



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KM v Minister of Employment and Social Development*, 2021 SST 233

Tribunal File Number: GP-21-16

BETWEEN:

K. M.

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: Steven Sacco

Teleconference hearing on: April 13, 2021

Date of decision: April 14, 2021

Decision

[1] The Claimant, K. M., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of May 2019. This decision explains why I am allowing the appeal.

Overview

[2] The Claimant a 52-year old woman who has had panic disorder and anxiety throughout her life. She was off work as a dealer for the Ontario Lottery and Gaming Corp. between 2004 until 2007. She returned to work and left again permanently in 2017 due to her anxiety and panic disorder. She has not been able to return to any work since then.

[3] The Claimant applied for a CPP disability pension on April 27, 2020. The Minister of Employment and Social Development (Minister) refused her application because: she was getting benefits from the same medication since 2017; there is no evidence that she cannot work at any job and has not attempted to do so; and, she does not have to obtain a complete and full recovery. The Claimant appealed that decision to the Social Security Tribunal's General Division.

What the Claimant must prove

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

[5] 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

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

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 GD 2-4. In this case, the Claimant's coverage period ends on the hearing date.

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.

Reasons for my decision

[7] I find the Claimant has a disability that was severe and prolonged by the date of the hearing. I reached this decision by considering the following issues.

The Claimant's disability is severe

- The Claimant's limitations do affect her ability to work

[8] The Claimant has severe panic disorder, anxiety and agoraphobia. My focus though is not on the Claimant's diagnosis.⁴ I must focus on whether she has functional limitations that get in the way of her earning a living.⁵

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

- What the Claimant says about her limitations

[10] The Claimant says she has limitations from her medical condition that affect her ability to work in the following ways:

- a) She has complied with all recommendations and has sought out extra treatment on her own and still has her conditions;
- b) She does not leave the house some days, and has not been able to drive for a long time; and,
- c) She thought working in an office environment would be less stress but was not qualified and got overwhelmed trying to complete her resume. She is overwhelmed with everything.

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

[11] The Claimant must provide objective medical evidence that shows her limitations affected her ability to work.⁶ The medical evidence supports what the Claimant says.

⁴ The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

⁵ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

⁶ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

[12] There were some confusing social worker notes⁷ in 2018. It was ascertained at the hearing that the notes were included from a previous social worker between 2004 and 2007. The Claimant stopped working in late 2004 due to overwhelming anxiety and stress. Her family physician, Dr. Grafham, told her to go off work then, as he did again in 2017. She consulted with a social worker during that period. Those notes show she was struggling at work with her condition then.

[13] The Claimant stated that when her long-term disability benefits (LTD) were cut off in 2006, her union stepped in and got her job back. She was not ready to return to work. She felt she had not worked out her anxiety and panic disorder. She returned over fear of finances. Her return to work was gradual, and the Claimant stated that she struggled through the next ten years trying to keep her job with her condition.

[14] Dr. Grafham, who is aware of her condition, took her off work again in September 2017, for an estimated four weeks⁸. His update in November 2017 indicated she was already attending counselling and required more time and treatment to return to work.⁹ She had extreme worry causing nervousness and difficulty focussing or concentrating. She started on Citalopram, which she continues to take with a positive partial response.¹⁰ By January 2018, Dr. Grafham felt she still needed to continue with counselling¹¹. In September 2018, Dr. Grafham noted she required ongoing counselling and pharmacotherapy to remain in partial remission and she was unable to return to her previous work indefinitely.¹²

[15] The most current report from Dr. Grafham is the CPP medical report of July 2020.¹³ He noted she had difficulty leaving home and would not be able to get a job for fear of driving and confronting others. He expected her condition to remain the same for more than one year. Dr. Grafham indicated that he had told her to stop work in 2017, and it is unknown when she could return to work.

⁷ GD 2 120 121 and onward

⁸ GD 2 135 September 12, 2017

⁹ GD 2 141 November 22, 2017

¹⁰ GD 2 134 November 6, 2017

¹¹ GD 2 142 January 15, 2018

¹² GD 2 125 September 14, 2018.

¹³ GD 2 13 July 19, 2020

[16] It has been noted by the Minister that she has had success with Citalopram and her functioning had improved. Dr. Grafham states this in his report. I recognize that having some results with a drug is not the same as stating that her condition is manageable, or resolved.

[17] The Claimant has had an abundance of cognitive behavioural therapy (CBT) and counselling. Dr. Frey was treating her with individual psychoeducational therapy at the Anxiety Treatment and Research Clinic since June 2019.¹⁴ He was pleased with her progress and anticipated good results. He did not think she was ready to return to work by December 2019, and noted that with ongoing work she would continue to experience improvement in her panic disorder. He did not opine that with ongoing work she would be able to return to work. In fact, he was not prepared to estimate when she would be able to return to work.

[18] Her sessions with Dr. Frey were cut short due to his personal reasons for stopping work. At that time, in March 2020, she was still experiencing anxiety and panic, albeit less than when she had at the beginning of his sessions.

[19] The Minister submitted that she is not required to obtain a complete and full recovery. I agree, however in this case, she was never at 100%. She has always had panic and anxiety. She had already left work for three years due to the condition, and returned before she was ready. She started her second attempt at work at a disadvantage, and her condition worsened. I accept the opinions of both Dr. Grafham and her specialist Dr. Frey, that the progress she made was not enough to bring her to a position to return to work.

[20] She had been working on her resume in 2020 with Occupational Therapist Tanja Colonerus, and was hoping to return to work. With Dr. Frey's help, she was feeling better about her options.¹⁵ After Dr. Frey stopped treating, the Claimant realized she has become too dependent upon him and she lapsed again into panic and anxiety. This became exacerbated with the COVID-19 pandemic. Working on her resume became overwhelming and she lost her confidence in being able to work or do anything.

¹⁴ Refer to his notes of GD 2 102 August 26, 2019; GD 299 December 20, 2019; and GD 2 24 March 2020.

¹⁵ GD 3 19 December 10, 2019 and GD 3 13 February 6, 2020 Tanja Colonerus, OT

[21] The Claimant testified that she knows she would have to work on her panic and anxiety in order to return to work. COVID-19 terrifies her and increases her anxiety and panic. She also knows that in order to return to work, which would have to be a low stress environment, she would need to upgrade her computer skills.

[22] Dr. Grafham also noted¹⁶ that any future work would need to be below stress, no conflict and accommodate her ability to work on her own with little interaction with co-workers. I am mindful he made this opinion at the same time that he stated it was unknown when she can return to work. I recognize that his opinion on the type of workplace she would need is not the same as an opinion that she is capable of returning to work.

[23] Currently, the Claimant has had ongoing assessments with the Odyssey Health Services¹⁷ for her LTD insurance carrier. She began treatment with Odyssey in January 2021, and is waiting to hear about a new group counselling.

[24] The Claimant has followed medical advice.¹⁸ She has been compliant with medications and treatments, and as mentioned earlier, sought out further treatment on her own.

[25] The evidence shows the Claimant's panic disorder and anxiety prevent her from returning to work.

- The Claimant can't work in the real world

[26] 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.¹⁹ These factors help me decide if the Claimant has any ability to work in the real world.

[27] I find that the Claimant cannot work in the real world. She is 52 with a high school education. She did receive one year college training in business administration in her late 20's, but the college went bankrupt before she could finish the course. She has shown she can be

¹⁶ GD 2 13 the medical report of July 19, 2020

¹⁷ GD 3 3 November 11, 2020

¹⁸ In *Sharma v. Canada (Attorney General)*, 2018 FCA 48, the Federal Court explains the requirement to follow medical advice.

¹⁹ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

retrained as she worked up the ranks at the casinos from a waitress, to a dealer then a supervisor/manager. She would not be prevented from working due to her education or her transferable skills. However, she is currently not capable of working due to her long-standing panic disorder and anxiety and agoraphobia.

[28] She has already shown that she cannot work at her usual job as a dealer and supervisor at the casino. I also accept that Dr. Grafham and Dr. Frey are not just commenting on her ability to return to her usual job, but any job.

[29] I find that the Claimant's disability was severe by the date of the hearing.

The Claimant's disability is prolonged

[30] The Claimant's condition began early in life, has continued since then, and will more than likely continue indefinitely.²⁰

[31] She stated she had panic and anxiety in high school that caused her to quit after Grade 12. She was afraid to leave the house at that time. She has shown the same conditions caused her to stop working for three years from 2004 until 2007. Then again, she stopped working altogether in 2017.

[32] She was diagnosed at age 19 with panic disorder and agoraphobia.²¹ The diagnosis has been the same with all her physicians, despite extensive treatment.

[33] The Claimant's disability was likely to be long continued and of indefinite duration. I find her disability was prolonged by the date of the hearing.

When payment begins

[34] The Claimant had a severe and prolonged disability in September 2017, when she stopped working for the second time. However, the CPP says a person cannot be considered

²⁰ In the decision *Canada (Attorney General) v. Angell*, 2020 FC 1093, the Federal Court said a person has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously thereafter. See also *Brennan v. Canada (Attorney General)*, 2011 FCA 318.

²¹ GD 2 2 6 according to a psychological consultation with Dr. Roa, psychologist and Ms. Friedman, psychometrist on May 8, 2019

disabled more than 15 months before the Minister receives their disability application. After that, there is a four-month waiting period before payments start.²² The Minister received the Claimant's application in April 2020. That means she is considered to have become disabled in January 2019. Payment of her pension starts as of May 2019.

Conclusion

[35] I find the Claimant is eligible for a CPP disability pension because her disability is severe and prolonged.

[36] The appeal is allowed.

Jackie Laidlaw
Member, General Division – Income Security Section

²² Section 69 of the *Canada Pension Plan* sets out this rule.