



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *ID v Minister of Employment and Social Development*, 2020 SST 1232

Tribunal File Number: GP-20-371

BETWEEN:

**I. D.**

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: Virginia Saunders

Claimant represented by: Connie Oliverio

Teleconference hearing on: September 3, 2020

Date of decision: September 24, 2020

## **DECISION**

[1] I am dismissing the appeal. The Claimant, I. D., is not entitled to a *Canada Pension Plan* (CPP) disability pension. These are my reasons.

## **OVERVIEW**

[2] The Claimant is 56 years old. She is originally from Ukraine. She worked as a physician before immigrating to Canada in 1998 with her husband and her two daughters. She took English classes, and then went to university where she obtained a Bachelor of Science degree in 2005. She did office work until 2008. She has not worked much since then.

[3] The Claimant applied for a CPP disability pension in December 2018. She said she was disabled by Menière's disease, back pain, and chronic depression. The Menière's disease caused dizziness, hearing loss, and tinnitus. The back pain caused difficulty with sitting, standing, lifting, reaching, and bending. Because of dizziness and back pain, she could not walk for long. Chronic depression caused malaise, fatigue, and anxiety. She had trouble remembering, concentrating, and sleeping.<sup>1</sup>

[4] The Minister of Employment and Social Development (the Minister) denied the application. The Claimant appealed to the Social Security Tribunal.

## **WHAT I HAVE TO DECIDE**

[5] For the Claimant to succeed, she must prove that she has a disability that was severe and prolonged by December 31, 2012. This date is based on her contributions to the CPP.<sup>2</sup>

[6] 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.<sup>3</sup>

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<sup>1</sup> The Claimant's disability application and questionnaire are at pages GD2-43-47 and GD2-373-380.

<sup>2</sup> The *Canada Pension Plan* calls this date the "minimum qualifying period". See subsection 44(2). The Claimant's contributions are at GD4-9-10.

<sup>3</sup> The definition is found in paragraph 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.

## **THE REASONS FOR MY DECISION**

[7] I recognize the Claimant has medical issues. However, she did not prove that she had a severe and prolonged disability by December 31, 2012. I reached this decision by considering the following:

### **The Claimant's evidence of her condition**

[8] The Claimant told me she has been weak and unwell for most of her life. When she was a young girl she had ulcers and became intolerant of many medications. She had blood transfusions after an appendectomy at age 11. As a result, she may have contracted hepatitis C or another autoimmune disorder. Around 2002 she developed a goiter. A few years after that she started to have gynecological problems. She had ongoing stress because of the move to Canada. She pushed herself despite her physical and mental challenges, because she wanted to work and be successful.

[9] The Claimant told me her condition worsened considerably in January 2011 after she had gynecological surgery. She had a lot of bleeding. Doctors determined that the bleeding had nothing to do with the surgery. Her family doctor wanted her to see another specialist, but she was too depressed to follow through. She thought if she learned how to relax, she might get better.

[10] The Claimant's husband left her that June. She became more depressed and anxious, and she started to have panic attacks. She had a hard time going outside. She sent her younger daughter to live with her older one, because she could not look after her. Her family doctor prescribed medication to help her sleep, but did not refer her to a psychiatrist. The Claimant said her doctor thought he could cure her himself.

[11] The Claimant did not get better. She developed more problems and complications. She was in a motor vehicle accident in 2016. About a year ago, she moved in with her older daughter. She relies on her daughter for help with dressing, bathing, housework, and keeping track of her schedule. Her daughter takes her to all her medical appointments.

[12] The Claimant told me she cannot work because of the effects of depression, panic, back pain, Menière's disease, insomnia, and her autoimmune disease.

### **The medical evidence does not support the Claimant's argument**

[13] My decision about whether the Claimant's disability is severe is not based on her diagnosis.<sup>4</sup> It is based on whether she has functional limitations that prevent her from earning a living.<sup>5</sup> I have to look at her overall medical condition and think about how her health issues might affect her ability to work.<sup>6</sup>

[14] First, I have to focus on the Claimant's condition at December 31, 2012. She has to provide objective medical evidence of her disability at that time. If she does not prove that she suffered from a severe disability then, any medical evidence dated after is irrelevant.<sup>7</sup>

[15] The Claimant argues that she is disabled by a combination of conditions that worsened after her surgery in January 2011, and were severe by the end of 2012. That may be what she remembers. But the medical evidence does not support her. Medical records from 2011 and 2012 show that she had surgery in January 2011.<sup>8</sup> She was investigated for bleeding, thyroid lesions, renal stones, ovarian cysts, and abdominal pain.<sup>9</sup> She was diagnosed with mild to moderate anal fissuring, diverticulitis, endometriosis and GERD (gastroesophageal reflux disease).<sup>10</sup>

[16] But the results of the investigations, and the treatments suggested, do not show anything significant. In June 2011, the gynecologist said the Claimant was problem-free and did not need any more follow-up from her surgery.<sup>11</sup> In March and April 2012 the Claimant saw her family doctor, Dr. Tchernov, for immunization and a regular physical exam. He noted her intermittent gastrointestinal distress and her history of pelvic surgery. Other than needing immunization, she was stable. Her examination was normal. She had full range of motion in all joints, balance and

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<sup>4</sup> *Ferreira v. Canada (Attorney General)*, 2013 FCA 81

<sup>5</sup> *Klabouch v. Canada (Attorney General)*, 2008 FCA 33

<sup>6</sup> *Bungay v. Canada (Attorney General)*, 2011 FCA 47

<sup>7</sup> *Canada (Attorney General) v. Dean*, 2020 FC 206, citing *Warren v. Canada (Attorney General)*, 2008 FCA 377 and *Canada Pension Plan Regulations*

<sup>8</sup> GD6-5-10

<sup>9</sup> GD2-119-121, 127-128; GD6-11-14, 20, 22, 24-25, 28

<sup>10</sup> GD2-123, 125-126

<sup>11</sup> GD6-14, 15

coordination were normal, and she had no psychiatric issues.<sup>12</sup> In May 2012 she was seen for overactive bladder symptoms and kidney stones. The doctor noted that most of the time the Claimant's bladder symptoms did not bother her enough for her to take medication. She had tiny kidney stones and had never had renal colic. The doctor noted that her general health was good.<sup>13</sup>

[17] Dr. Tchernov has been the Claimant's family doctor for many years. When he wrote the medical report for the Claimant's disability application in 2018, he said her main medical conditions were Menière's disease, mechanical back pain, and chronic depression. He said he had been treating her for these conditions since May 2015.<sup>14</sup> This is consistent with his office notes, which do not show any significant, lasting, concerns by or about the Claimant until well after December 2012.<sup>15</sup>

[18] I considered the Claimant's evidence that she was too depressed to seek medical treatment, and that Dr. Tchernov thought he could cure her himself. I also considered the possibility that her concerns were not taken seriously. These could explain why there is no medical evidence of a severe condition in 2012 and earlier. However, those scenarios are not plausible to me. The Claimant's medical file shows that she went to doctors regularly for multiple reasons. The symptoms she complained about were investigated. She was treated or referred elsewhere. Therefore, the more likely explanation for the lack of medical evidence is that the Claimant's condition simply was not as serious then as she now recalls.

### **The Claimant had work capacity at December 31, 2012**

[19] Sometimes, an assessment of whether a person's disability is severe has to include consideration of things like age, level of education, language proficiency, and past work and life experience. That is so there can be a realistic of their work capacity.<sup>16</sup> I did not do that assessment here, because medical evidence is still needed to support a finding of disability.<sup>17</sup>

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<sup>12</sup> GD2-105, 117

<sup>13</sup> GD2-125

<sup>14</sup> GD2-318

<sup>15</sup> Dr. Tchernov summarized these in a letter of October 4, 2019 (GD2-95-

<sup>16</sup> The Federal Court of Appeal said the severe part of the test for disability must be assessed in the real world context (*Villani v. Canada (Attorney General)*, 2001 FCA 248).

<sup>17</sup> *Villani, supra, paragraph 50; Giannaros v. Minister of Social Development*, 2005 FCA 187

[20] The Claimant may not be able to work now. But the medical evidence does not show that her conditions – either alone or in combination – had any effect on her capacity to pursue substantially gainful employment at December 31, 2012. She did not prove she had a severe disability at that time.

[21] In reaching this decision, I did not place any weight on the Claimant's work activity in 2014 and later. For a few months in 2014 she was a public health inspector. She said in her disability application that she had worked as a supply teacher in 2016, but she told me she didn't actually work. Her name was on a call list, but she was not qualified to teach and she was not called. In 2018 she worked from home doing research and data entry for an educational company. The Claimant said that she had a great deal of difficulty in these jobs and would not have been able to continue. I note that she only worked for a few months in each job. Whether or not these can be viewed as successful or failed attempts to return to work, they don't tell me anything about the Claimant's condition at December 31, 2012. As discussed above, the medical evidence does not show the Claimant had a severe disability at that time.

## **CONCLUSION**

[22] Because I decided the Claimant's condition was not severe at December 31, 2012, I did not consider whether it was prolonged.

[23] The appeal is dismissed.

Virginia Saunders  
Member, General Division - Income Security