



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *SB v Minister of Employment and Social Development*, 2020 SST 1215

Tribunal File Number: GP-20-127

BETWEEN:

**S. B.**

Appellant

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: Antoinette Cardillo

Teleconference hearing on: November 30, 2020

Date of decision: December 18, 2020

## **DECISION**

[1] The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension for the reasons set out below.

## **OVERVIEW**

[2] The Minister received the Appellant's application for the disability pension on August 22, 2019<sup>1</sup>. The Appellant is 56 years old. She arrived in Canada in 1992 from Sri Lanka. She had a grade 10 education. When she arrived in Canada, she took an English course for one (1) month. She bases her disability application on back pain, asthma, diabetes and high blood pressure. The Appellant indicated on her application that she felt she could no longer work as of November 1995. The Minister denied the application initially and on reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant 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 Appellant's contributions to the CPP.

[4] To be eligible for disability benefits in 1987 or later, the legislation requires that contributions be made in five (5) of the last ten (10) calendar years, or in two (2) of the last three (3) calendar years, included wholly or partly in the contributory period. To be eligible in 1998 or later, the legislation requires that contributions be made in four (4) of the last six (6) calendar years.

[5] A person's contributory period starts the later of January 1966 (when the CPP began) or the month following the person's eighteenth birthday, and ends the month in which the person is deemed to have become disabled for CPP purposes.

[6] The Appellant's contributory period began in April 1982 (when she turned 18) and ended in May 2018.

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<sup>1</sup> GD2-28

[7] The Appellant's record of earnings indicates she made valid earnings and contributions to the CPP in 2012. She is not eligible as she did not have valid earnings and contributions in four (4) of the last six calendar (6) years.

[8] The Minister considered her eligibility under the Late Applicant provision, which may allow a person to qualify for disability benefits, if it can be established that the person was disabled, within the meaning of the CPP, at the time the person last satisfied the minimum contributory requirements.

[9] At the time of Appellant's initial application, she had met the earnings and contributions qualification under the Late Applicant Provision, with valid earnings and contributions in four (4) of the last six (6) years, providing a minimum qualifying period of December 2001.

Therefore, I find the Appellant's MQP to be December 31, 2001.

## **PRELIMINARY MATTERS**

[10] An interpreter was present at the hearing. The Appellant indicated on her notice of appeal that she could not communicate effectively in English or French. She needed an interpreter who spoke Tamil.

## **ISSUES**

[11] Did the Appellant's conditions result in the Appellant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2001?

[12] If so, was the Appellant's disability also long continued and of indefinite duration by December 31, 2001?

## **ANALYSIS**

[13] Disability is defined as a physical or mental disability that is severe and prolonged<sup>2</sup>. 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

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<sup>2</sup> Paragraph 42(2)(a) *Canada Pension Plan*

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 Appellant meets only one part, the Appellant does not qualify for disability benefits.

### **Severe disability**

[14] I must assess the severe part of the test in a real world context<sup>3</sup>. 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.

[15] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living. It is not a question of whether a person is unable to perform their regular job, but rather the person's inability to perform any substantially gainful work<sup>4</sup>.

[16] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition<sup>5</sup>.

#### ***i. Medical records***

[17] Based on the evidence, the Appellant had multiple ER and hospital visits in 2018 and 2019<sup>6</sup>.

[18] The medical report in support of the Appellant's disability application date stamped on August 22, 2019<sup>7</sup> from Dr. Nasir, family physician, indicated that the Appellant suffered from chronic asthma, hypertension, diabetes, hypothyroidism, and gastroesophageal reflux disease (GERD). She also had a pace maker placement because of complete heart block. Her prognosis was fair.

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<sup>3</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

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

<sup>5</sup> *Inclima v. Canada (A.G.)*, 2003 FCA 117

<sup>6</sup> GD5-20

<sup>7</sup> GD2-62

[19] In a report dated January 7, 2020<sup>8</sup>, Dr. Block, Respiriologist, indicated that the Appellant had a respiratory disorder which made it difficult for her to perform any physically demanding work (walking, carrying, climbing) although she would be able to consider a sedentary type position.

[20] On August 27, 2020<sup>9</sup>, Dr. Block stated that the Appellant had moderate to severe lung dysfunction with frequent exacerbations, making regular work impossible. She also had a remote diagnosis of non-eosinophilic asthma and was followed since 2015. Despite compliance with recommended therapy, she had frequent exacerbations requiring ER assessment 4-6 times per year and she experienced dyspnea with minimal exertion.

[21] The Appellant testified that she went to doctors when she first started to have breathing in 1997 or 1999. She could not remember the year. She was prescribed medication but she had side effects. Over time, she developed diabetes and other medical problems. She explained that during the day she feels tightness in her chest. In addition, she has had heart problems and a pace maker was inserted in 2019.

[22] The Appellant explained her work history. She worked from 1993 to 1994 as a seamstress. She did not return to work until 1999. From 1999 to 2001, she had breathing problems because of the dust at work. She had to stop but could not remember the exact date. After 2001, she testified that she worked on and off until 2014. She had to stop many times because of health issues. In 2018, she returned to work for one month in a restaurant. She worked approximately 30 hours.

[23] Her record of earnings indicates that she made valid earnings and contributions in 2006, 2007, 2011 and 2012. Therefore, the Appellant has shown capacity to work for several years after her MQP of 2001.

[24] There is no doubt that the Appellant suffers from many medical conditions. However, there are no medical records about her conditions before or at her MQP. The Appellant did

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<sup>8</sup> GD1-8

<sup>9</sup> GD5-1

testified that she went to doctors when she first started to have breathing in 1997 or 1999, which is before her MQP. Nevertheless, she did testified that she did work afterwards albeit on and off. More importantly, the evidence shows that she worked in 2006, 2007, 2011 and 2012, which is several years after her MQP and she showed ability to work for two (2) consecutive years.

[25] Unfortunately, I simply cannot conclude based on all of the evidence, that the Appellant had a severe disability on or before her MQP.

### **Prolonged disability**

[26] Since I found that the Appellant's disability was not severe, it is not necessary to make a finding on the prolonged criterion.

### **CONCLUSION**

[27] The appeal is dismissed.

Antoinette Cardillo  
Member, General Division - Income Security