



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MB v Minister of Employment and Social Development*, 2020 SST 1240

Tribunal File Number: GP-19-1417

BETWEEN:

M. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Jackie Laidlaw

Claimant represented by: Zane Roth

Videoconference hearing on: December 15, 2020

Date of decision: December 31, 2020

DECISION

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

OVERVIEW

[2] The Claimant is an aboriginal woman age 36. She worked in project management and health and safety for a construction company. She stopped working on October 27, 2017 and went on stress leave. She began treatment for alcohol abuse with CAMH, and was determined to have Post-Traumatic Stress Disorder (PTSD). She went to school part-time for a year after she quit working. She has not worked since October 27, 2017. The Minister received the Claimant's application for the disability pension on November 28, 2018. 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, 2019.

ISSUE(S)

[4] Did the Claimant's conditions of PTSD, alcohol use disorder, and tobacco use disorder result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2019?

[5] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2019?

ANALYSIS

[6] Disability is defined as a physical or mental disability that is severe and prolonged¹. 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 Claimant meets only one part, the Claimant does not qualify for disability benefits.

Severe disability

The medical issue leaving work was alcohol abuse

[7] The Claimant indicated in her application she left work due to stress and PTSD. The evidence shows she left due to alcohol addiction, and a desire to change occupations.

[8] At the hearing, the Claimant testified that on October 26, 2017 her drinking was out of hand. She had just broken up with her partner. She was drinking a lot and resolved to do something else. She also wanted to go to school. She looked at the Centre of Addiction and Mental health (CAMH) for help.

[9] On November 6, 2017, immediately after leaving work, the Claimant referred herself to the addiction medicine services to make changes in her alcohol use. She did not consult with CAMH for stress. She described herself with situational depression and anxiety.² She had her first and only (at the time)³ panic attack on November 2, 2017 and noted she had not eaten and had taken an Adderal and a Redbull. She felt better sitting in the dark and drinking water. She noted that the attack was brought on by struggling to deal with a break up with her current boyfriend.⁴

[10] She began treatments with CAMH for alcohol and tobacco abuse on November 6, 2017.⁵ She saw Dr. Peter Selby at the STOP program (Smoking Treatment for Ontario Patients).

¹ Paragraph 42(2)(a) *Canada Pension Plan*

² GD 5 148 initial consultation with Holly Smith, OT, November 16, 2017

³ GD 5 64 CAMH clinical note.

⁴ GD 5 149 initial consultation with Holly Smith

⁵ GD 5 7 November 6,2 017 Sophia Sousa Konstantaki, RN, CAMH and GD 5 69 admission to collaborative addiction and admission assessment CAMH

PTSD diagnosis

[11] When the Claimant attended at CAMH on November 6, 2017, she was referred to psychiatrist Dr. Ketan Vegda of the Aboriginal Services that has a focus on early recovery skills in combination with traditional teaching and knowledge from the Elder.

[12] Dr. Vegda found she had an emotional, physical and sexual trauma history. She did not have nightmares or flashbacks. She had never received help in the past for trauma.⁶ This was the first time the Claimant had been diagnosed with PTSD, and the first time she had begun psychological counselling.

[13] Dr. Vegda referred her to Holly Smith, Occupation Therapist, also of the Aboriginal Services. For eight months, she met weekly with Holly Smith for Cognitive Behavioural Therapy (CBT) that she found to be a great help.

[14] The clinical notes from both Dr. Vegda and Holly Smith do address her previous sexual abuse. However, the focus is mainly on her substance abuse. I accept that the substance abuse would be her attempt at managing her sexual abuse history, and any situational stressors. It is clear the specialists were more concerned about dealing with her substance abuse.

ADHD and Stress

[15] The Claimant was diagnosed with ADHD by a school psychiatrist in College. Even in 2013, psychiatrist Shawn Vasdev told her to seek addiction support for her drinking.⁷

[16] I refer to the clinical notes of her family physician, Dr. Sara Armani⁸. The notes start in February 13, 2017 with the initial meeting between the doctor and the Claimant. There is a note of ADHD requiring Adderal, and alcoholism. Her mood was stable and she was bored at work. She was seen monthly for renewals for her ADHD medications. The first mention of any mental health issue was a referral to a psychiatrist on July 5, 2017, with no reason for the referral. Her ADHD was stable in September 2017, and the psychiatrist was referred for an assessment.

⁶ GD 5 64 CAMH clinical note November 6,2 017

⁷ GD 5 64 CAMH clinical note of November 6, 2017 intake

⁸ GD 5 222-247

[17] The first mention of stress was the day before she quit work, on October 26, 2017. The note shows she was stressed out, had a few incidents over the past year with her manager and that the Claimant felt she had chronic mental stress. Her mood was anxious and depressed. The Claimant requested the doctor document her concerns and incidents for a chronic stress leave from work.

[18] Prior to October 26, 2017, there is no indication of any chronic stress.

[19] Four days later, on October 30, 2017, the Claimant was filling out a form for Employment Insurance (EI) and needed another form filled for a disability credit due to her ADHD. The Claimant did receive EI benefits.

Stress and Harassment in the workplace

[20] The Claimant states she left work due to stress and harassment. She has not shown any evidence of stress or harassment occurring at her workplace to corroborate her comments to Dr. Armani and Holly Smith after she left work.

[21] After leaving work, she told Holly Smith she felt stress at work because she is a woman in a male dominated industry, but was able to present in board meetings to top executives and do her job well. The anxiety was in social settings from time to time⁹. I note that had also done this type of job for two previous employers without any incident, stress or harassment. As well, occasional social anxiety is not a severe condition.

[22] Her employer outlined her work experience in a form to the long-term disability (LTD) provider.¹⁰ She never showed signs of any stress prior to leaving work on October 27, 2017. She worked there one and a half years, 40 hours a week and had no sick leave in 12 months prior to leaving work. Her job was sedentary, on a laptop, in non-supervisory role, and without stress. The employer was unaware of any workplace issues. She did not receive accommodations.

⁹ GD 5 148 November 16, 2017

¹⁰ GD 5 44 January 24, 2019

After leaving, she did not accept any modified duties, as she was uncooperative and did not provide the required updates on her status. (as is evidenced in a letter of January 24, 2018¹¹)

[23] The Claimant testified that she took sick days from work and the work environment was toxic. At the hearing, she testified that the toxic workplace, full of games and bullying, was actually one man who was competitive. There is no corroborating evidence that she was being bullied, or harassed at work by an individual, or that she required any help.

[24] When questioned about harassment, she noted that it happened after she left work. Her employer requesting she return to work¹², and on one occasion, the HR manager left her business card on her door. The evidence shows the employer sent two emails and a letter requesting additional medical information, which they have a right to request.¹³ The letter is neither threatening nor harassing. At the request of the Claimant, Dr. Vegda wrote a letter in May 2018 stating that the stress from harassing interactions with co-workers, in his opinion, “has resulted in significant impairments and disability”¹⁴. Dr. Vegda felt she must remain on a medical leave of absence for an indefinite duration to focus on health, and contact with the employer should be limited to written correspondence. The only evidence provided of contact with the Claimant is the letter indicating previous emails requesting medical updates on her condition.

[25] She went on to testify that recently the owners of the company have been charged with conspiracy and fraud. She stated this did affect her because she knew too much about their fraud and was worried about repercussions. I do not find this to be credible. The Claimant was not in a position of authority. She was not in an executive position. She states she was in a position where she had the power and obligation to shut down work due to health and safety, and only once did she call a stop work order. Again, there is no corroborating evidence that she was bullied into ignoring stop work orders.

[26] There is an email to Holly Smith from the Claimant on April 8, 2019 where she states a memory came back regarding Bondfield, and she does not feel safe.¹⁵ She then went on to

¹¹ GD 4 337 a letter from Bondfield January 24, 2018 to the Claimant

¹² GD 5 158 as referenced in a meeting with Holly Smith on May 18, 2018

¹³ GD 4 337 letter from Bondfield January 24, 2018

¹⁴ GD 5 57 May 16, 2018

¹⁵ GD 5 180

inform Ms. Smith she had been a whistle-blower on the company. There is no evidence of this, and it would have been present years earlier if she had told authorities about any wrongdoings at the company. At the time of her memory, she was suing the company. She talked of receiving potentially millions of dollars from the lawsuit.¹⁶ There was no further discussion in the notes after that period about fearing for her safety due to fall out from her “whistle-blowing”. There is no evidence provided to substantiate the allegations of her involvement in whistle blowing. I do not accept that she left work due to her danger for her physical safety from her employer.

[27] There is little supporting evidence of stress and harassment at work. However, if she did leave work due to feelings of stress and harassment at that job, she would have been capable of working elsewhere as she submits the stress and harassment was specific to that employer.

[28] There is, however, a lot of evidence that she left work to pursue another career.

The Claimant attended school for a year after quitting work

[29] The capacity to work is indicated by the performance of school attendance.¹⁷ The Claimant attended school for one year after leaving work. The evidence indicates she did well but did not complete the course due to reasons other than her health. As well, her decision, a choice, to go to school instead of working would indicate a capacity to work.

[30] The Claimant testified that prior to leaving her job she went on job interviews with a competitor and did not get the job. There is no evidence she was denied the job for any health reason.

[31] She also testified that she was resolved to do something else and to go to school. In August, 2017, before leaving work she realized the government was giving out more funding for school and thought she would do that for a while and change direction. She determined she would go to CAMH and school by taking advantage of the grants.

[32] She stated that while at work, she planned to leave work and go to school.

[33] This testimony is confirmed by the material evidence.

¹⁶ GD 5 183 in discussions with Walter Lindstone April 16 2019.

¹⁷ *S.M.-R. v. Canada (Attorney General)*, [2013] F.C.J. No. 689, 2013 FCA 158

[34] Dr. Selby at the STOP program noted on November 6, 2017 that she was on stress leave in the past week and unsure of returning to work, but that she had plans to leave to switch careers and attend school¹⁸.

[35] In November 2017, in her first meeting with Holly Smith,¹⁹ the Claimant tells Ms. Smith she is on leave and looking to get on Employment Insurance. She also notes that she is starting her own business in the fashion industry and will start an 18-month course in fashion design January 8, 2018. She was pleased with the new opportunity.

[36] The lack of interest in her work is also noted by Dr. Armani in her initial meeting with the Claimant in February 2017 where it is noted she finds work a bit boring²⁰. There is no mention of any stress from work or otherwise in Dr. Armani's notes until she stopped working in October 2017²¹.

[37] On November 6, 2017, the doctor filled out her OSAP (Ontario Student Assistance Program) disability form²² for anxiety disorder and ADHD noting both conditions affect her attention, focus, memory, causes stress in social interactions, frustration, and inability to complete tasks. These symptoms are common ADHD symptoms. She had been diagnosed years earlier with ADHD and was able to work with these symptoms and the condition. There was no diagnosis of anxiety disorder at the time; therefore, the symptoms would be with reference to the ADHD.

[38] The Claimant started school in January 2018. Dr. Armani noted that school was going well, but she would not be able to return to work, as it was too stressful²³. The Claimant went to school 25 hours a day. It is reasonable she would be unable to work a full time job as well.

[39] During this period of attending school 25 hours a week focusing on a new career, the Claimant was on medical leave from work.

¹⁸ GD 5 145 November 6,2 017 Dr. Selby CAMH STOP program

¹⁹ GD 5 148 November 16, 2017 Holly Smith

²⁰ GD 5 222 clinical note February 13, 2017

²¹ GD 5 222 clinical note of October 26, 2017 and October 30, 2017

²² GD 4 361 OSAP form

²³ GD 4 222 clinical notes from Dr. Armani

[40] Though she was still in therapy for alcoholism and PTSD, she continued to drink. In March, she began CBT for her PTSD with Dr. Vegda. She also got a new boyfriend. By July 2018, Dr. Armani noted that she was overall stable, not working but studying.²⁴ By August, she had two panic attacks. In the fall, her boyfriend moved in with her, which complicated her ODSP benefits, so she kicked him out.

[41] The Claimant requested a letter from Holly Smith for extra time for assignments at school. She stated she could not get to school on time.²⁵ It is also noted that she slept through her alarm and did not attend an appointment with Holly Smith on August 13, 2018²⁶. At the time, her alcohol use disorder was severe according to Dr. Vegda.²⁷ As well, she was changing her ADHD medication from Adderall to Biphentin. It would be more reasonable to assume that she was unable to get to school on time due to the bottle of wine every night and 20 mg of cannabis rather than anxiety as evidenced in the doctors notes during that period.

[42] Holly Smith wrote on August 1, 2018 that her severe anxiety and sleep disturbances may affect her ability to attend class and submit assignments and highly recommended accommodations and lenience to support educational pursuits as an important component to her healing²⁸. She received accommodations. I do not put much weight on this letter as being an assessment of her condition. Ms. Smith asked the Claimant what she would like her to put in the letter, and the Claimant stated, "Something along the line of coping, anxiety, and sleep issues, intensify at time and need leniency or extra time for my assignments".²⁹ Holly Smith wrote what the Claimant requested, and not from her own medical opinion.

[43] Holly Smith reported that her individual therapy was ending in September 2018 but the Claimant's major concern was finances³⁰. Ms. Smith also noted at the time that she had ample work experience and education to resume or return to work in the future. She was sent to the Anishinabe Health for tuition support and housing support. If Holly Smith did not think she was capable of continuing to study, it is unlikely she would refer her for tuition support.

²⁴ GD 4 222 clinical notes from Dr. Armani

²⁵ GD 4 165 July 31, 2018

²⁶ GD 5 166

²⁷ GD 2 60 CAMH progress notes September 17,2 018 Dr. Vegda

²⁸ GD 2 45 August 1, 2018 CAMH letter.

²⁹ GD 5 165 a series of emails between the Claimant and Holly Smith July 31, 2018

³⁰ GD 5 167 September 10, 2018

[44] Dr. Vegda noted on October 15, 2018 that she was going to school regularly and her PTSD symptoms were getting better. The Claimant told Dr. Vegda that school days tended to be long.³¹ Despite the long days, it would appear she was capable of attending regularly and doing well. In November 2018, Dr. Vegda noted she has been doing reasonably well, but had a one time “mental health day” where she did not go to school or get out of her pajamas.³²

[45] The Claimant withdrew from fashion design program in January 2019, six months short of the end of the eighteen-month course. She stated it was due to anxiety and sleep disturbances. However, it is noted by Dr. Vegda that her insurance benefits were cancelled and she was seeking legal assistance. The anxiety and stress was financial, as well as legal issues with her previous employer. She was also very concerned about getting back on track, deal with her drinking, go back to therapy and give school a break to re-group. Dr. Vegda noted that she was working on a plan to resume studies in June 2019.³³ He wrote the note supporting her withdrawal for mental health reasons so that she would not be penalized financially³⁴. His note gives the impression she is willing to return, and capable of doing so after the break.

[46] The Claimant testified that she did very well at school and got good marks, however she had no artistic ability. She did not return to school in June, not because of her health condition, but because she was in court with her ex-husband and also had a health condition, a blood clot, unrelated to her mental health.

[47] She was receiving treatment for PTSD, which went well during the time she was at school. I do acknowledge that her alcohol abuse was still an issue despite the treatment.

[48] Therefore, she did well at school, despite her conditions. She was unsuited to the course. She did not resume the course due to her condition, rather due to external circumstances.

[49] As she was capable regularly of attending school for 25 hours a week, and performing well, I find this would be akin to a capacity to work for one year after leaving her job.

The Claimant was managing well by her MQP

³¹ GD 5 131 Dr. Vegda reports

³² GD 5 133 November 9, 2018

³³ GD 5 136 and 137 Dr. Vegda January 15, 2019

³⁴ GD 2 46 January 15, 2019.

[50] The Claimant stated that 2019 was a terrible year. The evidence notes that she had many situational problems. The evidence also shows she was drinking a lot during 2019.

[51] By the end of 2018, she was not getting any treatment with Dr. Vegda or Holly Smith. Dr. Vegda noted in November 2018 that she was normal, no psychosis and a degree of stability. Her affect was euthymic.³⁵ He did not have to see her for three months.

[52] Dr. Armani noted in a questionnaire for SunLife (LTD provider) in January 2019 that she was never treated for an underlying anxiety disorder in the past. Her symptoms were anxiety attack situations moderate to severe; moderate ongoing ADHD; moderate ongoing insomnia; moderate ongoing PTSD. Her symptoms had improved to mild at that time, though she was currently not in any position to resume any type of job. She was in treatment and required long-term therapy and medications. Her prognosis was fair to good.³⁶

[53] The Claimant takes medications only for her ADHD and other than a very short period in 2018 on Lorazepam, she has not taken anything for her depression or PTSD.

[54] In January, her LTD was cut off. She was angry with her previous employer for this, and she wanted to withdraw from school for six months. She was drinking and Dr. Vegda suggested she return to group therapy with Ms. Smith and limit her drinking³⁷. Ms. Smith noted stress over family and finances. She started meeting with a personal support worker every two weeks (Theresa Shilling of the Toronto Aboriginal Health), and receiving more CBT at individual counselling through LOFT (initially with Teigen van der Walk January 18, 2019)³⁸. In March, she saw Holly Smith for 45 minutes who was concerned about her alcohol and cannabis use.³⁹ She was supposed to go to the Jane Tweed Treatment Centre for a two-week program but did not attend as she was in court for child support. The Jane Tweed Centre is a funded non-medical program offered to women with problematic substance abuse. In the application for the Jane Tweed Centre, Dr. Armani noted she requires significant assistance to help with alcohol.⁴⁰ I take

³⁵ GD 4 133 progress note of November 9, 2018.

³⁶ GD 4 284 Dr. Armani January 3, 2019

³⁷ GD 4 136 January 15, 2019

³⁸ GD 4 398 LOFT information

³⁹ GD 4 138 March 25, 2019

⁴⁰ GD 4 265

the alcohol abuse to be the reason for Dr. Armani's opinion she was unable to work in January 2019. In April, Holly Smith noted that her stress was due to the lawsuit against her employer.⁴¹

[55] It was at this point, in April 2019, Holly Smith discharged her from the Aboriginal Services because she had not been engaged in coping strategies, or attending groups; she did not have a plan to reduce her use of alcohol and she was no longer interested in a referral to residential treatment.⁴² Her file was transferred to Walter Lindstone.

[56] The Claimant returned to her boyfriend in the spring of 2019. She had a pulmonary embolism (blood clot) in May 2019, resolved, which sent her to the hospital for a week. In addition, her ex-husband made her anxious over child support. As well, her mother died that year. She stated that she lost her mental health gains due to family issues. I accept this would be the case. However, she also stated that she was working through all this in therapy.

[57] It would appear the specialists in her life were most concerned about her drinking and cannabis use.

[58] The Claimant testified that by Christmas 2019, she was very settled with her boyfriend and pregnant again. She stopped drinking and using marijuana and tobacco. She stated she has been clean and sober since Christmas 2019.

[59] Her eventual goal of healing was reached and reported in the entries from Krista Godward, her social worker at LOFT. Just after her MQP period, in March 2020, she had found healthy activities and new resources. Her file was closed.⁴³

[60] I accept 2019 was a rough year. However, it ended with the Claimant sober, settled and a new focus on life.

Villani Test

⁴¹ GD 4 183 April 2019 CAMH note

⁴² GD 5 183

⁴³ GD 4 89-398.

[61] I must assess the severe part of the test in a real world context⁴⁴. 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.

[62] The Claimant has submitted she meets the *Villani* test and has a severe disability when viewed in a real world context. The Minister submits she does not meet the test. I agree with the Minister.

[63] The Claimant is a very young woman age 36. Her age would not be a barrier to work. She is fluent in the English language. She stated she is two courses short of a high school degree; however, she went to Georgian College as an adult student and took a three-year course in business administration. She noted she did well but was three credit short of her diploma. She did not finish because she was working and supporting two children and felt the job was more important. As well, it has been established she did well in 2018 at the design course but was unsuited, as she did not have the artistic aptitude. Therefore, she would be capable of retraining in a field more suited to her abilities. She has had a lengthy variety of jobs, from administration at a construction company; starting her own graphic design company with a partner; project management; and, health and safety management. She has numerous transferable skills. Holly Smith also noted she had ample work experience and education to resume or return to work in the future. I agree. There is no barrier to the Claimant finding suitable employment in a real world context, even with her conditions.

[64] The Claimant presented a lengthy history of her life at her hearing. Her story centered mainly on her life and challenges, and less on her inability to work. She submitted that she has a lot of baggage and cannot function in society. She stated could not handle her trauma any longer and is now trying to do so. She feels guardedly optimistic.

[65] I am sympathetic to her history. The evidence indicates she managed her "baggage" by relying upon alcohol and cannabis.

[66] She was never aware of PTSD when she worked, nor had she ever had any counselling prior to leaving work. She had an alcohol problem, which she left work to address. She also left

⁴⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

work to try a new direction in life by going to school for a new career in fashion design. She has treated her alcohol addiction and her PTSD since leaving work. She has never worked with the knowledge she had PTSD, therefore she has not shown she is incapable of doing so after three years of therapy. By October 2018, her PTSD symptoms were improving, and by January 2019, they were mild. She is now sober, and at present, and at the time of her MQP, has managed her alcohol addiction, which was the reason she stopped working. She testified to returning to CAMH in October this year to see a social worker, Pamela Broeders and Dr. Vegda to try a new medication, Zoloft. This will be the first time, besides the short stint with Lorazepam, that the Claimant will try an anti-depressant. There is the possibility that this will help her manage her anxiety.

[67] I find the Claimant has failed to prove a severe disability that renders her incapable regularly of pursuing any substantially gainful occupation.

CONCLUSION

[68] The appeal is dismissed.

Jackie Laidlaw
Member, General Division - Income Security