



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MM v Minister of Employment and Social Development*, 2021 SST 119

Tribunal File Number: GP-20-1325

BETWEEN:

**M. M.**

Appellant (Claimant)

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: Kelly Temkin

Teleconference hearing on: February 1, 2021

Date of decision: February 3, 2021

## Decision

[1] The Claimant, M. M., is not eligible for a *Canada Pension Plan* (CPP) disability pension. This decision explains why I am dismissing the appeal.

## Overview

[2] The Claimant last worked as a laboratory technologist-quality coordinator from October 1, 1985 to September 5, 2018. She stated that she could no longer work as of September 2018 because of lymphedema in her left arm post breast cancer. She also had knee issues and arthritis but these did not affect her ability to work.

[3] The Claimant applied for a CPP disability pension on March 18, 2019. The Minister of Employment and Social Development Canada (the Minister) refused her application both initially on reconsideration. The Minister stated that the medical evidence on file did not support severe findings that would have prevented her from performing some type of suitable work. The Claimant appealed to the General Division of the Social Security Tribunal.

## What the Claimant must prove

[4] The Claimant has to prove it is more likely than not she is disabled.

[5] For the Claimant to succeed, she must prove she has a disability that was severe and prolonged by the date of the hearing.<sup>1</sup>

[6] The CPP defines “severe” and “prolonged”. A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup> It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>3</sup>

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<sup>1</sup> Service Canada uses a person’s years of CPP contributions to calculate their coverage period, or “minimum qualifying period” (MQP). The end of the coverage period is called the MQP date. See subsection 44(2) of the *Canada Pension Plan*. The Claimant’s CPP contributions are on GD2-41. In this case, the Claimant’s coverage period ends on the hearing date.

<sup>2</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>3</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## **Reasons for my decision**

[7] I find the Claimant has not proven she has a disability that was severe and prolonged by February 1, 2021. I reached this decision by considering the following issues.

### **The Claimant's limitations do not affect her ability to work**

[8] The Claimant has lymphedema in her left arm post breast cancer. My focus though is not on the Claimant's diagnosis.<sup>4</sup> I must focus on whether her functional limitations get in the way of her earning a living.<sup>5</sup>

[9] I find the Claimant has functional limitations, but they do not affect her ability to work. Here is what I considered.

### **What the Claimant says about her limitations**

[10] The Claimant says she has functional limitations from her medical condition that affect her ability to work in the following ways. She cannot do repetitive work. Working on a computer all day is too difficult. She cannot push, kneel, squat or pull. She must sit with her left arm supported. Yard work was okay but shoveling snow was too difficult.

[11] In September 2018, she tried to return to work but her arm swelled and she had to stop after two weeks.

### **What the medical evidence says about the Claimant's limitations**

[12] The Claimant must provide objective medical evidence that shows her limitations affected her ability to work by February 1, 2021.<sup>6</sup> The medical evidence supports what the Claimant says.

[13] The evidence shows the Claimant's has limitations with weight, repetitive work and her need to support her left arm by February 1, 2021.

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<sup>4</sup> The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>6</sup> The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

[14] In October 2018, Jean Ann Ryan, Lymphedema Program Coordinator, wrote that the Claimant had been under the care of the cancer centre for treatment of breast cancer related lymphedema as her typically mild swelling had recently increased. The Claimant responded well to treatment; however, when she returned to work, she had exacerbation of symptoms after less than two weeks. The Claimant was therefore going to consider early retirement, extended sick leave or long-term disability.<sup>7</sup>

[15] In July 2019, Dr. Lake, Family Physician, wrote the Claimant was unable to return to her previous employment due to post breast cancer left arm lymphedema. The Claimant's condition was chronic. After taking time off, she returned to work but her symptoms recurred.<sup>8</sup> Her prognosis was guarded.<sup>9</sup>

[16] In October 2019, a Functional Assessment conducted by Jennifer Bouzane, Occupational Therapist, concluded the Claimant had consistent ability to sit in supportive seating for 60 minutes, stand for 45 minutes and walk long distances. She demonstrated light level tolerances. The Claimant needed to limit weighted demands and repetition of the affected arm.

[17] I now have to decide if the Claimant can regularly do other types of work. To be severe, the Claimant's limitations must prevent her from earning a living at any type of work, not just her usual job.<sup>10</sup>

### **The Claimant can work in the real world**

[18] When I am deciding if the Claimant can work, I must consider more than just her medical conditions and how they affect what she can do. I must also consider her age, level of education, language ability, and past work and life experience.<sup>11</sup> These factors help me decide if the Claimant has any ability to work in the real world.

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<sup>7</sup> GD2-83

<sup>8</sup> GD2-74

<sup>9</sup> GD2-97

<sup>10</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>11</sup> The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

[19] The Minister does not dispute that the medical evidence establishes that the Claimant is disabled from her previous occupation. But, the Minister's position is that the medical evidence shows she has work capacity for lighter, alternate work.

[20] The Claimant said that sitting at a computer all day would be too difficult for her. She might be able to do a job as a sales person for a laboratory if she did not have to travel around too much. The Claimant agreed with the conclusion of the assessment that she could do lighter work. She said she could function in her daily activities and had no cognitive limitations. She thought she could retrain for other work.

[21] I find that the Claimant can work in the real world. The Claimant was 55 years old with a 2-year college diploma and work experience providing guidance and oversight to the lab quality management system. While her age and limitations with sitting at a computer all day may affect her capacity to find alternate work, she is proficient in English with significant work experience and transferable skills for alternate work.

**The Claimant did not try to find and keep a suitable job**

[22] If the Claimant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts were not successful because of her medical condition.<sup>12</sup> Finding and keeping a job includes re-training or looking for a job that accommodates her limitations.<sup>13</sup>

[23] The Claimant did not make these efforts. She made the decision to retire since she was eligible for a pension. She did not look for work. While she is of course entitled to make this decision, she cannot show that she made work efforts that were unsuccessful because of her medical condition.

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<sup>12</sup> The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

<sup>13</sup> The Federal Court of Appeal said this in *Janzen v. Canada (Attorney General)*, 2008 FCA 150.

## **Conclusion**

[24] I find the Claimant is not eligible for a CPP disability pension because her disability is not severe under the CPP. Because I found the disability is not severe, I did not have to consider if it is prolonged.

[25] My decision relates only to the Claimant's eligibility for CPP disability by the date of the hearing (February 1, 2021). Her MQP ends on December 31, 2021. As her medical situation might change over time, she might choose to re-apply for the disability pension. If she decides to re-apply, she could provide updated medical and other information to establish that her disability became severe between February 2, 2021 and the end of her MQP on December 31, 2021.

[26] The appeal is dismissed.

*Kelly Temkin*  
Member, General Division - Income Security