



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SM v Minister of Employment and Social Development*, 2020 SST 1148

Tribunal File Number: GP-19-1775

BETWEEN:

S. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Teleconference hearing on: December 29, 2020

Date of decision: December 30, 2020

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of October 2018.

OVERVIEW

[2] The Minister received the Claimant's application for the disability pension on September 26, 2018. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] 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, 2021.

ISSUE

[4] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 29, 2020 (the date of the hearing)?

[5] If so, was the Claimant's disability also long continued and of indefinite duration?

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

[7] I must assess the severe part of the test in a real world context². 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.

[8] 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's 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 work³.

[9] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment⁴.

[10] 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 condition⁵.

Did the Claimant have severe disability by December 29, 2020?

[11] I find on a balance of probabilities the Claimant had a severe disability by December 29, 2020, for the following reasons:

[12] First: The Claimant's testimony on her chronic pain and functional limitations was credible and persuasive, because her statements were consistent, detailed, and forthright. Specifically, the Claimant testified that she could not work owing to fibromyalgia joint pain that especially affected her hips and back. The Claimant testified that her medical condition affected her daily functioning and she often spent half the day in bed due to pain and fatigue. I recognize the Minister submitted that Dr. Flusk (pain specialist) indicated the Claimant had not trialed first line treatments used in the management of fibromyalgia symptoms. However, the Claimant did take the medications prescribed by Dr. Flusk (PMS-Pregabalin and APO-Duloxetine) in 2019. However, these medications did not improve the Claimant's condition. Furthermore, the

² *Villani v. Canada (A.G.)*, 2001 FCA 248

³ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

⁴ *Bungay v. Canada (A.G.)*, 2011 FCA 47

⁵ *Inclima v. Canada (A.G.)*, 2003 FCA 117

Claimant testified that Dr. Norman prescribed Nabilone in March 2020 but the medication had not helped her condition either.

[13] Second: The report from Dr. Casey (dated October 31, 2018) documented that the Claimant could not return to gainful employment at any time in the foreseeable future. I place some weight on this report, because the Claimant had been seeing Dr. Casey since 2016 (GD2-75). Furthermore, Dr. Casey wrote that the Claimant had a two-year history of progressive muscle and joint pain which made standing and walking difficult.

[14] Third: The Claimant followed most of the treatment recommendations provided by her doctors. For example, the Claimant tried PMS-Pregabalin and APO-Duloxetine in 2019 with no improvement in her condition. The Claimant also started taking Nabilone in March 2020, but with no noticeable improvement in her condition. Furthermore, the Claimant attempted aqua therapy but was now prevented from attending owing to the pandemic. I realize the Minister submitted the Claimant had not participated in exercise programs that benefited patients with fibromyalgia. Still, the Claimant did attempt aqua therapy until she could no longer attend.

[15] Fourth: The Claimant lacks transferable skills for alternate work. For example, since 2007 the Claimant has only worked as a cashier with no further training credentials. Furthermore, the Claimant has limited computer skills and testified she did not send or receive e-mails. I realize the Minister submitted the Claimant has transferable skills to adjust to alternate work that would be more suited to her limitations. The Minister also mentioned the Claimant had work experience as a hairdresser. Nevertheless, the Claimant last worked briefly as a hairdresser over 20-years ago and would be unable to perform this work now because of her chronic pain and functional limitations.

Additional Submissions from the Minister

[16] I recognize the Minister further submitted the Claimant did not attempt alternate work within her capacities. However, the Claimant tried working on a part-time basis as a cashier in March 2018 but had to stop in June 2018 owing to chronic pain from her fibromyalgia. The Claimant was forthright during the hearing that if she could work she would attempt a job. Nevertheless, the Claimant's chronic pain, ongoing functional limitations, age (55-years-old) and

limited transferable skills makes her incapable regularly of pursuing any substantially gainful occupation.

Prolonged disability

[17] I find on a balance of probabilities the Claimant's disability was long continued and of indefinite duration for the following reasons:

[18] First: The report from Dr. Casey's (dated October 31, 2018) states that the Claimant could not return to gainful employment any time in the foreseeable future.

[19] Second: I accept the Claimant's oral testimony that her medical condition was not improving. I further accept the Claimant's testimony that her treatments have not provided any lasting relief.

CONCLUSION

[20] The Claimant had a severe and prolonged disability in June 2018, when she stopped working part-time as a cashier. Payments start four-months after the date of disability, as of October 2018⁶.

[21] The appeal is allowed.

Gerry McCarthy
Member, General Division - Income Security

⁶ Section 69 *Canada Pension Plan*