



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MM v Minister of Employment and Social Development*, 2020 SST 1242

Tribunal File Number: GP-19-462

BETWEEN:

**M. M.**

Appellant

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: Antoinette Cardillo

Teleconference hearing on: August 5, 2020

Date of decision: August 21, 2020

## **DECISION**

The Appellant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of December 2016.

## **OVERVIEW**

[1] The Appellant is 44 years of age. She bases her disability claim on stress and anxiety. She completed grade 12 and has post-secondary education in General Business (2 years) and Business Administration Specialization/Management (3 years). She was last employed as a receptionist from April 2008 until October 2008 when she stopped due to an end of contract. The Minister received the Appellant's application for the disability pension on November 22, 2017<sup>1</sup>. The Minister denied the application initially and on reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

[2] To qualify for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant 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 Appellant's contributions to the CPP. I find the Appellant's MQP to be December 31, 2009.

## **PRELIMINARY MATTERS**

[3] The parties were advised on June 25, 2020 that a hearing was scheduled on August 5, 2020 at 10h. A previous hearing was scheduled for May 28, 2020 but the Appellant asked for an adjournment because she was waiting for new documents to submit.

[4] On August 3, 2020, the Appellant filed submissions, which she referred to as a comprehensive report. She resubmitted the report on August 4, 2020 asking to disregard the previous version submitted on August 3, 2020. The reports were over 60 pages each. Both reports were shared with the Minister.

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<sup>1</sup> GD2-22

[5] On August 4, 2020, in reviewing the report, I realized that the Appellant made reference to the *Canadian Charter of Rights and Freedoms* and made claims that her rights had been violated.

[6] Given that the hearing was scheduled for the next day (August 5, 2020), I asked the Registry Officer assigned to the appeal to contact the Appellant to inform her of the following:

1) if she wanted to raise a Charter claim, the hearing scheduled for the next day would be adjourned and she would be sent the appropriate documents to pursue a Charter claim; or

2) the hearing scheduled for the next day would proceed in two parts: in the first part, I would discuss with the Appellant the process to pursue a Charter claim and if she wanted to go ahead with the claim, then the hearing would be adjourned and she would have to follow the process for a Charter claim; if after the explanation/discussion, she did not want to pursue with the Charter claim, then I would proceed with the second part of the hearing, meaning the hearing would proceed on her eligibility to the disability pension (on the merits).

[7] On August 5, 2020, at the beginning of the hearing, I began by disclosing the fact that the Appellant's family name appeared to be similar to some of my relatives, I wanted to ensure there was no family connection. My research before the hearing confirmed that there was none and the Appellant confirmed as well, there was no family ties or connection.

[8] I then proceeded to explain in detail the requirements to proceed with a Charter claim and asked if the Appellant wanted to pursue it. The Appellant was informed that if she decided not to pursue the Charter claim, she would be precluded from making any Charter arguments in connection with her appeal. The Appellant was categorical in her response that she did not wish to continue with the Charter claim and that the appeal and hearing could continue on the merits. I therefore proceeded to conduct the hearing as scheduled.

## ISSUES

[9] Did the Appellant's conditions result in the Appellant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2009?

[10] If so, was the Appellant's disability also long continued and of indefinite duration by December 31, 2009?

## ANALYSIS

[11] Disability is defined as a physical or mental disability that is severe and prolonged<sup>2</sup>. 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 Appellant meets only one part, the Appellant does not qualify for disability benefits.

### **Severe disability**

[12] I must assess the severe part of the test in a real-world context<sup>3</sup>. 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, past work and life experience.

[13] 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 is 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 work<sup>4</sup>.

### *i. Medical Reports and Testimony*

[14] In her Questionnaire for disability benefits<sup>5</sup> date stamped on November 22, 2017, the Appellant indicated that she worked as a receptionist and described her main disabling

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<sup>2</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>3</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>4</sup> *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>5</sup> GD2-79

conditions as anxiety and stress. She indicated she had both physical and cognitive limitations with respect to prolonged sitting, standing, walking, lifting/carrying, bending, and household chores as well as issues with memory, concentration and sleeping but was able to drive for 30 minutes.

[15] The Appellant testified that she was assessed by a psychologist in 2008. She did not have any other psychotherapy treatment or sessions until 2017 because of financial limitations. She also stated that she did take medication for her depression for a period of time but after trying a few different types, she did not feel any better. She has not been on medication for depression since, except for over-the-counter pain medication.

[16] A psychological examination dated July 5, 2008<sup>6</sup> from Dr. Harris, clinical psychologist, indicated that the Appellant underwent a series of testing. The results showed that she was affected by symptoms of trauma and depression, a consequence of her chronic pain. The symptoms appeared to be related to a motor vehicle accident in March 2007. The assessment showed that her depression, poor energy and pain affected her activities of everyday life and household chores. The trauma resulted in an inability to carry on a normal life. The Appellant's Beck anxiety score was 30, and her depression score was also 30, which was considered at the severe level. The multidimensional pain inventory testing categorized her as a dysfunctional patient. Dr. Harris suggested 16 counselling sessions and medication (an antidepressant instead of an anxiolytic).

[17] In a medical report date stamped November 23, 2017, Dr. Pizzuto, family physician,<sup>7</sup> indicated he had been the Appellant's physician since 2010. He diagnosed her with cognitive mental delay and anxiety. He stated that she was assessed by a psychologist in 2017 and the testing revealed her IQ was 66-74 (extremely low). He added that the Appellant is mentally immature, dependent on parents, unable to work as she struggles with problem solving, reality testing and overall learning. The testing revealed that despite best efforts, she was unable to perform most tasks in a work environment. He further indicated that she was treated with anxiolytics and antidepressants but due to cognitive mental delay, they had not been helpful to her.

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<sup>6</sup> GD2-69

<sup>7</sup> GD2-53

[18] A 2017 psychological assessment from Dr. Cimbura<sup>8</sup>, psychologist, dated March 5, 2017 indicated that the Appellant was unable to work. The specific reason for the assessment was to determine the Appellant's ability to benefit from participation in upgrading and/or retraining with respect to employability and/or be able to succeed in the employment market. The Appellant's overall cognitive ability was determined to be in the extremely low range. On the verbal scale, her score was in the borderline range; her performance score was in the extremely low range; on the verbal comprehension index, she was in the borderline range; on the perceptual organization index, she was in the borderline range; on the working memory index, she was in the low average range; and the processing speed index was within the extremely low range.

[19] Dr. Cimbura noted that there were a number of concerns. First, there was the indication of a significant cognitive disability. The Appellant's full-scale IQ only fell around the 2<sup>nd</sup> percentile. Her actual IQ fell somewhere between 66 and 74, placing her functioning within the extremely low range. There were corresponding deficits in both the working memory and processing speed indexes, she would struggle to keep up with her peers across a wide range of situations and tasks. She would struggle with more complex or abstract skills or concepts. She would need extra time to both learn and perform tasks. She would also struggle with serial tasks or with tasks that involved multiple steps. In Dr. Cimbura's opinion, the current results were not suggestive of a decline in cognitive abilities over time but were instead likely a reflection of her baseline abilities.

[20] Second, Dr. Cimbura stated that there were concerns with overall comprehension. Although the Appellant could read sentences and pronounce words, she struggled to understand the content of what she was reading. The overall reading composite score fell in the below-average range. Dr. Cimbura stated that the Appellant's difficulties with comprehension might make it difficult for her to understand workplace training manuals or safety sheets. This could place her or her coworkers at risk on a job site.

[21] Third, there were moderate problems with mathematical competency. The Appellant's

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<sup>8</sup> GD2-57

Math score only fell around the early grade 4 level or in the low range. Dr. Cimbura stated that sound math skills were a requirement for many entry-level positions including food counter help, retail, factory work or construction (measuring, estimating).

[22] Lastly, there were concerns regarding the Appellant's overall presentation. Specifically, there were indication of immaturity, perseveration of thought and idea, over-inclusivity of speech, and poor problem solving.

[23] Dr. Cimbura concluded that based on the significant cognitive disability, the moderate literacy and math concerns and the noted concerns regarding perseveration, immaturity, poor problem solving and over-inclusivity, the Appellant's ability to find and/or maintain a job was strained. She remained fixated on the loss of her position with the City of X and despite the passage of time and significant efforts on her part to remedy the situation, she had been unable to move forward. She was struggling with problem solving, reality-testing and overall learning and these factors would likely continue to impact her ability to either find or maintain a job. The Appellant did not present as being able to re-enter the workforce. She was struggling with problem solving and reality-testing and overall learning and these factors would likely continue to impact on her ability to either find or maintain a job.

[24] In addition to her cognitive limitations or condition, the evidence on file showed that the Appellant was in a motor vehicle accident (MVA) and she was hit on the driver's side in 2007. The window broke, she hit her arm against the door and she went back and forth<sup>9</sup>. She was given muscle relaxants, painkillers and was referred to physiotherapy. She then had two more accidents in 2007. According to the evidence, she was in good health prior to the accidents and no psychological history.

[25] The Appellant testified that she became disabled in March 2007 after the first MVA but despite her physical pain, she was able to return to work in 2008. Based on the evidence on file, in 2008, she still reported excruciating pain, feelings of anxiety and her body shaking when driving.

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<sup>9</sup> GD2-37

[26] The Appellant's testimony corroborated the evidence on file regarding her employment history and her academic accomplishments prior to graduation in 1999. She worked for the City of X on contracts for two (2) years then went to IBM. She then went to work in 2008 for a Member of Parliament as a clerk for a six (6) month contract.

[27] The Appellant explained that she sees her family physician regularly and he deals with her struggles with depression. She takes over-the-counter medication for physical pain caused by the car accidents. She has not had any therapies or physiotherapy since the accidents because of monetary restrictions. During the day, she does not do much, on occasion she does a load of laundry. She feels very weak and has no energy. She stated that her last contract in 2008 was not renewed, that was her dream job. She tried to find work at grocery and pharmacy stores but was never hired.

*ii. Residual capacity to work*

[28] The Minister submitted that the Appellant's care was provided by her family physician and a psychologist with no hospitalizations, medications, active treatments, participation in a rehab program or the use of any assistive devices. The evidence on file many years after the MQP ended clearly established a lack of treatment despite specific recommendations from both a physical and psychological point of view. The numerous recommended treatments which were made in contemplation of symptom improvement do not appear to have been pursued. As such, it cannot be said maximum medical recovery has been attained. Regardless, severe and prolonged has not been demonstrated as of December 2009 and on a continuously severe basis since, there was therefore no eligibility for disability benefits under the CPP.

[29] I disagree with the Minister's submission and find that the Appellant does suffer from a severe disability as of October 2008, when she stopped working.

[30] I base my findings on the psychological assessment of July 2008, the psychological assessment of March 2017 and the Appellant's testimony.

[31] The psychological assessment in 2008, before the Appellant's MQP, is very clear and indicated that the Appellant's test results showed that she was affected by symptoms of trauma and depression, a consequence of her chronic pain. Her depression, poor energy and pain



affected her activities of everyday life and household chores and that the trauma resulted in an inability to carry on a normal life. The Appellant's Beck anxiety score was 30, and her depression score was also 30, which was considered at the severe level. The multidimensional pain inventory testing categorized her as a dysfunctional patient.

[32] Dr. Harris conclusions and assessment in 2008 of the Appellant's inability to carry on a normal life were apparent at the hearing. During her testimony, the Appellant was not able to focus and answer the questions but rather she went on and recounted historical events at great length that were not pertinent to her disability. Her main focus was on how she was treated or mistreated by different individuals, she did not want to be interrupted and kept saying that she would let me speak once she was done. Although I can understand that someone's treatment by others could have a negative psychological impact, the Appellant had already submitted lengthy written submissions prior to the hearing (including the day before the hearing) on how she had been treated by individuals but insisted in repeating and recounting the events, stating that those events were the cause of her disability. She stated that she was not being rude but bold and believed she was answering the questions despite being advised otherwise. It is clear that the Appellant has difficulty focusing, listening to questions and little capacity to understand what is being asked of her.

[33] Regarding the Minister's submission that there was a lack of treatment and hence it could not be said that maximum medical recovery had been attained, based on the evidence from Dr. Pizzuto and the Appellant's testimony, she did try anxiolytics and antidepressants but due to cognitive mental delay, they had not been helpful to her. Her family physicians helped her with her depression. She also attended physiotherapy sessions after her MVA in 2007.

[34] The psychological results remain the same in 2017, nine (9) years after her initial psychological assessment by Dr. Harris in 2008. Dr. Cimbura stated clearly that there were a number of concerns and an indication of a significant cognitive disability. In Dr. Cimbura's opinion, the current results were not suggestive of a decline in cognitive abilities over time but were instead likely a reflection of her baseline abilities. The Appellant did not present as being able to re-enter the workforce. She was struggling with problem solving and reality-testing and overall learning and these factors would likely continue to impact on her ability to either find or

maintain a job. The psychological assessment in 2008, shortly before her last employment, demonstrates that the Appellant was not able to carry on a normal life, she had symptoms of trauma and depression, a consequence of her chronic pain. Her anxiety and depression were considered already at the severe level and she was categorized as been dysfunctional.

[35] Given the medical reports and the Appellant's behaviour and testimony at the hearing, I am satisfied that the Appellant has a severe disability and she is not able to function in any capacity in a vocational setting. Although the Appellant is only 44 years of age, she does not have the mental capacity to re-enter the workforce and has not had that capacity since 2008. It is also evident based on the psychological results of 2008 and most recently of 2017, that she cannot be retrained.

### **Prolonged disability**

[36] I find that the Appellant has proven on a balance of probabilities that she has a prolonged disability that is long continued and of indefinite duration.

[37] Based on the Appellant's testimony and the medical reports from 2008, it is evident that her condition has not improved. In 2008, the Appellant's Beck anxiety score was 30, and her depression score was also 30, which was considered at the severe level. The multidimensional pain inventory testing categorized her as a dysfunctional patient. In 2017, the psychological assessment revealed there was a significant cognitive disability and the results were not suggestive of a decline in cognitive abilities over time but were instead likely a reflection of her baseline abilities.

### **CONCLUSION**

[38] The Appellant had a severe and prolonged disability in October 2008, when she stopped working. 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 pension<sup>10</sup>.

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<sup>10</sup> Paragraph 42(2)(b) *Canada Pension Plan*

The application was received in November 2017 so the deemed date of disability is August 2016. Payments start four months after the deemed date of disability, as of December 2016<sup>11</sup>.

[39] The appeal is allowed.

Antoinette Cardillo  
Member, General Division - Income Security

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<sup>11</sup> Section 69 *Canada Pension Plan*