



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SP v Minister of Employment and Social Development*, 2021 SST 238

Tribunal File Number: GP-19-1956

BETWEEN:

S. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Claimant represented by: Sarj Gosal

Videoconference hearing on: March 24, 2021

Date of decision: April 16, 2021

DECISION

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

OVERVIEW

[2] The Claimant used to work as a medical laboratory assistant. She stopped in July 2011, when she was in a car accident. She applied for a CPP disability pension in May 2018. The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed to the Social Security Tribunal's General Division.

[3] The Claimant says she has not been able to work since July 2011 because of post-traumatic stress disorder (PTSD), anxiety and depression, headaches, soft tissue injuries, and blurry vision. She says these limit her physical abilities, her emotions, and her cognitive function.

[4] The Minister says the Claimant's physical condition is not severe, because it will improve if the Claimant continues an independent, active rehabilitation program. The Minister also says the Claimant's mental health condition has not been ongoing or severe. The Minister argues that the Claimant has responded to treatment and should be able to do some type of work.

WHAT THE CLAIMANT MUST PROVE

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

[6] The CPP defines "severe" and "prolonged." A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.² It is prolonged if it is likely to be long continued and of indefinite duration.³

¹ 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 page GD3-14. In this case, the Claimant's coverage period ends after the hearing date, so I have to decide if she was disabled by the hearing date.

[7] To be severe, the disability has to regularly stop the Claimant from doing suitable work that pays the same as or more than what she would receive from a CPP disability pension.⁴ Besides the Claimant's medical condition, other things may be relevant in showing her disability is severe. These include:

- The Claimant's background and work history.
- What medical advice she received, and if she followed it.
- Whether she tried to return to work or find other work.

[8] To be prolonged, the disability cannot have an expected recovery date. The disability does not have to be permanent, but it must be expected to keep the Claimant out of the workforce for a long time.

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

REASONS FOR MY DECISION

[10] I find the Claimant has a disability that was severe and prolonged by the hearing date. Here are my reasons.

The Claimant's disability is severe

- The Claimant's limitations affect her ability to work

[11] I do not focus on the Claimant's diagnosis.⁵ I must focus on whether she has functional limitations that get in the way of her earning a living.⁶ When I do this, I have to look at all the Claimant's medical conditions (not just the main one) and think about how they affect her ability to work.⁷

[12] I find the Claimant has functional limitations. Here is what I considered.

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

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

⁴ Section 68.1 of the *Canada Pension Plan Regulations* explains what it means for a job to be "substantially gainful."

⁵ The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

⁶ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

⁷ The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

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

[13] The Claimant says her symptoms affect her daily and cause these limitations:

- She has panic attacks two or three times a day. They are triggered by loud noises and her family members being around her. She has to go somewhere quiet to recover. Up to four times a month, she will get a bigger panic attack. It takes up to a day to recover from these.
- She barely drives because she gets anxious and dizzy. She makes mistakes like turning left against a light, or forgetting where she is going. When she does drive, her father or her brother goes with her.
- She has a hard time focussing and remembering what she has just read or what people have just said to her. She mixes up words. She forgets what she is doing and where she is going. For example, she makes mistakes when she is helping her eight-year-old son with his reading. She keeps her medication in a container for each day, but needs her mother to help her find it and make sure she takes it on schedule.
- She needs help and monitoring to do household chores. She does things like leave the stove on, or drain pots onto the stove instead of into the sink. She is mentally and physically exhausted while trying to do chores. She takes breaks and will often walk away from tasks she cannot complete. She often loses her balance and trips.
- Her judgment is “off.” She does not trust herself.
- She can’t deal with her emotions. She cries frequently and feels she is walking on eggshells. She has a hard time maintaining relationships.
- She does not sleep well because she is restless, and she wakes up often with night terrors. She has difficulty getting out of bed in the morning. It takes about an hour for her to get up. Sometimes she will stay in bed until noon. About once every two weeks, she will stay in bed all day.

- She has pain in her neck, shoulder, back and hips. Because of her pain, she cannot sit or stand in one position for long. She has to shift her position and take breaks. She cannot lift or carry anything heavy. She has pain when bending down. Her neck pain causes daily headaches.

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

[14] The Claimant must provide objective medical evidence that shows her limitations affected her ability to work by the hearing date.⁸ The objective medical evidence mainly supports what the Claimant says about her limitations.

[15] The Claimant's psychiatrist is Dr. Sandhu. He first saw the Claimant in November 2011. The Claimant has seen Dr. Sandhu regularly since then. Because of this, I find Dr. Sandhu's reports are reliable evidence of how the Claimant's condition developed over time. I did not give much weight to the notes from the Claimant's family doctor, Dr. Mann, because the Claimant was seeing Dr. Sandhu, not Dr. Mann, for her main condition. So, the fact that the Claimant did not report issues to Dr. Mann or did not see Dr. Mann, is not particularly significant.

[16] Dr. Sandhu's reports show the Claimant had long periods of improvement until May 2017. Since then, she has had significant limitations.

- In February 2013, Dr. Sandhu said the Claimant was calm and healthy looking. She was cognitively intact.⁹
- In March 2014, he said the Claimant was gradually improving. She slept well and her nightmares had stopped. Her panic attacks had resolved. She was able to look after her children and no longer insisted that her parents stay with her. She was coping with her headaches and neck pain.¹⁰
- In November 2015, he noted a partial improvement in the Claimant's condition. She had not had any panic attacks in the last three months, and was able to drive with

⁸ 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.

⁹ GD2-86

¹⁰ GD2-82

comfort. He said, “if her stress tolerance and cognition improves, then she will be encouraged to try being productive.”¹¹

[17] There is very little medical evidence from November 2015 to May 2017. The Claimant had x-rays of her lumbar spine, sinuses, and facial bones in 2016.¹² There are no other records for that year. She saw her family doctor, Dr. Mann, in the first half of 2017. She complained of pain and continued depression. But Dr. Mann also noted the Claimant appeared well, and was sleeping well. She was doing active rehabilitation.¹³ The absence of any other medical evidence means I cannot find the Claimant had significant limitations during this period.

[18] In May 2017, Dr. Sandhu said the Claimant was disabled from her job as a laboratory assistant, because of anxiety, low stress tolerance, impaired attention, impaired cognition, low self-confidence, vulnerability to panic attacks with minor stress, and loss of job skills. He said that with these symptoms she should not be working with patients.¹⁴

[19] Dr. Sandhu’s reports in September 2018 and February 2019 do not show any improvement.¹⁵ In February 2021, Dr. Sandhu wrote a report that is very similar to the one he wrote in May 2017. He said this about the Claimant:

- Because of chronic PTSD, she has a significant degree of cognitive dysfunction. She has impaired attention, difficulty registering new information, difficulty with short-term memory, “foggy head,” and decreased processing of her brain.
- Because of Generalized Anxiety Disorder, she has heightened anxiety most of the time. It disrupts her daily life, makes her dependent on others and lowers her self-confidence. Her parents look after her children and her household chores. Her husband does the grocery shopping. She is afraid to leave the house on her own.
- Because of a Panic Disorder, she has panic attacks accompanied by symptoms like pounding heart, shaking, shortness of breath, chest pains, dizziness, fear of dying,

¹¹ GD2-81

¹² GD3-167-169

¹³ GD3-22-32

¹⁴ GD3-142-143

¹⁵ GD3-141, GD2-61

dissociative states, and physical symptoms that cannot be explained by any other medical illness.

- She has headaches, neck pain and back pain as a result of the car accident in July 2011. Because of Persistent Somatic Symptom Disorder, her pain causes persistently high levels of anxiety about her symptoms, persistent thoughts about the seriousness of her symptoms, and she devotes excessive time or energy to deal with these symptoms.¹⁶

- **The Minister's submissions about the medical evidence**

[20] The Minister noted there are only three psychiatry reports on file since 2017. I do not think this is significant. I am satisfied from Dr. Mann's notes, Dr. Sandhu's reports, and the Claimant's testimony, that her symptoms and limitations persisted throughout this period.

[21] The Minister noted there were no cognitive assessments on file, presumably to support Dr. Sandhu's statements that the Claimant had cognitive deficits. But Dr. Sandhu is a psychiatrist. He is qualified to assess cognition. He accepted the Claimant's statements about her cognitive problems. The fact that he may not have used a screening tool does not invalidate his opinion.

[22] The Minister noted that the Claimant's medication had not changed since 2017, except for a decrease in mirtazapine. The Claimant told me this medication was reduced because it was making her much too groggy during the day, not because she had improved. I accept this explanation. I do not think the fact that the Claimant's medication otherwise remained the same means her limitations are not severe. It means Dr. Sandhu has found medication and a dosage that helps the Claimant without causing significant side effects. The Minister did not provide an alternate medical opinion to suggest otherwise.

[23] The Minister also noted the Claimant told Dr. Sandhu her parents had moved in to help look after her children, yet she told the Minister's medical adjudicator in October 2018 that she was taking care of her children independently.¹⁷ The Claimant told me she does not remember

¹⁶ GD2-5-6

¹⁷GD3-142, GD6-5, GD2-67

having the conversation. However, she did remember a period where her psychologist suggested she ask her parents to move out of her house so she could try managing on her own. She had a home care service come in, and her parents often came to help during the day as well.

[24] I accept the Claimant's explanation for this. I believe the adjudicator accurately recorded what the Claimant told her. But the Claimant was only talking about a short period of time, during which she was getting help with the rest of her tasks. Nor did she tell the adjudicator that she was managing well in those circumstances.

[25] The Minister also referred to a Kinesiology Discharge Report from October 2017, which suggested the Claimant had made great progress when she exercised independently and went to yoga classes. But that comment has to be considered in context. The rest of the report described how the Claimant found it difficult to attend rehabilitation sessions because of illness and other issues. The report's author identified these other issues as related to the Claimant's feeling overwhelmed by stress and anxiety. She had made progress, but she struggled going to the gym or participating in a class independently. She felt confused when she was independent, and she was mentally unable to overcome her symptoms at times.¹⁸ I do not think this report is inconsistent with Dr. Sandhu's opinion.

- The Claimant can't work in the real world

[26] To be severe, the Claimant's limitations must prevent her from earning a living at any type of work, not just her usual job.¹⁹ 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.²⁰ These factors help me decide if the Claimant has any ability to work in the real world.

[27] I find the Claimant cannot work in the real world. She is 43 years old. She is still young. She completed high school and worked as a receptionist. She then trained to become a lab assistant. She worked in that field for two years before the car accident. In theory, the Claimant could retrain for a different type of work. But her limitations prevent her from performing any

¹⁸ GD3-153-158

¹⁹ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

²⁰ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

job. Although her physical condition might not prevent her from doing sedentary work, her preoccupation with her physical pain would. Her many cognitive issues, her anxiety, and her frequent panic attacks impair her ability to get to any job reliably and to be productive while she is there.

[28] I recognize that in May 2017, Dr. Sandhu recommended the Claimant change her job and have a vocational assessment. This never happened. But the Claimant doesn't have the ability or the obligation to get a professional vocational assessment. Dr. Sandhu's comment does not persuade me the Claimant could have performed other work, considering the severity and frequency of the limitations he described. I view it as an off-the-cuff, overly optimistic remark made without regard to the rest of his report.

[29] I find the Claimant has no work capacity. As a result, she does not have to show that she tried to find work and failed because of her health condition.²¹

- The Claimant has followed medical advice

[30] The Claimant has followed medical advice as best she can.²² I asked her about Dr. Sandhu's note in September 2018 that she had not been taking anti-depressants for a few months.²³ She did not remember stopping. Dr. Mann's notes from July and August 2018 show the Claimant was taking this medication.²⁴ There is not indication anywhere else that the Claimant did not fully comply with medical advice as much as her limitations allowed her to. As a result, I think Dr. Sandhu misunderstood the Claimant.

[31] I find that the Claimant's disability was severe by May 2017. That was when Dr. Sandhu reported significant limitations, after a long period where the medical evidence (or lack of it) suggests the Claimant was improving.

²¹ The Federal Court of Appeal explained this requirement in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

²² The Federal Court of Appeal explained the requirement to follow medical advice in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

²³ GD3-141

²⁴ GD3-43-46

The Claimant's disability is prolonged

[32] The Claimant's disability is likely to be long continued and of indefinite duration. It began in July 2011, worsened in May 2017, and has continued since then. In May 2017 Dr. Sandhu said the Claimant's prognosis for further improvement was poor.²⁵ He confirmed this in February 2021.²⁶

[33] I find the Claimant's disability was prolonged by May 2017.

WHEN PAYMENT BEGINS

[34] The Claimant's disability became severe and prolonged in May 2017, when she stopped improving. There is a four-month waiting period before payments start.²⁷ This means that payments start as of September 2017.

CONCLUSION

[35] The appeal is allowed.

Virginia Saunders
Member, General Division - Income Security

²⁵ GD3-143

²⁶ GD6-6

²⁷ Section 69 of the *Canada Pension Plan* sets out this rule.