



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *BZ v Minister of Employment and Social Development*, 2021 SST 44

Tribunal File Number: GP-20-440

BETWEEN:

B. Z.

Applicant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Teleconference hearing on: September 16, 2020

Claimant assisted by: Julia Umbrio, CMHA (Canadian Mental Health Association) support co-ordinator

Minister represented by: Heather Carr

Date of decision: January 7, 2021

DECISION

[1] The Claimant has established new material facts. She is entitled to a *Canada Pension Plan* (CPP) disability pension with payment starting as of April 2016.

OVERVIEW

[2] The Claimant was 52 years old when she applied for a CPP disability pension in December 2016.¹ She worked as a driving instructor. She stopped working in March 2014 in order to care for her spouse and stepson who had suffered severe injuries in a car accident. In December 2015, the Claimant herself was injured in a car accident. In her June 2016 disability questionnaire, she stated that she has been unable to work since March 2014 because of several conditions. These included post-traumatic stress, type II diabetes, anxiety, depression, and sleep disturbance. They also included whiplash and soft tissue damage as well as nerve damage to her right side.²

[3] The Minister denied the application initially and on reconsideration. The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). In March 2019, the General Division dismissed the Claimant's appeal finding that she was not disabled when she last qualified for CPP disability in May 2017.

[4] In March 2020, the Claimant filed this application to rescind or amend the March 2019 decision. She filed eleven medical documents in support of her application.³ In June 2020, she filed two additional medical documents.⁴

[5] The Claimant's position is that the additional medical evidence establishes that she suffers from a brain injury caused by the December 2015 accident. As a result, she developed symptoms of PCS (post-concussion syndrome). She argues that her brain injury and PCS are new material facts. This is because these conditions were not discovered until October 2019, when

¹ GD2-25

² GD2-66

³ These documents are listed at RA1-4 to 5

⁴ RA4

she saw Dr. Berge, an audiologist. This was about six months after the initial hearing. As a result, she states that the General Division's March 2019 decision should be rescinded.

New Facts Issues

1. Do the Claimant's undiagnosed brain injury and PCS diagnosis meet the discoverability test for new facts?
2. If so, do they also meet the materiality test?

ANALYSIS

[6] I am satisfied that the Claimant's undiagnosed brain injury and PCS diagnosis are new material facts. They were in existence at the time of the initial hearing and were not discoverable by the exercise of reasonable diligence. This is the discoverability test. They could reasonably be expected to have affected the outcome of the initial decision. This is the materiality test.

Test for New Facts

[7] I may rescind or amend a decision made by the General Division if a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.⁵

[8] Under this provision, I may reopen a decision if an applicant submits new information that was not readily discoverable at the time of hearing. I must also determine that the new information is material – that is, it could reasonably be expected to have affected the outcome of the initial General Division hearing, if the Tribunal member had known about it at that time.

[9] This application is not an appeal, nor is it an opportunity to reargue the merits of a Claimant's appeal. Instead, it is a tool designed to allow the Tribunal to reopen one of its decisions if new and relevant evidence becomes known that existed but, for whatever reason, was previously undiscoverable by the exercise of reasonable diligence.⁶

⁵ Section 66(1)(b) of the *Department of Employment and Social Development Act* (the DESD Act)

⁶ *R.B. v Minister of Employment and Social Development and V.H.*, 2019 SST 29

[10] The Federal Court of Appeal has stated that medical reports written after the original hearing are admissible to establish new facts if the condition they describe existed at the time of the original hearing but the claimant could not have know about it. In this case, the new facts are the Claimant's brain injury and PCS.⁷

The Claimant's undiagnosed brain injury and PCS diagnosis were not discoverable at the time of the initial hearing by the exercise of reasonable diligence

[11] In October 2019, the Claimant for the first time received a diagnosis of brain injury and PCS. This was when she first saw Dr. Berge, about six months after the initial hearing. At the hearing before me, the Claimant stated that she saw Dr. Berge because she was experiencing hearing problems and pain in both ears. These problems started after the December 2015 accident – she repeatedly told her doctors that her ears hurt but they did not consider this important.

[12] In October 2019, Dr. Berge stated that⁸:

- The Claimant had a cluster of AVNS (audio vestibular nervous system⁹) PCS symptoms that she began to experience following a whiplash concussive car accident injury in December 2015;
- She presented with five of the seven AVNS symptoms of PCS. These were tinnitus, sound sensitivity, ear pain, difficulty hearing in multi speaker environments, and dizziness;
- Her PCS symptoms had been triggered by the whiplash, traumatic brain injury (TBI) that she suffered in the December 2015 accident; and
- She had trauma induced misophonia¹⁰, tinnitus¹¹, and sound proprioceptive¹² deficits from her TBI/whiplash injury.

⁷ *Kent v Canada (Attorney General)*, 2004 FCA 420, para 32; *Attorney General of Canada v Gordon MacRae*, 2008 FCA 82, para 17. The pre-2013 decisions deal with the new facts provisions under what was then section 84(2) of the CPP. In 2013, that provision was replaced by section 66(1)(b) of the *Department of Employment and Social Development Act*. There slight changes in the wording of the provisions. However, they are not significant for this case.

⁸ RA1-20 to 24

⁹ Inner ear nervous system

¹⁰ Hyper sensitivity to sound

¹¹ Ringing in the ears

¹² Stimuli produced within the ears

[13] None of the medical reports presented at the initial hearing stated that the Claimant had suffered a TBI in the car accident. All of them diagnosed a psychological condition - adjustment disorder. None of them diagnosed PCS.¹³

[14] In the initial October 2016 medical report, Dr. Jafferjee, the Claimant's family doctor, diagnosed adjustment disorder with the following conditions: anxiety/depression; soft tissue injuries to the hip, low back, and shoulder; and diabetes.¹⁴ In November 2017, he repeated his diagnoses of adjustment disorder with generalized anxiety and diabetes. He also diagnosed chronic knee pain.¹⁵ In November 2018, Dr. Jafferjee stated the Claimant was suffering from depression and chronic pain, which was exacerbated by increased stress in her life.¹⁶

[15] Dr. Jafferjee did not mention a brain injury or PCS until his June 2020 report, which is one of the reports that the Claimant argues establish new facts. In that report, he stated for the first time that the Claimant had been suffering from PCS with tinnitus. He also stated for the first time that she suffered head injuries in the December 2015 accident. He concluded that the Claimant had a mental health condition and PCS, which made it difficult for her to cope with her daily activities.¹⁷

[16] Dr. Sicoli, psychologist, started to treat the Claimant in June 2018. In November 2018, she diagnosed adjustment disorder with mixed anxiety and depressed mood.¹⁸ Dr. Sicoli did not mention a brain injury until her January 2020 treatment and assessment plan. In that plan, she identified the Claimant's potential undiagnosed head injury as a barrier to recovery.¹⁹

[17] At the time of the initial hearing, the Claimant did not know that in the December 2015 car accident she had suffered a brain injury in addition to her whiplash. She could not reasonably be expected to have known this since her treating doctors had not diagnosed this.

¹³ These reports included a December 2015 assessment and an undated report by Dr. Smith, psychologist, GD4-3 to 4, GD2-54 to 55; the three reports from Dr. Jafferjee, discussed below; April and July 2017 psychological treatment plans, GD4-18 to 26, 10 to 17; and a November 2018 report from Dr. Sicoli, psychologist, discussed below.

¹⁴ GD2-50

¹⁵ GD4-36

¹⁶ GD5-2

¹⁷ RA4-12 to 13

¹⁸ GD4-2

¹⁹ RA1-52

They attributed her mental health symptoms to adjustment disorder – not to PCS. Her brain injury and PCS were not diagnosed until six months after the initial hearing.

[18] I find that the Claimant’s brain injury and PCS meet the discoverability test. They were in existence at the time of the initial hearing. The Claimant did not know about them because her doctors had not diagnosed them. She cannot be expected to have known that she suffered from a condition that her doctors had not yet diagnosed.

Knowledge of the Claimant’s undiagnosed brain injury and PCS could reasonably be expected to have affected the outcome of the initial hearing

[19] Since I have found that the Claimant has met the discoverability test, I must now determine whether she also meets the materiality test.

[20] The Tribunal member who made the initial decision considered the following conditions: diabetes; mental health conditions - primarily adjustment disorder and generalized anxiety and depression; and physical conditions - primarily chronic back, shoulder, and knee pain.²⁰

[21] He did not consider the Claimant’s diabetes significant since there was no indication of any functional limitations relating to this.

[22] He did not consider her chronic back, shoulder, and knee pain to be severe because there was no evidence of any functional limitations or impairments that would have physically prevented her from working at her previous employment as a driving instructor. He also considered that her treatment had been conservative, that she had not been referred to an orthopaedic surgeon or rheumatologist, and that she was taking little or no medication for pain.

[23] He did not consider her mental health conditions to be severe for several reasons:

- first, despite her longstanding “psychosocial issues” going back to 2000, she had been able to maintain employment up March 2014, when she stopped working to care for her spouse and stepson,
- second, although she was receiving counselling there was no indication that she had any severe symptomology,

²⁰ General Division decision, para 9

- third, there was no indication that she had been prescribed any medications or been referred to a psychiatrist, and
- fourth, her anxiety symptoms had increased because of her low income, behavioural management of her step son, and her need to provide care for her spouse who had a an acquired brain injury – not her medical conditions.

[24] He decided that even if he considered all of her medical conditions together, she did not have a physical or psychological condition that prevented her from pursuing all types of work.²¹

[25] The Claimant completed her disability questionnaire in June 2016, which was about one year before she last qualified for CPP disability. When explaining her difficulties and functional limitations, she described what we now know were PCS symptoms.²² These included hearing loss, being startled by noises, becoming overwhelmed, difficulty remembering and focusing, difficulty sleeping, and nightmares.²³ In addition, the Claimant testified about these symptoms at the initial hearing. When asked why she was unable to work as of December 2016, she testified that this was because of, amongst other matters, she was sleep deprived and had nightmares, she had constant ear and jaw pain, her ears hurt more if there was a loud noise, she was always anxious, and she clenched her teeth. Although these symptoms were known at the time of the initial hearing, their significance was not well understood.

[26] The Federal Court of Appeal has stated that new fact applications based on physical and mental conditions that are not well understood by medical practitioners should be assessed against the background of an evolving understanding of a claimant's condition, treatment and prognosis. In such cases, it is important to ensure that the new facts rule is not applied in an unduly rigid manner that would deprive a claimant of a fair assessment of their claim on the merits.²⁴

[27] At the hearing before me, the Claimant stated that she did not know what was wrong with her at the first hearing. She was not receiving proper treatment. She did not start to receive

²¹ General Division decision, para 12

²² Dr. Berge describes the symptoms of PCS to include headache, pain, neurocognitive changes and mood dysregulation, sleep difficulty, panic and being emotionally overwhelmed in loud and visually stimulating settings, RA1-20, first paragraphs 1 and 2.

²³ GD2-67

²⁴ *Kent*, above, para 36

proper treatment until after Dr. Berge diagnosed her with PCS. A psychiatrist is now treating her. The insurance company has approved a dental guard, occupational therapy, and physiotherapy.

[28] Anne-Marie McDonough, occupational therapist, started to treat the Claimant in December 2019 for her PCS. She testified that a “team” was put in place to treat the Claimant. This included a psychiatrist, a dentist, an audiologist, a physiotherapist, and a clinical psychologist.

[29] It is reasonable to expect that if the Tribunal member had been aware of the Claimant’s brain injury and PCS, this would have affected his decision. This is because he was obliged to consider the combined effect of all of the Claimant’s conditions on her ability to work.²⁵ He would have been aware that the Claimant suffered a brain injury in the December 2015 accident. He would also been aware that the brain injury led to PCS symptoms that compounded both her longstanding mental health issues and her chronic pain issues.

[30] Ms. Carr, the Minister’s representative, argues that a different diagnosis is not in itself sufficient to be a new fact.²⁶ She states that all of the Claimant’s symptoms were “well known, and well reviewed” at the initial hearing and in the initial decision. However, in this case we are not simply dealing with a different diagnosis. We are dealing with an unknown and undiagnosed condition. The Tribunal member did not consider all of the Claimant’s symptoms and limitations because her condition was not well understood.

Eligibility for CPP disability pension

[31] Since I have found that the Claimant has established new facts, I must determine if her disability was severe and prolonged by the end of May 2017, when she last qualified for CPP disability.

²⁵ *Bungay v. Canada (Attorney General)*, 2011 FCA 47; *Barata v MHRD* (January 17, 2001) CP 15058 (PAB)

²⁶ The Minister relied on the decision of the Federal Court of Appeal in *Gaudet v Attorney General Canada*, 2010 FCA 59, para 12

[32] My finding that the Claimant's undiagnosed brain injury and PCS could reasonably be expected to have affected the results of the initial decision does not mean that they would necessarily have done so.

Test for CPP disability

[33] A qualifying disability must be severe and prolonged.²⁷ The Claimant's disability was severe if it caused her to be incapable regularly of pursuing any substantially gainful occupation. Her disability was prolonged if it was likely to be long continued and of indefinite duration.

[34] However, the Claimant must prove that it was more likely than not that she became disabled by the end of her Minimum Qualifying Period (MQP), which is calculated based on her contributions to the CPP. Her MQP ended on December 31, 2016.²⁸

[35] The Claimant had earnings of \$3,760 in 2017.²⁹ This is below the minimum amount required to make valid contributions to the CPP. In this situation, the law allows for proration of the below minimum level of earnings to help the Claimant meet contributory requirements. If the Claimant was not disabled by December 31, 2016, she could use proration and qualify for the disability benefit if she became disabled between January 1 and May 31, 2017.

CPP Disability Issues

1. Did the Claimant's medical conditions result in her being incapable regularly of pursuing any substantially gainful employment by May 31, 2017?
2. If so, was her disability likely to be long continued and of indefinite duration by that date?

The Claimant's medical condition interfered with her ability to work by May 31, 2017

²⁷ Subsection 42(2) of the CPP

²⁸ Record of Contributions: GD3-17

²⁹ GD3-21

[36] I must focus on the Claimant's conditions as of May 31, 2017. Her significant disabling conditions at that time included the following:

- physical conditions - primarily chronic back, shoulder, and knee pain;
- mental health conditions - primarily adjustment disorder and generalized anxiety and depression as well as post-traumatic stress disorder; and
- neurocognitive issues - brain injury that led to PCS.

Oral Evidence

[37] At the initial hearing, the Claimant testified that she stopped working in March 2014 to care for spouse and stepson after they suffered brain injuries in a car accident. She stated, "Everything has gone downhill since." Even though she was not involved in the accident, she started having nightmares and flashbacks of death scenes. She was rear-ended in the December 2015 accident while driving her family to a medical appointment. In that accident, she suffered injuries to her right knee, shoulder, and hip. She started to have headaches. Psychologically, this accident was the "icing on the cake – everything was over."

[38] When asked why she was unable to work as of December 2016, she stated this was because of the following:

- She was suffering from constant pain in her head, neck, jaws, knees, legs, ears, and back. She went to sleep in pain and woke up in pain.
- She was sensitive to noise and her ears hurt more if there was even a small noise;
- She was sleep deprived and had nightmares;
- She suffered from severe anxiety and her stomach always tightened up;
- She could not sit in a car for long. Sitting was hard on her back, neck, and jaw. She would experience tingling in her hands. Her legs went numb if she sat for too long;
- She had problems with her shoulder; and
- She could not walk for more than 10 minutes.

[39] Kristin Hunter had been a CMHA resource co-ordinator for the Claimant for several years. At the initial hearing, she testified that although the Claimant was a caregiver for her spouse and stepson, she suffered from her own disability. Her barriers included depression, anxiety, and post-traumatic stress disorder. She believed the Claimant would still have been disabled even if she lived in a different home environment that did not include caring for her brain injured spouse and stepson.

Medical Evidence

[40] The medical evidence confirms that the Claimant suffered from numerous physical, mental health, and neurocognitive conditions before May 31, 2017. It also confirms that she had undergone extensive investigations and treatment for her conditions. She had seen a physiotherapist and kinesiologist for her physical conditions. She had seen a psychologist and had attended for numerous psychotherapy sessions. She had attended for family therapy and counselling. She was reluctant to take prescription painkillers and anti-depressants because she became addicted to prescription medications after a 2004 car accident. The medical evidence also confirms that she suffered from PCS symptoms by May 31, 2007, although this was not diagnosed until October 2019.³⁰ None of the numerous medical practitioners who saw her suggested that she was feigning or exaggerating her symptoms.

Physical conditions

[41] A December 23, 2015 doctor's office note records that the Claimant had been in a car accident the previous day. She had suffered soft tissue injuries and had pain in her hips, lower back, and shoulder.³¹

³⁰ See paras 11 & 12, above

³¹ RA1-27. The Claimant testified that she saw Dr. Jafferjee the day after the accident.

[42] X-rays of the Claimant's cervical spine in April 2016 revealed mild degenerative disc disease at C5-C6 with no significant neuroforaminal narrowing.³² In October 2016, an ultrasound of the Claimant's right shoulder revealed moderate tendinosis and right shoulder impingement (inflammation of the tendons).³³

[43] In December 2016, Dr. Jafferjee diagnosed soft tissue injuries of the hip, low back, and shoulders. The Claimant had restricted range of motion of her lumbar spine as well as restricted abduction and adduction of her right shoulder.³⁴

[44] In November 2017, Dr. Jafferjee stated that the Claimant was suffering from acute and chronic knee pain. She had been going for physiotherapy and had seen a kinesiologist. Because of her knee pain, she had difficulty cooking, cleaning, climbing, and driving.³⁵

[45] In November 2018, Dr. Jafferjee stated that the December 2015 car accident exacerbated the Claimant's pain in multiple areas of her body. She was suffering from chronic pain in her knees, shoulder and back.³⁶

[46] In November 2018, Colleen Loree, nurse practitioner, stated that the Claimant had chronic pain in both of her knees and her right shoulder pain. She had fallen because of the pain and instability in her knees.³⁷

Mental health conditions

[47] The Claimant has a difficult and problematic history. Both of her parents were alcoholics. They moved house with her about 50 times by the time she was in grade nine. She was sexually abused on three occasions. She was involved in a physically and emotionally abusive common-law relationship that ended in 1999.³⁸

³² GD2-57

³³ GD4-38

³⁴ GD2-50 to 52

³⁵ GD4-36

³⁶ GD5-2

³⁷ GD7-2

³⁸ GD4-34

[48] In November 1999, she was diagnosed with panic disorder with agoraphobia, major depressive disorder, and post-traumatic stress disorder.³⁹

[49] In mid-July 2000, she began five weeks at the Homewood Health Centre (Homewood), with the diagnosis of psychotic disorder (not otherwise specified) and possible psychotic depression.⁴⁰ She returned to Homewood again for two weeks in January 2002 with a “brief reactive psychosis.”⁴¹

[50] There is no evidence of further treatment for mental health issues until September 2015, when she began seeing Dr. Smith, psychologist, for individual counselling. According to Dr. Smith, she was experiencing intense mood and anxiety symptoms because of the intense burden of care required by her spouse. In addition, according to Dr. Smith, the Claimant’s burden of care increased “well beyond her ability to cope” after the December 2015 accident.⁴² She saw Dr. Smith about twice a month until November 2017.⁴³

[51] In October 2016, Dr. Jafferjee diagnosed adjustment disorder with anxiety and depression. He stated that the Claimant was receiving mental health counselling and ongoing psychological support.⁴⁴

[52] In December 2016, Dr. Smith stated that the Claimant was experiencing a persistent sense of inability to cope. She was distressed and irritable. She had difficulty concentrating. Her social and occupational functioning were significantly impaired. Her scores on self-report questionnaires reflected severe symptoms of anxiety and depression. She had passive and fleeting suicidal ideation. He stated her symptoms began after the March 2014 accident. The December 2015 accident significantly exacerbated her symptoms. Dr. Smith diagnosed severe chronic adjustment disorder with anxiety and depressed mood.⁴⁵

³⁹ GD4-35

⁴⁰ GD4-27

⁴¹ GD4-30

⁴² GD2-54

⁴³ GD4-5 to 9.

⁴⁴ GD2-53

⁴⁵ GD2-54 to 55

[53] In November 2017, Dr. Jafferjee repeated his diagnosis of adjustment disorder with generalized anxiety. He stated that the Claimant suffered palpitations, low mood, outbursts of anger, continuous worry about catastrophic events, and a sense of overall hopelessness. The Claimant had been receiving counselling since 2015 from a psychologist, from the CMHA, from a family health team social worker, and from a mental health therapist.⁴⁶

[54] Dr. Sicoli, psychologist, started to treat the Claimant in January 2018. She agreed with the diagnosis of adjustment disorder with mixed anxiety and depression. In November 2018, she stated the Claimant continued to struggle with symptoms of low mood, anxiety, distress, hopelessness, difficulty concentrating and remembering, and making decisions. Dr. Sicoli also stated that the Claimant was not able to work at any job because of her psychological condition.⁴⁷

Neurocognitive issue

[55] At the hearing before me, Anne-Marie McDonough testified that it is difficult to separate the Claimant's brain injury and PCS neurocognitive issues from her long-standing mental health issues. Her neurocognitive issues include mood dysregulation, attention and concentration deficits, memory problems, difficulty making decisions, and feelings of being overwhelmed. She testified that Claimant suffers from functional limitations that occur in both mental health and PCS situations.

[56] In October 2019, Dr. Berge diagnosed a brain injury and PCS. She stated that the Claimant had started to experience a cluster of AVNS symptoms following the December 2015 car accident. The Claimant complained of tinnitus (ringing in the ears), headaches, sound sensitivity, otalgia (ear pain), difficulty hearing and dizziness.⁴⁸

[57] In a February 2020 post- concussion treatment protocol, Sumithra Indermohan, physiotherapist, stated that the Claimant had post-concussion syndrome since the December 2015 car accident. She listed the Claimant's impairments as severe headaches and head pressure,

⁴⁶ GD4-36

⁴⁷ GD4-2

⁴⁸ RA1-20

pain and pressure in the ears, balance problems, severe pain all over her body, tinnitus, nausea, blurred vision, jawbone pain, brain fog, stuttering speech, cognitive difficulties and poor sleep.⁴⁹

My findings

[58] I must assess the Claimant's condition as a whole and consider all the impairments that affected her employability, not just her biggest impairments or her main impairment.⁵⁰

[59] Ms. Carr submits that the Claimant's condition deteriorated after her MQP. She argues that while the Claimant may have some limitations, she did not have any significant physical or psychological impairments that prevented her from working when her MQP ended. However, the medical reports discussed above provide ample evidence that the Claimant suffered numerous disabling physical, psychological, and neurocognitive conditions at the MQP. The fact that her condition may have deteriorated after the MQP, does not mean she was not disabled at the MQP.

[60] The Claimant completed the disability questionnaire in June 2016. This was almost one year before she last qualified for CPP disability. In that disability questionnaire, she described her numerous difficulties and functional limitations as follows⁵¹:

- Difficulty getting in and out of car, standing, doing dishes, going up stairs, driving, carrying, and lifting;
- Unable to sit for more than 15 minutes;
- Unable to walk for more than 10 minutes;
- Difficulty putting shoes on and off;
- Difficulty cooking and cleaning;
- Loss of hearing and startled by noises;
- Overwhelmed;
- Difficulty remembering;

⁴⁹ RA1-29

⁵⁰ *Bungay v. Canada (Attorney General)*, 2011 FCA 47

⁵¹ GD2-67

- Difficulty focusing;
- Difficulty sleeping and has nightmares; and
- Struggles to drive.

[61] I find that the Claimant's physical, mental health, and neurocognitive conditions, taken together, interfered with her ability to work by May 31, 2007.

The Claimant has established a severe disability

[62] The key question in CPP cases is not the nature or name of the medical condition, but its effect on a claimant's ability to work.⁵² The Claimant's capacity to work, not the diagnosis of her disease, determines the severity of her disability under the CPP.⁵³

[63] A disability is severe if it prevents a claimant from pursuing with consistent frequency any truly remunerative occupation. I must assess the severity requirement in a "real world context" and consider such factors as the Claimant's age, education level, language proficiency, and past work and life experiences when determining her "employability".⁵⁴

[64] The Claimant was 53 years old at the MQP. She was 12 years away from the usual retirement age. She has two university credits and had obtained driving instructor certificates. She has worked almost exclusively in transportation as a cab driver, dispatcher, pizza delivery person, and driving instructor. Her age, limited education, and narrow work history, when considered together, limit her capacity to pursue employment.

[65] The Claimant acknowledged that she has not applied for work since March 2014. However, she did work on a part-time basis as a relief building manager for the townhouse complex where she lived. From February 2017 to January 2018, she screened emergency calls every second weekend and helped tenants deal with emergencies. There was also some light physical work such as moving garbage bins. She had to stop doing this because it increased her anxiety. She was always afraid she would miss a call.

⁵² *Ferreira v. Attorney General of Canada*, 2013 FCA 81

⁵³ *Klabouch v. Canada (Social Development)*, 2008 FCA 33

⁵⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

[66] The Minister argues that the Claimant is not entitled to the CPP disability pension because she has failed to make reasonable efforts to pursue employment. However, I am satisfied that because of the combined effect of her physical, mental health, and neurocognitive conditions, the Claimant lacks the capacity regularly to pursue any kind of substantially gainful employment.⁵⁵ She could not be a regular and reliable employee. In view of this, she was not obliged to make efforts to pursue alternative employment.⁵⁶

[67] I find that the Claimant has established that it is more likely than not that she suffers from a severe disability in accordance with the CPP requirements.

Prolonged Disability

[68] The Claimant's disabling conditions have persisted for many years. Despite extensive treatment, there has been no significant improvement.

[69] The Claimant's disability is long continued and that there is no reasonable prospect of improvement in the foreseeable future.

[70] I find her disability is prolonged.

CONCLUSION

[71] The Claimant has established new facts.

[72] The Claimant had a disability that was severe and prolonged in December 2015, when she was injured in a car accident. Payments start four months after the date of disability.⁵⁷ Payments start as of April 2016.

[73] The application is allowed.

Raymond Raphael

⁵⁵ See paras 37 to 60, above

⁵⁶ *Inclima v Canada (Attorney General)*, 2003 FCA 117

⁵⁷ Section 69 of the CPP

Member, General Division - Income Security