



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *EB v Minister of Employment and Social Development*, 2020 SST 1245

Tribunal File Number: GP-19-1851

BETWEEN:

E. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Lianne Byrne

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 worked part-time as a homecare worker from July 31, 2016 until December 31, 2016. She stopped working due to Chronic Obstructive Pulmonary Disease (COPD). The Minister received the Claimant's application for the disability pension on December 3, 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, 2013.

[4] In this case, the Claimant also has earnings and contributions that are below the year's basic exemption for the year 2014, which can be prorated if she became disabled during the prorate period. The prorated period in this case is from January 1, 2014 to January 31, 2014.

ISSUE(S)

[5] Did the Claimant's conditions result in the Claimant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2013 or in 2014 by January 31, 2014?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2013 or in 2014 by January 31, 2014?

ANALYSIS

[7] 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

[8] 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 work².

[9] In this case, the Claimant is currently facing significant health problems. She has severe COPD and congestive heart failure. However, she did not have a severe disability as of the MQP or during the prorated period. It is also evident from the documentary evidence on file that she was able to work after the MQP and prorated period. Her health worsened significantly after the MQP and prorated period.

[10] The Claimant indicated in her application for CPP disability benefits that her health worsened after the MQP in 2015. Since then, she has been hospitalized with COPD every year, including for 9 days in 2016, for 7-8 days in 2017, and for 5 days in 2018.

[11] It is evident that the Claimant was able to work after the MQP and prorated period. She worked as a homecare worker for D. N. D. N. completed a CPP Employer’s Questionnaire on March 28, 2019. D. N. indicated that the Claimant worked as a replacement for her usual worker from December 2014 until October 2015 and from July 2017 until December 2017. Her duties included light housekeeping, preparing meals, helping with medication, helping her shower, and watching for seizures. She worked 5 hours per day, 35 hours per week. Her attendance was

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

² *Klabouch v. Canada (A.G.)*, 2008 FCA 33

good, she did not have any absences for medical reasons, the quality of her work was satisfactory, and she did not use any special equipment. D. N. wrote that the Claimant's COPD worsened and she can no longer do the work. I note, however, that the Claimant was capable of doing this work several years after the MQP and prorate period.

[12] The Claimant also indicated in her application for CPP disability benefits that she received regular Employment Insurance benefits from January 16, 2018 until September 25, 2018.

[13] There is no medical evidence to indicate that the Claimant had a severe disability as of the MQP or during the prorated period. The medical reports indicate that her health worsened significantly after the MQP.

[14] Dr. G.M. Anjilvel, family physician, reported on May 6, 2016 that the Claimant was hospitalized from April 17, 2016 to April 25, 2016 with a discharge diagnosis of acute exacerbation of COPD. However, I note that this exacerbation occurred several years after the MQP and prorated period.

[15] Dr. Anjilvel completed the CPP Medical Report on December 18, 2018. It is noted that the Claimant has severe COPD and congestive heart failure. She has trouble walking due to shortness of breath. All of her activities of daily living are affected by severe pulmonary obstruction. However, this report is dated many years after the MQP.

[16] Similarly, there are multiple reports on file from Dr. George Fox dated after the MQP, including the following:

- On July 6, 2016, Dr. Fox reported that she has exertional dyspnea associated with wheeze and chest congestion that may be related to underlying airways disease.
- On October 6, 2016, Dr. Fox noted that her pulmonary function tests showed severe COPD.
- On March 9, 2017, Dr. Fox reported that she is active and carrying out normal activities of daily living without too much difficulty. There is no evidence of heart failure.

- On May 9, 2018, Dr. Fox reported that she benefited significantly from her new medication regime. She is stable.
- Dr. Fox reported on October 30, 2018 that she was recently hospitalized due to exacerbation, but she is now back to baseline.
- On May 16, 2019, Dr. Fox reported that she is at end stage COPD with very severe airflow obstruction. She is significantly disabled from her COPD symptoms. She becomes short of breath looking after herself in the washroom, she is unable to do minimal chores, such as dressing, bathing, and making her bed.

[17] There is no evidence of a severe disability as of the MQP or during the prorated period from Dr. Fox's reports.

[18] There are several other medical reports related to the Claimant's post-MQP health. These include a report from Dr. Tony Batten dated July 27, 2016 that noted episodic dysphonia, likely due to reflux. Dr. Baboo Mathew, internist, also reported on October 4, 2017 that she has 4-5 months of swelling in her feet. An x-ray dated March 26, 2019 showed multilevel degenerative changes in her lumbar spine and a left knee x-ray dated July 26, 2019 showed borderline tricompartmental joint space narrowing. There is no evidence to suggest that these health problems affected her prior to the MQP or during the prorated period.

[19] Given that the Claimant worked after the MQP and prorated period, I considered section 68.1 of the *Canada Pension Plan Regulations* (CPP Regulations), which came into force on May 29, 2014. The provision was in effect when the Claimant applied for a disability pension on December 3, 2018. Section 68.1 of the *CPP Regulations* states that "substantially gainful", in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

[20] In the present appeal, her record of earnings shows that she earned \$20,328 in 2015 and \$6,856 in 2017. Her earnings in 2015 are above the maximum annual disability pension amount established for the year 2015. Her earnings in 2017 fell below the maximum annual disability pension amounts established for that year. D. N. indicated that the Claimant was working 35 hours per week as a homecare worker in 2015 and was able to do the work. I therefore find that

the Claimant was engaged in substantially gainful work in 2015, which is after the MQP and prorate period.

[21] I must assess the severe part of the test in a real world context³. 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. In this case, in finding that the Claimant's disability was not severe as of the MQP or during the prorate period, I considered that she was 49 years old as of the MQP and during the prorate period. She completed primary school. She worked as a homecare worker.

[22] Despite her low level of education and her lack of transferrable skills, I do not find that she was unemployable in a real world context as of the MQP or during the prorate period. She was able to do substantially gainful work after the MQP and prorate period. Her health deteriorated significantly after the MQP and prorate period.

[23] I must assess the Claimant's condition in its totality, which means I must consider all of the possible impairments, not just the biggest impairments or the main impairment⁴. Having considered the totality of the evidence and the cumulative effect of the Claimant's medical conditions, I am not satisfied on a balance of probabilities that she suffers from a severe disability.

CONCLUSION

[24] The appeal is dismissed.

Lianne Byrne
Member, General Division - Income Security

³ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁴ *Bungay v. Canada (A.G.)*, 2011 FCA 47