Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *MM v Minister of Employment and Social Development*, 2021 SST 49

Tribunal File Number: GP-20-1052

BETWEEN:

M. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by:	Connie Dyck
Claimant represented by:	Monique Long on behalf of Retirement Planning Institute and Mike Moreland
Teleconference hearing on:	January 20, 2021
Date of decision:	January 28, 2021

DECISION

[1] The Claimant, M. M., is eligible for a Canada Pension Plan (CPP) disability pension. Payments are to start June 2018. This decision explains why I am allowing the appeal.

OVERVIEW

[2] The Claimant was 29 years old when he stopped working as a paramedic in July 2012. He stopped working because of symptoms of Post-Traumatic Stress Disorder (PTSD), anxiety/depression and depersonalization. He says he continues to be disabled and is unable to work in any occupation. The Claimant applied for a CPP disability pension on May 3, 2019. The Minister of Employment and Social Development Canada (the Minister) refused his application because the symptoms and activities described are not of such severity to prevent a return to alternate more suitable types of employment which has not been discouraged by his doctors. The Claimant appealed to the General Division of the Social Security Tribunal.

WHAT THE CLAIMANT MUST PROVE

[3] For the Claimant to succeed, he must prove that it is more likely than not that he has a disability that was severe and prolonged by December 31, 2015. This date is based on his contributions to the CPP.[1]

[4] 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.[2]

THE CLAIMANT'S DISABILITY WAS SEVERE

[1] The *CPP* calls this date the "Minimum Qualifying Period." See s. 44(2).
[2] 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.

[5] I find that the Claimant has a severe and prolonged disability as of July 2012. I reached this decision by considering the following issues.

The Claimant has functional limitations that affect his capacity to work

[6] The Claimant has been diagnosed with PTSD, panic attacks and anxiety. However, my decision about whether the Claimant's disability is severe is not based on his diagnosis. It is based on whether he has functional limitations that prevent him from working.[3] I have to look at his overall medical condition and think about how the Claimant's health issues might affect his ability to work.[4]

[7] The medical evidence of the family doctor, psychologist and psychiatrists say the Claimant cannot return to his work as a paramedic.[5] However, the test before me is not whether he can return to his work as a paramedic. I must decide if he has capacity for *any* substantially gainful work.[6]

[8] The Claimant argues that he is unable to work at any job because of PTSD, anxiety, panic attacks, depression and chronic low back pain.[7] He testified that he witnessed many traumatic events as a paramedic. However, an emergency call in 2011 involving the birth of a baby in a toilet, who ultimately died, was what he recalled to be the triggering event of his PTSD, depersonalization and anxiety. He said his symptoms were intermittent after that incident and he tried to continue to work. However, by December 2011, he was having panic attacks at work. His family doctor at that time told him the panic attacks were because of his job. The doctor recommended he take time off work and he started anti-anxiety medication.

[9] In March 2012, he attempted to return to work as a paramedic. After approximately three months in July 2012, he had a mental breakdown and stopped working again.[8] He has not returned to any type of work since July 2012. The Claimant

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[3] *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada* (A.G.), 2013 FCA 81
[4] *Bungay v. Canada (A.G.)*, 2011 FCA 47
[5] Dr. Lariviere's report is at GD 2-156, Dr. Young's report is at GD 2-194.
[6] *Klabouch v. Canada (Social Development)*, 2008 FCA 33
[7] This information is at GD 2-39.
[8] Dr. Jospeh's (psychiatrist) report is at GD 2-167.

started short-term disability benefits. In 2015, the insurance company and employer decided the Claimant would not be able to ever return to work as a paramedic. I note that there are earnings recording for 2015, in his Contribution of Earnings Record,[9] however these are not from work the Claimant performed.

[10] The Claimant says because of his conditions, he has difficulty following through with tasks, adjusting easily to unexpected changes and figuring out what to do when stressed. He also struggles with managing his anxiety and being in public. The Claimant said his communication and thinking skills are poor to fair. He said his conditions vary and he has good and bad days. He said he had some improvement since he last worked in 2012, but never enough to allow him to return to any type of work. He said that since 2018, his improvement has plateaued.[10]

[11] The medical evidence of Dr. Notman (family doctor) supports the Claimant's description of his conditions and his functional limitations. She said the Claimant's PTSD started in about 2011. Resulting impairments include panic attacks and depersonalization. He also has anxiety, which causes him to assume the worst will happen and to have irrational fears. His anxiety has severe episodes, which result in poor focus and concentration. He also has difficulty with interpersonal relationships.[11]

[12] I find that the medical evidence shows that the Claimant had functional limitations that affected his ability to work by July 2012.

The Claimant does not have work capacity

[13] The Claimant has to provide objective medical evidence of his disability as of December 2015. If he fails to prove that he suffered from a severe disability prior to this date, medical evidence dated after is irrelevant.[12]

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[9] The Contribution record is at GD 2-7.
[10] The Claimant provided this information in his questionnaire at GD 2-43.
[11] Dr. Notman's report is at GD 2-84.
[12] *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*

[14] The Claimant began psychiatric treatment with Dr. Veluri in March 2012.[13] Based on the chart notes, it is apparent that Dr. Veluri's primary role in treating the Claimant was to find an appropriate medication for him.[14] By March 2013, the Claimant was using Wellbutrin, Clonazepam, Lorazepam and Sertaline. Dr. Veluri felt the Claimant was doing well on this medication and discharged him back to the care of his family doctor. I do not see this as evidence of work capacity or significant improvement that would allow the Claimant to return to work. I say this because although the Claimant's medications may have been managed, he required ongoing psychological treatment in addition to medication. Dr. Lariviere's (psychologist) opinion in September 2013[15] was that the Claimant did not have work capacity. The Claimant's condition required more than just medication to improve his functionality. It was Dr. Lariviere's opinion that with appropriate interventions and support, the Claimant's prognosis for recovery was fair.

[15] The Claimant saw Dr. Young (psychiatrist) for a consultation in May 2014 at the request of his insurance company.[16] Dr. Young's diagnosis was PTSD with dissociative symptoms and moderate to severe Major Depressive Disorder. She explained that the Claimant's episodes of panic consist of him shaking, heart racing, sweating and the feeling that he is going to die. These have occurred up to a maximum of 2-3 times per day and are currently 2-3 times per week. He could go several days in a row without experiencing them, but then they reoccur. The Claimant told Dr. Young that his greatest concern was the episodes of dissociative experience. He said these symptoms had not improved significantly. These episodes occur approximately three times per month and last 2-3 days at a time. Despite the Claimant's desire to return to some type of work, it was Dr. Young's opinion that this was not possible with his current symptoms and abilities.[17] She explained that his dissociative experiences, poor concentration and panic made it consistently difficult to have enough attention to code new memories or to manage competing cognitive demands. His executive functioning was affected in that his mental flexibility, decision making capacity and sequencing of complex actions

[13] Dr. Veluri's report is at GD 2-320.
[14] Dr. Veluir's chart notes are at GD 2-142 to GD 2-152.
[15] Dr. Lariviere's medical report is at GD 2-318.
[16] Dr. Joseph's report is at GD 2-186.
[17] This information is provided by Dr. Young at GD 2-191 – GD 2-195.

would also be difficult due to his anxiety and depressive symptoms. This shows me that the Claimant would not be able to return to any work, not just his job as a paramedic. Also, he would be unable to train for any other type of job either by attending school or in vocational training.

[16] Dr. Young was hopeful that if her treatment suggestions were followed and if the Claimant continued to improve, that he would be able to return to work within several years. I note that Dr. Notman did review the recommendations of Dr. Young.[18] She explained that she typically avoided the anti-psychotic drugs as recommended by Dr. Young because in her experience they resulted in "horrendous side effects for my previous patients". She said she reserved using anti-psychotic drugs as an absolute last resort. Further, Dr. Young provided no guarantee that these anti-psychotic medications would improve the Claimant's functionality that would allow him to work. Specifically, she said "and if the Claimant continued to improve," which to me indicates a possibility that he may not.

[17] The Claimant also saw Dr. Joseph (psychiatrist) in May 2014. Dr. Joseph agreed that the Claimant suffered from PTSD with dissociative symptoms.[19] He, like Dr. Young, noted the Claimant had problems with concentration and depersonalization symptoms. He said that the Claimant had symptoms of anxiety as well as intense psychological and physiological distress with distorted cognitions. Dr. Joseph said the Claimant's fear of returning to work and relapsing was realistic because he continued to have symptoms even though he was no longer at work. Dr. Joseph thought a "firm approach" should help the Claimant overcome his anxiety and associated symptoms and it was possible that he may return to work. He suggested a change in the Claimant's medication including that he stop using Zoloft. The Claimant stopped using Zoloft in July 2014 and tried Cipralex.[20] However, the Claimant's condition did not improve as hoped.

[18] Dr. Notman's letter is at GD 2-195.
[19] Dr. Joseph's report is at GD 2-171.
[20] This information is at GD 2-116.

[18] The Claimant was also examined by Dr. Bishop (psychiatrist) in February 2014; Dr. WIgmore (psychologist) in February 2014 and Dr. Stewart (neuropsychologist) in December 2016.

[19] I gave little weight to the report of Dr. Bishop[21] because it was made solely on her interpretation of medical reports from other doctors. She did not personally examine the Claimant.

[20] Dr. Wigmore's[22] report is also based on not personally examining the Claimant. Further, Dr. Wigmore's report focuses on the conclusions of Dr. Bishop and Dr. Lariviere. He is unsure if the Claimant would be able to return to work as a paramedic, but that is not the test before me.

[21] Dr. Stewart[23](neuropsychologist) concluded that the Claimant has no limitations in cognitive, emotional and social functions from a neurocognitive perspective. However, he says there are documented limitations in social functions, adaptation to change and reduced stress tolerance attributable to his PTSD diagnosis. Further, what is most telling in his report is that the Claimant's symptoms have remained the same despite numerous treatments and interventions in the previous four years. The Claimant continued to have cognition problems including difficulty concentrating and memory loss. He continued to have difficulty coping in various environments, avoided crowds and felt uncomfortable in "uncontrolled" environments. He continued to experience anxiety approximately 5 days a week and continued to have panic attacks.[24] The evidence shows me that the Claimant's cognitive limitations as well as his social anxiety and panic attacks would prevent him from retraining or returning to any type of work in December 2016 when he saw Dr. Stewart, just as they did in May 2014 when he saw Dr. Young.

[22] In 2015, the Claimant continued his monthly treatment with Dr. Lariviere. While Dr. Lariviere remained hopeful that the Claimant would be able to work at an alternate

[21] Dr. Bishop's report is at GD 2-157.
[22] Dr. Wigmore's report is at GD 2-161.
[23] Dr. Stewart's report is at GD 2-202.
[24] This information is at GD 2-205.

vocation, this was conditional on the Claimant's symptoms remitting.[25] Throughout 2015, the Claimant continued to have intermittent anxiety and depression with flare-ups and difficulty leaving his house as a result.[26] By October 2015, the Claimant continued to be symptomatic with depersonalization and underlying anxiety 3-4 days a week. This continued to be the case even after his MQP. In June 2016, Dr. Notman said the Claimant continued to suffer depersonalization and derealisation that kept him from actively participating in meaningful employment.[27] Dr. Lariviere agreed with Dr. Notman and reported in June 2016 that the Claimant's symptoms remained anxious avoidance, intrusive experience and depersonalization. The Claimant continued to avoid crowds, chaos and social events. It remained Dr. Lariviere's opinion that a return to work in any occupation was not yet suitable.

[23] I gave considerable weight to Dr. Lariviere's prognosis regarding the Claimant being able to return to work. This is because he has consistently and regularly treated the Claimant since July 2012. In March 2017, now almost five years after the Claimant started treatment and well after his MQP, Dr. Lariviere maintained the position that a return to work was guarded and that the Claimant's symptoms precluded him from re-entry into the workforce as well as participating in academic or vocational retraining efforts.[28] He said the Claimant continued to suffer from generalized anxiety and trauma.

[24] Dr. Lariviere, Dr. Joseph and Dr. Young all agree that the Claimant would not be able to return to work as a paramedic. They all agree that the Claimant has PTSD and anxiety/depression. They all make recommendations and are hopeful that the Claimant will improve enough to be able to return to some type of work. Unfortunately, this has not been the case. The Claimant has made some improvements since 2012; however, he continues to have unpredictable and recurring episodes of anxiety/panic and dissociative experiences.

[25] Dr. Lariviere's report is at GD 2-182.
[26] Dr. Notman's reports are at GD 2-120 – GD 2-122.
[27] This information is at GD 2-122
[28] Dr. Lariviere's report is at GD 2-134.

[25] I find that the medical evidence shows that the Claimant had functional limitations that affected his ability to work by December 31, 2015.

The Claimant's efforts at gardening/farming are not evidence of work capacity

[26] The Claimant sold his house during his divorce and he needed a place to live. In 2016, he purchased a farmhouse. The house needed a lot of work and he hoped that fixing it up, might improve his mental health. The yard had a small garden bed, so he grew some peppers, while he was renovating at his own pace. His psychologist said to make it bigger and keep going. So, he planted lettuce, carrots, peppers and other vegetables. He hoped that he would eventually be able to make some money selling his vegetables at a Farmer's Market. He explained that this would be a controlled setting meaning that he did not have to go if he was having a bad day.

[27] The Minister says that the Claimant's attempt at hobby farming did not fail due to his mental health, but rather due to a back injury.[29] This is true, however, I find that his efforts at hobby farming were not evidence of work capacity for the following reasons. In a questionnaire completed in September 2016,[30] he explained that he watered his garden when needed which is about twice a week for one hour. The Claimant could work at his own pace and on days when he felt able. He testified that there were many days when he did nothing except for sit on the veranda. This was because of his anxiety, low motivation and depersonalization symptoms. Further, the Claimant would not be a reliable employee because of his regular weekly flare-ups. It was Dr. Notman's opinion that employment would require special accommodations that would go beyond what would be expected in the marketplace.[31] The Clamant's efforts at growing vegetables are not evidence of work capacity. He can only water or plant for a short time and his condition makes it unpredictable when he will be able to do that. There are

[29] The Minister's argument is at GD 4-9.
[30] The questionnaire is at GD 2-201.
[31] Dr. Notman's report is at GD 2-87.

many days when he cannot leave his house. I find the Claimant's ability to plant or water his vegetables when he is able, is not evidence of work capacity.

[28] Also, the medical evidence shows that despite his closest neighbor being ¼ mile away and hearing no loud noise or sirens, the Claimant continued to suffer depersonalization that keep him from actively participating in meaningful employment.[32] The Claimant was making slow improvements and he said that being outside was helpful. However, as again noted by Dr. Notman in April 2017,[33] now one year after he moved to the hobby farm, the Claimant continued to have ongoing anxiety and depression that prevented him from leaving the house on some days. This supports the Claimant's testimony that he remained unable to even go water the vegetables on some days. He had persistent episodes of depersonalization.[34]

The Claimant's personal circumstances

[29] 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 his 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.[35]

[30] I find the Claimant has no capacity to work in the real world.

[31] The Claimant was only 32 years old at his MQP. His age would provide him with many potential years of employment before the standard age of retirement. However, he has essentially no transferable skills. His entire work history has been that of a paramedic. His PTSD and anxiety are a result of the traumatic events he witnessed as a paramedic. His family doctor and psychologist both agree that the Claimant will not be able to return to work as a paramedic or in any stressful environment.

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[32] This is Dr. Notman's opinion in June 2016 at GD 2-122.
[33] Dr. Notman's information is at GD 2-131.
[34] The Claimant's description of his limitations during 2016 is at GD 2-198 – GD 2-199.
[35] 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).

[32] He has a grade 13 education and took a few career college courses. So, I considered whether he would be able to retrain.

[33] The Claimant's functional limitations because of his mental health condition would prevent him from not only work as a paramedic but in any occupation or to retrain. Dr. Notman said the Claimant would not be able to participate in vocational retraining because he continued (in 2017) to suffer the effects of PTSD that would prevent him from participating successfully. She explained that he had ongoing anxiety and depression that prevented him from leaving the house on some days. He had persistent episodes of depersonalization that were not conducive to classroom learning. He had ongoing hypervigilance and sleep disturbance that would affect his performance in vocational rehabilitation.[36]

[34] The Claimant testified that he tried programming a computer. Although he was interested and motivated, this attempt proved unsuccessful because he could not focus. He said he cannot look at screens very long before going into a "fog".

[35] The Claimant is limited from work due to his depression and anxiety, including memory and concentration issues, I find that despite his personal attributes, the Claimant is unable to work in any capacity. The Claimant continues to be anxious in public, avoids people and is essentially housebound with no motivation and low energy on days when his condition flares. This is several days a week. The Claimant would be unable to adhere to a work schedule, because his anxiety and panic happens without triggers and without warning. He would not be a reliable employee. I find that in the "real world" it is unlikely that the Claimant is capable of maintaining employment or retraining.

[36] I find the Claimant has no capacity to work in the real world.

The Claimant has made reasonable efforts to follow recommended treatments

[36] Dr. Notman's report is at GD 2-131.

[37] The Claimant has made reasonable efforts.[37] By February 2015, the Claimant had tried more than eight psychiatric medications.[38] He also tried CBD oil, natural medications. He also tried using no medications but relying only on relaxation techniques and exercise. Despite these efforts, his condition did not improve. He has had psychiatric treatment and has been under the regular care of a psychologist since 2012. He has participated in therapies including Cognitive Behavioural Therapy and exposure therapy. These treatments have not improved the Claimant's functionality.

THE CLAIMANT'S DISABILITY IS PROLONGED

[38] The Claimant's condition began in 2011, was present when he left work in 2012 and continues today. This supports that the Claimant's disability is prolonged. I do not find any evidence that would reasonably lead me to assume that the Claimant's condition will be resolving in the near future.

[39] The Claimant's family doctor and psychologist, who have provided consistent care to the Claimant for more than 7 years, both agree that the Claimant has not had capacity to return to any type of work from July 2012 to the present day. While it is hoped, that he will be able to return to some type of work other than a paramedic in the future, there is no suggestion from either caregiver that this is expected in the foreseeable future.[39]

CONCLUSION

[40] The Claimant had a severe and prolonged disability in July 2012 when he was no longer able to work. However, the CPP says he cannot be deemed disabled more than fifteen months before the Minister received his disability application. After that, there is a four-month waiting period before payment begins.[40] The Minister received the

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[37] The requirement to follow medical advice is explained in *Sharma v. Canada (Attorney General)*, 2018 FCA 48
[38] This list is at GD 2-188.
[39] Dr. Lariviere's reports are at GD 2-182, GD 2-197 and GD 2-194. Dr. Notman's report is at GD 2-87 and GD 2-131.
[40] This is set out in s. 69 of the *Canada Pension Plan*

Claimant’s application in May 2019. That means he is deemed to have become disabled in February 2018. Payment of his pension starts as of June 2018.

OTHER ISSUE

[41] Mike Moreland of Retirement Planning Institute is identified as the authorized representative in the file.

[42] Mr. Moreland advised the Tribunal that Tami Cogan would attend the hearing on his behalf.

[43] At the hearing, Monique Long attended the hearing as the representative of the Claimant. She said it was on behalf of Mr. Moreland and the Claimant confirmed that she was his representative.

Connie Dyck
Member, General Division - Income Security