



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CR v Minister of Employment and Social Development*, 2020 SST 1243

Tribunal File Number: GP-20-1180

BETWEEN:

**C. R.**

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: Jackie Laidlaw

Videoconference hearing on: December 10, 2020

Date of decision: December 21, 2020

## **DECISION**

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension.

## **OVERVIEW**

[2] The Claimant is a 52-year woman who has worked as a tax accountant. She stopped working in May 2019 due a shortage of work. She did not return to any type of work because of fibromyalgic pain and limitations. The Minister received the Claimant's application for the disability pension on August 2, 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, 2020. As the MQP is in the future, the Claimant must be found disabled as of the date of the hearing.

## **ISSUE(S)**

[4] Did the Claimant's symptoms of fibromyalgia result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by the date of the hearing?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by the date of the hearing?

## **ANALYSIS**

[6] Disability is defined as a physical or mental disability that is severe and prolonged<sup>1</sup>. A person is considered to have a severe disability if incapable regularly of pursuing any

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<sup>1</sup> Paragraph 42(2)(a) *Canada Pension Plan*

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**

#### **The Claimant has fibromyalgia**

[7] I accept the Claimant has fibromyalgia and related symptoms. Her family physician, Dr. Ibrahim, outlined the symptoms she has had since 2019 including severe widespread muscle and joint pain and tenderness, fatigue, non-restorative sleep, low mood and some cognitive dysfunction of memory and verbal fluency.<sup>2</sup> Dr. Ibrahim also noted that the disease is non-progressive but affects her function. In her notes, Dr. Ibrahim recommended a healthy lifestyle with exercise.<sup>3</sup>

[8] Dr. Nancy Collington was the Claimant's family physician for 20 years before Dr. Ibrahim. She thought the Claimant had arthritis and suggested exercise. The Claimant stated she walked seven kilometers a day until 2016. Dr. Michael Tarek then treated her from 2016 to 2017 and sent her for blood work and X-rays. In 2017, Dr. Ibrahim became her family physician and diagnosed fibromyalgia in 2018. Dr. Ibrahim made a point to noting this was a clinical diagnosis<sup>4</sup>: meaning it was based on history and examination and not on any studies. I accept the clinical diagnosis of Dr. Ibrahim, as there is evidence the Claimant has had widespread pain for many years that was not identified in any laboratory tests.

[9] Dr. Ibrahim started her on amitriptyline in September 2018.<sup>5</sup> The Claimant stated that the drug put weight on her and made her feel foggy. She did say that she went on initially for a short period then went off for six or seven months. She testified that Dr. Ibrahim would not do anything for her unless she took the amitriptyline. When another doctor told her amitriptyline was the best medication for fibromyalgia, she went back on the drug. In August 2019, she was

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<sup>2</sup> GD 2 61 December 23, 2019

<sup>3</sup> GD 2 63 clinical note of July 2019

<sup>4</sup> GD 2 84 medical report of August 6, 2019

<sup>5</sup> GD 1 25 script of September 20, 2018

taking 50 mg of amitriptyline, which was reduced to 25 mg by December 2019. The decreased dosage provided some relief.<sup>6</sup> A few months ago, in September 2020, Lyrica was added. She is also taking CBD oil and marijuana. She states she still tries to do exercises but cannot walk like before. She cannot focus, or sleep well, and feels depressed. The pain has slowly been getting worse over the years. Dr. Ibrahim told her that these are all symptoms of fibromyalgia. I accept that these are commonly accepted symptoms of fibromyalgia. She is being treated with the usual medications for fibromyalgia, and the most common treatment is to remain active, as recommended by Dr. Ibrahim.

**The evidence does not indicate an inability to work at anything**

[10] The Claimant has worked preparing taxes since 1999 with a few breaks to have children. Over the years, she has worked for H&R Block at a few locations in X and X. Every year she had had to take upgrading courses in tax. She worked from January to April, full time, as it was tax season and very stressful. The workday would be eight to 12 hours. After tax season, most people were laid-off. Usually she would go to two days a week and get Employment Insurance (EI) from May to December. Between September and December, she would take mandatory tax courses.

[11] The last year she worked, 2019, she was laid-off in May due to a shortage of work. She went on regular EI benefits. When those benefits ended, Dr. Ibrahim wrote Service Canada that she was no longer working as of July 22, 2019 due to medical reasons in order to receive EI sick benefits.<sup>7</sup> The Claimant then had a further 16 weeks of EI sick benefits.

[12] I do not accept that Dr. Ibrahim's note indicates she could no longer work at anything. In the medical report of August 2019, after the letter to Service Canada, Dr. Ibrahim notes that she did not recommend the Claimant stop working.<sup>8</sup> If Dr. Ibrahim felt the Claimant could not continue working, she would have noted it on the medical report for the CPP disability application, as it is a direct question to the physician. The doctor reported the opposite, that she did not recommend the Claimant stop working.

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<sup>6</sup> GD 2 61 according to Dr. Ibrahim December 23, 2019

<sup>7</sup> GD 1 22 Dr. Ibrahim July 23, 2019

<sup>8</sup> GD 2 84 medical report of August 6, 2019

[13] The Claimant stated she decided to stop working on her own as she felt she could no longer do her job. I accept that tax time would be stressful, and an overwhelming time. And, it is reasonable that after working at that pace from January to May, the Claimant would not wish to return in part due to her pain and lack of concentration. She stated she has not looked for other work because she was not dependable. There is no evidence that she was not dependable during the busy tax season, or that she was fired due to her performance. She was let go due to a lack of work, which happened every year at that time.

[14] I also accept that the Claimant loved her job, as she testified. However, the test is not to return to her usual job. It is to show she is incapable of working at any suitable, substantially gainful occupation. She has not shown she was incapable of working.

[15] I must assess the severe part of the test in a real world context<sup>9</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, and past work and life experience.

[16] She still has 10 years remaining before retirement age and has shown that she is capable of taking very intense courses, and therefore capable of retraining. The Claimant completed two years of a three-year college degree in accounting. She did not complete the third year as she decided to have a child. She is very well experienced in tax preparation, as well as office duties. She has taken numerous courses annually to keep up with the tax changes and different types of tax areas such as rentals, investments and RRSP's. Her knowledge would be an asset to a number of occupations. The Claimant would not be prevented from working by any "real world" reason such as her age, level of education, language skills or past work and life experiences.

[17] The Claimant does have fibromyalgia. She is being treated conservatively with the proper medication, and recommendations of a healthy lifestyle and exercise. Her doctor has not told her to stop working. While she may feel she is not dependable to work anywhere, there is no medical evidence, or evidence from her previous employer to suggest this to be the case.

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<sup>9</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

[18] I find the Claimant has not shown she has a disability that renders her incapable regularly of pursuing any substantially gainful occupation.

### **CONCLUSION**

[19] The appeal is dismissed

Jackie Laidlaw  
Member, General Division - Income Security