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

Citation: *SS v Minister of Employment and Social Development*, 2021 SST 199

Tribunal File Number: GP-21-261

BETWEEN:

S. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: Angela Ryan Bourgeois

Claimant represented by: Frank Van Dyke

Videoconference hearing on: April 7, 2021

Date of decision: May 7, 2021

Canada

Decision

[1] The Claimant, S. S., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of December 2017. This decision explains why I am allowing the appeal.

Overview

[2] The Claimant is 59 years old. She is well educated with various university degrees. She speaks many languages. She has worked in a variety of positions, including professor, parole officer, clerk, and administrative assistant. She stopped working in February 2016. She has not returned to work. She says she cannot work because of symptoms and limitations from her elevated heart rate, calcified heart arteries, angina, asthma, posttraumatic stress disorder and depression.[1] These include inability to walk very far, shortness of breath, sweating, low mood, and poor coping abilities.

[3] The Claimant applied for a CPP disability pension in November 2018. The Minister of Employment and Social Development (Minister) refused her application because he said the medical evidence showed no significant cardiac abnormalities that would prevent the Claimant from working. The Minister said her sleep apnea, reflux and thyroid conditions do not prevent her from working because her sleep apnea is mild and her reflux and thyroid conditions are treated with medication.[2]

[4] The Claimant appealed that decision to the Social Security Tribunal's General Division. The General Division decided the Claimant was not disabled. The Claimant appealed that decision to the Social Security Tribunal's Appeal Division. The Appeal Division allowed the appeal, and returned the matter to another member of the General Division for reconsideration.[3] I am that member. I have to decide if the Claimant is disabled under the CPP.[4]

---

[1] I mention only the main ones from all the evidence. The Claimant mentions more conditions in her application for benefits (GD2-43).
[2] The Minister's reconsideration decision is on page GD2-6.
[3] Appeal Division Decision dated January 22, 2021.
[4] I have not considered evidence from the first hearing. I did not review the General Division decision dated October 5, 2020, and there was no recording of that hearing. As I told the parties at the hearing, I considered the documentary evidence in the appeal record coded GD1 to GD11 and IS01. Neither party objected to this approach.

What the Claimant must prove

[5] For the Claimant to succeed, she must prove it is more likely than not that she has a disability that was severe and prolonged by December 31, 2019. This date is based on her contributions to the CPP.[5]

Reasons for my decision

[6] I find the Claimant has a disability that was severe and prolonged by December 31, 2019. I reached this decision by considering the following issues.

The Claimant's disability is severe.

[7] The CPP says a disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.[6]

- **The Claimant's limitations affect her ability to work.**

[8] The Claimant has tachycardia (elevated heart rate), sleep apnea, hypothyroidism, calcification of arteries, liver bile reflux, hiatal hernia, asthma, and posttraumatic stress disorder with depression and anxiety. However, my focus is not on the Claimant's diagnoses, but on whether she has functional limitations that get in the way of her earning a living. [7] I have to look at all the Claimant's medical conditions (not just the main one) and think about how her conditions affect her ability to work.[8]

[9] I find the Claimant has functional limitations. I considered what the Claimant says about her limitations, and what the medical evidence shows.

- **This is what the Claimant says about her limitations.**

[10] The Claimant says limitations from her medical conditions affect her ability to work. She testified that she becomes short of breath with any activity. She gets winded walking from her

---

[5] 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 section 44(2) of the *Canada Pension Plan*. The Claimant's CPP contributions are on GD2-4 and her MQP date is December 31, 2019.
[6] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.
[7] *Ferreira v Canada (Attorney General)*, 2013 FCA 81; *Klabouch v Canada (Attorney General)*, 2008 FCA 33.
[8] The Federal Court of Appeal said this in *Bungay v Canada (Attorney General)*, 2011 FCA 47.

living room to her bathroom. In September 2018, she reported that she became short of breath from 20 minutes of walking.[9] She reported that she did no lifting or carrying because it was too hard.[10]

[11] The Claimant becomes drenched in sweat and fatigued with the least activity. Walking for ten minutes makes her clothes so wet she has to change them. She changes her clothes about four times a day.

[12] The Claimant does very little around the house. She does light cooking, some dishes and sorting the laundry. Her husband does most cooking, shops for groceries, cleans and does the rest of the laundry duties. In September 2018, the Claimant reported that the only household duty she did was cooking.[11]

[13] The Claimant has poor sleep. She used to have sleep apnea, but effectively treated it by raising the head of her bed and sleeping on her left side. However, she wakes several times a night with a racing heart. She never gets more than a few hours of sleep at once. This means she is tired during the day, a bit confused, irritable, and emotional. She says she is not nice to be around, and doesn't like to be around others. The Claimant has a low mood. She thinks about jumping out of her window about once a week. She has to force herself to shower and dress. She finds it difficult to manage stress now that she cannot exercise. She used to dance, swim, skate, run, do gymnastics, and go for long walks. She feels hopeless, as if she wasted her youth preparing for a future that she cannot realize because of her health condition.

[14] The Claimant's husband testified at the hearing. He said the Claimant doesn't sleep well. He has to take her to all her appointments because she can't walk very far. He said the Claimant has to change her clothes four or five times a day because of how much she sweats. He reported doing the cooking and cleaning. He said the Claimant can't work because she can't walk, has to sit all the time, and doesn't feel well.

---

[9] GD2-496.
[10] GD2-496.
[11] GD2-496.

- **This is what the medical evidence says about the Claimant's limitations.**

[15] The Claimant must provide objective medical evidence that shows her limitations affected her ability to work by December 31, 2019.[12] The medical evidence supports what the Claimant says.

[16] As the Claimant's family doctor at the time, Dr. O'Donnell completed the Claimant's CPP medical report in May 2019. Dr. O'Donnell supported the Claimant's disability application. He reported that the Claimant had been fully disabled from working since February 2016, even though he had only become the Claimant's doctor in October 2017, and had started to treat her main conditions in March 2018.[13] Of interest from Dr. O'Donnell's reports and notes:

a) In the CPP medical report, he noted the following conditions and symptoms:

   i) SVT arrhythmia, with symptoms of shortness of breath, labile (unpredictable) heart rhythm, fainting, exercise intolerance

   ii) Sleep apnea, causing poor sleep and fatigue that limited her ability to work and exercise.

b) In January 2019, he said that based on his medical exam and review of the specialty reports, the Claimant was currently incapable of functional employment. He said the Claimant had idiopathic unpredictable tachycardia and associated comorbidities that rendered her in a precarious state of health.

c) Clinic notes show that the Claimant saw Dr. O'Donnell regularly from December 2017 to January 2019 for shortness of breath, heart palpitations, fatigue, and chest pain.[14]

[17] Emergency room reports from January 2016, March 2018 and September 2018, show that the Claimant visited the emergency room for chest pain and heart palpitations.

---

[12] The Federal Court of Appeal said this in *Warren v Canada (Attorney General)*, 2008 FCA 377; the Federal Court repeated this in *Canada (Attorney General) v Dean*, 2020 FC 206.

[13] See first appointment notes from October 2017 at GD2-91 (GD9-4), and information about when treatment started at page GD2-81.

[14] Clinic notes start at page GD2-91.

[18] Cardiology reports from Dr. Marquis, Dr. Anand, Dr. Grewal, and Dr. Higginson, show no specific cardiac cause for the Claimant's symptoms. In March 2018, Dr. Higginson noted that a Holter monitor demonstrated that although the Claimant had an elevated heart rate, her heart beat was not irregular (sinus rhythm) and there was no cardiac explanation for the Claimant's exhaustion, fatigue, or shortness of breath.[15] In August 2018, Dr. Higginson noted that the Claimant had calcium in the arteries of her heart, but didn't feel a coronary angiography was appropriate unless the Claimant's symptoms and chest pain increased significantly.[16] The family doctor's clinic notes around that time show that the Claimant saw a brief improvement in her symptoms.[17] However, the improvement was short-lived. Her family doctor's clinic notes from October 2018 show that medication was not controlling her tachycardia, her heart rate was over 100 and she could do little exercise.[18]

[19] Reports from Dr. Dales, a respirologist, in December 2017, June 2018 and December 2018, show that the Claimant had moderate sleep apnea, that became mild sleep apnea. No follow-up was needed unless there was a change in her weight or she became sleepy while driving. Dr. Dales felt that anxiety and depression could have been contributing to the Claimant's fatigue, tachycardia and gastro reflux.

[20] The Claimant talked to her family doctors about her mental health. Dr. Ritsma's clinic notes from January to May 2016 show that the Claimant was anxious before going to work because of her supervisor's shouting and banging on his desk. Dr. Ritsma said the Claimant had anxiety, adjustment reaction. Dr. Ritsma thought the Claimant's tachycardia and palpitations were related to workplace stress. Her notes show that the Claimant felt panic attacks were not the reason she had to leave work by ambulance. Despite that, the Claimant agreed to try an antidepressant, which she found helped with her anxiety. However, the Claimant continued to have intermittent tachycardia as confirmed by a Holter monitor.[19] Dr. Ritsma left that medical

---

[15] Dr. Higginson's report is on page GD9-41. A sinus rhythm was also noted during her sleep study (GD9-12), by Dr. Grewal (GD2-36), and by Dr. Marquis (GD9-39).
[16] GD9-43.
[17] See notes from August 2018 and September 2018 on page GD2-96.
[18] GD2-97.
[19] GD9-57 to GD9-59.

clinic in May 2016. The Claimant continued at the same clinic, and started primarily to see Dr. Boisvenue.

[21] Dr. Boisvenue's clinic notes are in the file and cover the period from July 2016 to February 2017.[20] I find that these notes are from Dr. Boisvenue, not Dr. O'Donnell, as suggested by the Minister in his submissions.[21] This is because the notes have Dr. Boisvenue's initials, not Dr. O'Donnell's, on the right-hand side of the page, and the Claimant's first visit with Dr. O'Donnell was in October 2017, as evidenced by a "meet and greet" appointment.[22]

[22] Dr. Boisvenue's notes from July 2016 show that the Claimant walked about 2.5 blocks to her appointment. When she arrived, her heart rate was 133 beats per minute. Other clinic notes confirm that the Claimant's heart rate was frequently over 100 beats per minute.[23] I will discuss Dr. Boisvenue's clinic notes more when I address the Minister's submissions below.

[23] The Claimant has also seen two psychiatrists, Dr. Khan, in March 2017, and Dr. Vania, in November 2019. Dr. Khan diagnosed the Claimant with depressive reactive, and recommended psychotherapy. Dr. Vania diagnosed the Claimant with posttraumatic stress disorder with depression, anxiety and sleep disorder. She reported the Claimant was moderately depressed, avoided crowds, felt housebound, had poor sleep, experienced nightmares, and was fearful of sudden death. Dr. Vania noted physical symptoms of angina, tachycardia, hypothyroidism, high cholesterol, bile reflux and hiatal hernia. Dr. Vania said the Claimant was not well enough to work in any employment and that her emotional instability compounded her physical symptoms. According to the Claimant, she has since started regular counselling sessions. I have no reason to doubt this.

[24] The newest medical evidence is a letter from Dr. Kyrollos, who is an internal medicine specialist.[24] In June 2020, Dr. Kyrollos reported that the Claimant had tachycardia and calcification of the coronary arteries. He wrote that following a change in her medication, the

---

[20] The clinic notes are found in GD9 and have initials MB on the right-hand side of the page. See also GD9-28, question 1.
[21] GD10-3.
[22] GD9-4.
[23] GD9-60, GD9-62, GD9-63, GD9-67, GD9-2.
[24] GD7-2.

Claimant's tachycardia improved, but she still had a very high heart rate of over 100, which increased with mild exertion. He said the Claimant had a very low tolerance to exercise and stress because of her tachycardia. He reported that she cannot walk for more than five minutes, and cannot walk up hills or climb stairs without having to stop several times. Dr. Kyrollos reported that stress increases the Claimant's heart rate. Dr. Kyrollos noted that the Claimant had abdominal pain from hysterectomy adhesions, gastroesophageal reflux disease, lesions in her buccal mucosa, and asthma. Dr. Kyrollos reported that the Claimant couldn't work because she cannot tolerate the physical and emotional stress of work.

[25] In June 2014, Dr. Brar, a general surgeon, diagnosed the Claimant with epigastric pain.

[26] The Minister says the Claimant doesn't have a cardiac issue that prevents her from working. While the cause of the Claimant's tachycardia is not evident, the medical evidence shows that she has an elevated heart rate that increases with stress and mild exertion, and shortness of breath and fatigue.

[27] The Minister says that Dr. Boisvenue's clinic notes from October 2016 to November 2016 do not show a severe medical condition.[25] I have to consider all relevant medical evidence, not just one month of clinic notes. The Claimant saw Dr. Boisvenue for approximately six months, from July 2016 to February 2017. I find that Dr. Boisvenue's clinic notes show that the Claimant had limitations at that time. Reviewing the notes, Dr. Boisvenue believed the Claimant had anxiety that affected her heart rate and ability to work. The Claimant disagreed. The Claimant believed that, as a resilient person, her symptoms had a physical, not mental cause. She reported difficulties at work but did not believe them to be the cause of her increased heart rate.[26]

[28] The clinic notes from that time also show:

- A stress test indicated that the Claimant had below-average exercise capacity.

---

[25] GD10-3. The clinic notes in referred to start at page GD9-64. The Minister said these were Dr. O'Donnell's notes, but as explained above, I find that these are Dr. Boisvenue's notes.

[26] See also GD9-31. In January 2017, Dr. Boisvenue said anxiety was affecting the Claimant's work capacity, but the Claimant would not acknowledge it.

- The Claimant was unable to have the complete CT angiogram because her heart rate was too elevated.
- The Claimant reported being tired, sweating and having chest pain.
- The Claimant told the doctor that she just wanted to return to herself; she could not even bake a cake without her heart rate being over 100.
- The Claimant's husband was frustrated and concerned about the change in the Claimant's functioning since the summer before (2015).
- Dr. Boisvenue refused to write that the Claimant was *permanently* disabled based on a cardiac reason, and according to Dr. Boisvenue's notes, Dr. Ritsma agreed.
- Dr. Boisvenue and another doctor at the same clinic continued to write absentee notes for the Claimant until April 2017.[27]

[29] While there may not be a clear cardiac cause for her symptoms, my focus is on the Claimant's limitations, not her diagnoses. Neither Dr. Boisvenue nor Dr. Ritsma said they believed the Claimant was not having the symptoms she described.

[30] I find that the Claimant sweats an usual amount and with minimal activity. The Claimant and her husband both testified that she sweats profusely. While the medical evidence only mentions sweating in passing, I have no reason to doubt that this is one of the Claimant's symptoms. The Claimant thinks her medication may be causing some of her symptoms. Sweating is a reasonable response to a fast heart rate and to some medications.

[31] Considering the testimony and all relevant medical evidence, I find that the Claimant has an elevated heart rate, shortness of breath, fatigue, sweating, anxiety, and a low mood. These conditions affect what she can do. She has limitations with any activity, including walking and managing her home. She used to be very active, but has had to stop dancing, swimming, skating, gymnastics, and running because of her condition. Despite treatment, her limitations are

---

[27] GD9-2, GD9-27.

.

increasing. She can walk and do less activity now than she could in 2018. Her mental health conditions affect her ability to cope and interact with others appropriately.

- **The Claimant has followed medical advice.**

[32] To qualify for a disability pension, you have to follow medical advice.[28] When someone doesn't follow medical advice, I have to consider what effect, if any, that advice would have had on his or her disability.[29]

[33] I find that the Claimant has followed most medical advice and has actively tried to improve her condition. The Claimant has consulted family doctors, and has seen a variety of specialists. She has undergone various investigations and tried different medications. When she has not strictly followed advice, I find that the advice would not have had any effect on her disability.

[34] In July 2018, Dr. O'Donnell reported that the Claimant's condition was under optimal medical management, and that she had been fully compliant with treatment.[30]

[35] However, Dr. O'Donnell's last entry in January 2019 shows that the Claimant hadn't decreased her thyroid medication as he had asked, even though she continued to have tachycardia and high blood pressure.[31] I asked the Claimant about this at the hearing. She could not recall the incident. While the Claimant did not follow the initial request, I find she later decreased her thyroid medication as requested. This is because a few days after that January 2019 appointment, the Claimant's pharmacy sent Dr. O'Donnell a Prescription Authorization Request for, among other things, a new prescription of thyroid medication in a different dose. This shows that the Claimant was actively looking for the new dose of her thyroid medication. I find that the delay in making this dosage change would not have had any lasting effect on her condition.

---

[28] The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.
[29] The Federal Court of Appeal said this in *Lalonde v Canada (Minister of Human Resources Development*), 2002 FCA 211.
[30] GD2-146.
[31] GD9-11.

[36] Notes from Dr. Boisvenue from October 2016 to February 2017, suggest that the Claimant may not have been following medical advice. For example, Dr. Boisvenue indicated he had communication difficulties with the Claimant (e.g. she was not returning telephone calls), and the Claimant was not following treatment and recommendations (e.g. blood work and angiogram appointment).[32] I asked the Claimant about this. She testified that she had a conflict with Dr. Boisvenue and had filed a complaint with his governing body. I saw no compelling evidence that other doctors had trouble reaching the Claimant. No other doctor suggested that the Claimant's condition was adversely affected by her not adhering to medical advice. Given the conflict between the Claimant and Dr. Boisvenue, and Dr. O'Donnell's later note that the Claimant was compliant with medical treatment, I find it likely that any unfollowed advice from Dr. Boisvenue did not negatively affect the Claimant's condition.

[37] 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.[33]

- **The Claimant cannot work in the real world.**

[38] 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.[34] These factors help me decide if the Claimant has any ability to work in the real world.

[39] I find that the Claimant has no capacity to work in any occupation. She cannot work in the real world. The Claimant has no work capacity because the least amount of activity and stress increases her already high heart rate and causes shortness of breath. She cannot reasonably attend work when she is unable to walk around her apartment without becoming short of breath and cannot walk around her building without having to change her clothes from profuse sweating. While the Claimant's shortness of breath causes limitations enough to make her regularly

[32] This is on pages GD9-3 and GD9-63 to GD2-67.
[33] The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.
[34] The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

incapable of working at substantially gainful work, her work capacity is also impacted by her low mood and anxiety. She is afraid to talk to people.

[40] The Minister argues that the Claimant has work capacity. The Minister points to the psychiatry assessment completed by Dr. Vania, where Dr. Vania wrote: "When she is well enough to work, she needs to be allowed to work in a safe and warm environment without aggression or harassment."[35] This is not compelling evidence that the Claimant had work capacity then or now. It shows that Dr. Vania hoped the Claimant's mental health condition would improve, but even if it did, the Claimant would still require accommodations. Despite Dr. Vania's hope for improvement, the Claimant continues to struggle with a low mood and suicidal thoughts.

[41] The Minister says the Claimant could work in a modified position, and points out that the Claimant has significant real world transferable skills from her administrative work for the federal government, as federal parole officer and as a French professor. I agree with the Minister that the Claimant has many skills that would benefit her in many jobs. She has considerable post-secondary education and language skills, and has a variety of work experience. When the Claimant applied for benefits in 2018, she was 57 years old, but did not report any significant limitations with thinking or learning new things.[36]

[42] These positive factors do not negate the Claimant's functional limitations. No matter how many transferable skills she has, or how many languages she speaks, her limitations render her regularly incapable of doing any type of substantially gainful work, and have done so since she stopped working in February 2016.

[43] For all these reasons, I find that the Claimant's disability was severe by December 31, 2019.

---

[35] GD4-16.
[36] She applied in November 2018, but the relevant date for determining her disability (MQP date) is December 31, 2019.

The Claimant's disability is prolonged.

[44] A disability is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.[37]

[45] I find the Claimant's disability was prolonged by December 31, 2019. I find it has been long continued because it started in 2016, and has continued since then. Her disability is of indefinite duration because despite numerous investigations, she continues to have functionally limiting symptoms. There is no compelling evidence that her condition will improve in the foreseeable future.

[46] I recognize that the Claimant has only had five sessions of the recommended counselling for her mental health conditions. However, I find it unlikely that counselling will improve the Claimant's physical limitations enough that she will regain work capacity in the foreseeable future.

When payment begins

[47] The Claimant's disability became severe and prolonged in February 2016. This is when she had to stop working because of her symptoms, and when her family doctor recommended she stop working.

[48] However, the CPP says a person cannot be considered disabled more than 15 months before the Minister receives their disability application. After that, there is a four-month waiting period before payments start.[38]

[49] The Minister received the Claimant's application in November 2018. So although she stopped working in February 2016, under the CPP she is considered to have become disabled in August 2017. Pension payments start four months later, as of December 2017.

---

[37] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.
[38] Section 69 of the *Canada Pension Plan* sets out this rule.

Conclusion

[50] I find the Claimant is eligible for a CPP disability pension because her disability is severe and prolonged.

[51] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division - Income Security