



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CB v Minister of Employment and Social Development*, 2021 SST 127

Tribunal File Number: GP-20-366

BETWEEN:

C. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Claimant represented by: Monique Long

Teleconference hearing on: February 9, 2021

Date of decision: February 10, 2021

DECISION

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

OVERVIEW

[2] The Minister received the Claimant's application for the disability pension on January 29, 2019. 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, 2022.

PRELIMINARY MATTER

[4] Ms. Monique Long (Paralegal with "Phoenix Paralegal and Advocacy Services") joined the Teleconference hearing and explained that she would be representing the Claimant instead of Tami Cogan from the same organization. The Claimant had previously provided her consent to be represented by "Phoenix Paralegal and Advocacy Services" in the "Authorization to Disclose" form listed in GD-10.

ISSUES

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by the date of the hearing (February 9, 2021)?

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

ANALYSIS

[7] 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.

Severe disability

[8] 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.

[9] 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.

[10] 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.

[11] 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 a severe disability on or before February 9, 2021?

[12] I find on a balance of probabilities the Claimant had a severe disability on or before February 9, 2021, for the following reasons:

¹ Paragraph 42(2)(a) *Canada Pension Plan*

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

[13] First: There are numerous medical reports on file that indicate the Claimant could not work at any employment. For example, Dr. O'Connor wrote in September 2018 that based on symptom severity and functional limitations the Claimant would never be capable of performing the duties of any occupation (GD2-49). Furthermore, Ms. Barnett (Nurse Practitioner) reported in January 2019 that it was unlikely the Claimant would ever be in a position to fully recover from her medical condition or participate in gainful employment (GD2-70). Finally: Dr. Barnett wrote in August 2020 that the Claimant was unable to obtain or maintain employment (GD6-4).

[14] Second: The Claimant's oral testimony on her functional limitations, Post-Traumatic Stress Disorder (PTSD), anxiety, panic attacks, depression and chronic pain was credible because her statements were reasonably consistent, detailed, and forthright. I realize the Minister submitted that the information provided did not support a severe physical or psychological medical condition that prevented the Claimant from alternate work. However, I place more weight on the Claimant's testimony that her mental and physical condition prevented her from working at any employment. I also place considerable weight on the medical report from Dr. O'Connor that indicated the Claimant was incapable of performing the duties of any occupation (GD2-49).

[15] Third: The Claimant has followed most of the treatment recommendations from her doctors. For example, the Claimant continued to take anti-anxiety medication (Ativan). Furthermore, the Claimant has received psychological and psychiatric counselling and participated in Cognitive Behaviour Therapy. I do realize the Claimant rejected Electroconvulsive therapy (ECT) offered as an option by Dr. Anil in 2017 (GD2-78). However, under the circumstances I accept that the Claimant's rejection of this treatment was reasonable considering how contentious this treatment can be.

[16] Fourth: The totality of the Claimant's impairments must be considered. Specifically, the Claimant does suffer from panic attacks and PTSD. However, the Claimant further suffered from Major Depressive Disorder (MDD), baseline anxiety, poor memory and concentration, chronic hypersensitivity syndrome and difficulties maintaining interpersonal interactions. I realize the Minister argued the evidence did not support a severe physical or psychological medical condition. Nevertheless, the totality of the Claimant's impairments has rendered her incapable regularly of pursuing any substantially gainful occupation.

Additional Submissions from the Minister

[17] I realize the Minister submitted there was no evidence to indicate the Claimant attempted any other type of work. However, the Claimant did try weaving yoga mats but the work took several weeks to complete and triggered her physical pain.

[18] I further recognize the Minister indicated the Claimant had considered teaching yoga. I certainly realize the Claimant completed a yoga instruction certificate. Nevertheless, the Claimant testified that her intent in taking yoga classes was to benefit her mental health and not to teach a course. I will accept the Claimant's testimony on this matter as reasonable under the circumstances. Furthermore, I am unable to conclude the Claimant's attendance at yoga classes demonstrated a capacity for substantially gainful employment.

Prolonged disability

Was the Claimant's disability long continued and of indefinite duration?

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

[20] First: The report from Ms. Barnett (NP) explained that it was unlikely the Claimant would ever be in a position to fully recover from her medical condition or to participate in gainful employment (GD2-70)

[21] Second: Dr. Barnett wrote that the Claimant's condition was chronic and unlikely to resolve (GD6-4).

[22] Third: Dr. O'Connor reported that the Claimant's response to treatment had been partial and the residual symptoms were chronic and unlikely to fully resolve (GD2-49).

[23] Fourth: The oral testimony from the Claimant persuaded me her medical condition and functional limitations were long continued and of indefinite duration.

CONCLUSION

[24] The Claimant had a severe and prolonged disability in September 2015 when she stopped working as a mid-wife. However, to calculate the date of payment of the pension a person cannot be deemed disabled more than fifteen-months before the Minister received the application for the pension⁶. The application was received in January 2019 so the deemed date of disability is October 2017. Payments start four-months after the deemed date of disability, as of February 2018⁷.

[25] The appeal is allowed.

Gerry McCarthy
Member, General Division - Income Security

⁶ Paragraph 42(2)(b) *Canada Pension Plan*

⁷ Section 69 *Canada Pension Plan*