedentary work because she could not work consistently and productively. I do not believe that she could have handled a driving job because of fatigue, problems sitting, and vision problems. I accept that her ability to perform her activities of daily living and housekeeping tasks were impaired by December 31, 2017. I accept her evidence that the severity off her symptoms was unpredictable and she could not work on a regular, reliable or predictable basis at any job by December 31, 2017.

***The Claimant tried to obtain and maintain employment***

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<sup>13</sup> The Federal Court of Appeal held that the severe part of the test for disability must be assessed in the real world context (*Villani v. Canada (Attorney General)*, 2001 FCA 248).

[31] If the Claimant has some work capacity in the real world, she must show that she tried to obtain or maintain a job. She must also show that the attempts to work did not succeed because of her health condition.<sup>14</sup>

[32] The Claimant was initially diagnosed with MS in 2012 or 2013. She went off work for a period of time, but eventually returned. However, she had to stop working in October 2015 when her MS flared up. The Claimant volunteered after October 2015. But I do not believe that these volunteer efforts showed work capacity because she only volunteered for short periods of time when she felt well. I believe that the Claimant could work on occasions when she feels well and her symptoms are under control. But this does not happen very often and she does not know when she will feel well enough to work. I do not believe that the Claimant has had the capacity to regularly engage in any type of substantially gainful occupation since October 2015, when she last worked.

***The Claimant has made reasonable efforts to follow recommended treatment***

[33] The Claimant has followed medical advice.<sup>15</sup> She followed up with her family physicians and nurse practitioner. She sees her neurologist every year. She has taken medications to control her MS, but they have led to significant side effects that include bowel urgency. The Claimant lives in an isolated community. She cannot see her neurologist more often and she does not have access to other specialists. She also does not have access to other treatments for MS, such as physical or occupational therapy. I accept that the Claimant has difficulty accessing treatment. I find that the Claimant has done her best to access treatment that is available to her and that she complied with treatment recommendations. Unfortunately, the Claimant suffers from a medical condition that gets worse with time and has no cure. I am satisfied that the Claimant's treatments have not led to an improvement in her condition such that she can regularly engage in substantially gainful employment.

**WAS THE CLAIMANT'S DISABILITY PROLONGED?**

[34] The Claimant's disability is prolonged.

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<sup>14</sup> This is explained in *Inclima v. Canada (A.G.)*, 2003 FCA 117.

<sup>15</sup> The requirement to follow medical advice is explained in *Sharma v. Canada (Attorney General)*, 2018 FCA 48



[35] The Claimant's condition began in 2012 or 2013, was present when she left work in October 2015 and continues today.

[36] Her former family doctor confirmed that she has a relapsing and progressive condition.

## **CONCLUSION**

[37] The Claimant had a severe and prolonged disability in October 2015, when she last worked. However, the CPP says she cannot be deemed disabled more than fifteen months before the Minister received her disability application. After that, there is a four-month waiting period before payment begins. The Minister received the Claimant's application in April 2018. That means she is deemed to have become disabled in January 2017. Payment of her pension starts as of May 2017.

George Tsakalis  
Member, General Division - Income Security