



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MP v Minister of Employment and Social Development*, 2021 SST 236

Tribunal File Number: GP-20-1698

BETWEEN:

**M. P.**

Claimant (Appellant)

and

**Minister of Employment and Social Development**

Minister (Respondent)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Pierre Vanderhout

Teleconference hearing on: March 15, 2021

Date of decision: April 8, 2021

## Decision

[1] The Claimant, M. P., is entitled to a Canada Pension Plan (“CPP”) disability pension. Payments start as of April 2019. This decision explains why I am allowing the appeal.

## Overview

[2] The Claimant is 47 years old. He stopped working as an auto body technician at X on May 20, 2016, after 15 years of steady employment there. He has not worked since then. He says he is unable to work due to back pain, anxiety, and depression. He said many years of physically demanding work took a toll on his body. In turn, his inability to work led to his mental health concerns.<sup>1</sup>

[3] The Claimant applied for a CPP disability pension on March 17, 2020. The Minister of Employment and Social Development (the “Minister”) refused his application because the Minister thought he could do some other type of work. The Minister also thought the Claimant was coping well with his conditions, and did not find the objective evidence (such as medical imaging) persuasive. The Claimant appealed that decision to the Social Security Tribunal’s General Division.

## What the Claimant must prove

[4] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2018. This date is based on his CPP contributions.<sup>2</sup>

[5] The CPP defines “severe” and “prolonged”. A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup> It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>4</sup>

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<sup>1</sup> GD2-38

<sup>2</sup> 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 s. 44(2) of the *Canada Pension Plan*. The Claimant’s CPP contributions are on pages GD4-11 and GD4-12.

<sup>3</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## **Preliminary Matter**

[6] Due to a processing error at the Tribunal, Dr. Baxter's letter of February 10, 2021<sup>5</sup>, was not part of the record at the hearing. The Claimant brought this letter to my attention at the hearing. I elected to admit the letter because of its high potential relevance. However, I gave the Minister until March 31, 2021, to make submissions on the letter. The Minister filed those submissions on March 31, 2021.<sup>6</sup>

## **Reasons for my decision**

[7] I find the Claimant has a disability that was severe and prolonged by December 31, 2018. I reached this decision by considering the following issues.

### **The Claimant's disability is severe**

#### **- The Claimant's limitations affect his ability to work**

[8] The Claimant has mechanical back pain with degenerative disc disease. He also has depression with anxiety. However, my focus is not on the Claimant's diagnoses.<sup>7</sup> I must focus on whether he has functional limitations that get in the way of him earning a living.<sup>8</sup> This means I have to look at **all** the Claimant's medical conditions (not just the main one) and think about how his conditions affect his ability to work.<sup>9</sup>

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

#### **- What the Claimant says about his limitations**

[10] When he applied for CPP disability benefits, the Claimant said the limitations from his medical conditions affected his ability to work in the following ways. He could sit for only 15 minutes. He could stand for only 20 minutes. He was also limited to 15 minutes of driving. He could not walk for 15 minutes. He could not lift or carry anything above five pounds. His reaching and bending were quite limited. Pain affected his memory and concentration.

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<sup>5</sup> See GD5-2.

<sup>6</sup> See GD6-1.

<sup>7</sup> The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>8</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>9</sup> The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

Household maintenance was limited due to his problems with standing, moving, walking, bending and reaching.<sup>10</sup> He could not kneel, bend, or crouch for any length of time.<sup>11</sup>

[11] T. P. was a witness at the hearing and gave most of the oral evidence. She said she was in daily contact with the Claimant for the last five years, and sees him roughly five times a week. T. P. said it was hard for the Claimant to sit or stand for any length of time. He can do very little, if any, kneeling, bending or lifting. He cannot exert himself. Due to his anxiety and depression, he finds it hard to start the day. He finds it hard to go to a store or a gas station. T. P. described extreme pain. On his bedridden days, just going to the bathroom is a real challenge. He often cannot follow through and do scheduled things. At the hearing, the Claimant said he had little to add to T. P.'s evidence.

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

[12] The Claimant must provide objective medical evidence that shows his limitations affected his ability to work by December 31, 2018.<sup>12</sup> The medical evidence supports what the Claimant says. In February 2018, Dr. Baxter (Family Doctor) said the Claimant was unable to work because of his back pain.<sup>13</sup> While there appears to have been an improvement that summer, Dr. Baxter noted in October 2018 that the Claimant's back pain again caused significant muscle spasm. He needed to pace himself and limit his activity.<sup>14</sup>

[13] Little improvement was seen in 2019. In August 2019, Dr. Baxter said the Claimant's back pain markedly restricted his physical activity. The Claimant also had mood swings due to major depression with anxiety.<sup>15</sup> His depression and isolation had increased by November 2019.<sup>16</sup> In December 2019, Dr. Baxter confirmed that the Claimant was easily overwhelmed. His focus and energy were compromised. He was unable to seek or maintain gainful employment.<sup>17</sup>

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<sup>10</sup> GD2-151

<sup>11</sup> GD2-38

<sup>12</sup> 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.

<sup>13</sup> GD2-132

<sup>14</sup> GD2-110

<sup>15</sup> GD2-88

<sup>16</sup> GD2-75

<sup>17</sup> GD2-66

[14] Later evidence also supports the Claimant's inability to work by December 31, 2018. In March 2020, Dr. Baxter said the Claimant had been unable to work since 2016 for medical reasons. He had marked restrictions for any activity, with pain at rest aggravated by minimal activity. Simple day-to-day tasks took an abnormal length of time to complete. His depression affected his energy, focus and concentration. He was not even capable of sedentary activity.<sup>18</sup> In February 2021, Dr. Baxter again affirmed the Claimant's inability to work since 2016.<sup>19</sup>

[15] The evidence shows the Claimant's back pain prevented him from doing any physical work by December 31, 2018. His back pain limited his movement and left him unable to maintain a position or activity. This was complicated by anxiety and depression.

**- The Claimant has not followed medical advice**

[16] To receive a disability pension, a person must follow medical advice.<sup>20</sup> If a person does not do this, then she/he must have a reasonable explanation for not following the advice. I must also consider what effect, if any, the advice would have had on the person's disability.<sup>21</sup>

[17] The Claimant has not followed all medical advice. However, he gave a reasonable explanation for not following the advice. In November 2019, Dr. Baxter strongly recommended counselling for the Claimant's depression and anxiety.<sup>22</sup> At the hearing, the Claimant said he did not attend counselling. He said he would have had to pay for the counselling himself, but he could not afford it.

[18] In the circumstances, the Claimant's explanation is reasonable. The Claimant has not worked since May 2016. He also said he was unable to get financial support for medical marijuana, although he wanted to use it. Because the Claimant gave a reasonable explanation, it does not matter that he did not follow the advice about getting counselling. I do not see other evidence of a failure to follow medical advice. The Claimant said he tries to do the home exercises recommended by Dr. Baxter. He attended counselling in 2016 and 2017. He previously attended physiotherapy. Dr. Baxter never recommended attending a pain clinic.

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<sup>18</sup> GD2-146 to GD2-147

<sup>19</sup> GD5-2

<sup>20</sup> The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

<sup>21</sup> The Federal Court of Appeal said this in *Lalonde v Canada (MHRD)*, 2002 FCA 211.

<sup>22</sup> GD2-75

[19] I now have to decide if the Claimant can regularly do other types of work. To be severe, the Claimant's limitations must prevent him from earning a living at any type of work, not just his usual job.<sup>23</sup>

- **The Claimant can't work in the real world**

[20] When I am deciding if the Claimant can work, I must consider more than just his medical conditions and how they affect what he can do. I must also consider his age, level of education, language ability, and past work and life experience.<sup>24</sup> These factors help me decide if the Claimant has any ability to work in the real world.

[21] I find that the Claimant cannot work in the real world. The Claimant was only 45 years old in 2018. He speaks English fluently. He completed Grade 12, and was licensed as an auto body technician about 20 years ago.<sup>25</sup> However, his work experience has been quite narrow.

[22] The Claimant was an auto body technician at X from 2001 to 2016. He worked as an auto body technician even before that. His other work consisted of installing shingles and working in a scrapyards. All this work is highly physical. Although he is still relatively young, his functional limitations prevent him from doing physical work or even retraining for less physical work. Dr. Baxter has repeatedly affirmed the Claimant's inability to do even sedentary work.<sup>26</sup> Given his history and circumstances, it is not realistic for him to work.

[23] I find that the Claimant's disability was severe by December 31, 2018.

- **Comments on the Minister's submissions**

[24] The above analysis addresses most of the Minister's submissions. However, I will briefly address two of them now.

[25] The Minister submitted that the Claimant was coping well with his conditions. I accept that this was the case in July 2018 and September 2018, when his symptoms seemed to abate

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<sup>23</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>24</sup> The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

<sup>25</sup> GD2-148

<sup>26</sup> See GD2-147 (dated December 2019), GD1-3 (October 2020), and GD5-2 (February 2021)

briefly.<sup>27</sup> However, the Claimant only needs to establish a severe and prolonged disability by December 31, 2018. His symptoms and functioning worsened again by October 2018.<sup>28</sup>

[26] The Minister also suggested that the objective medical evidence, such as imaging, was not persuasive. However, not all disabling conditions can be proven through objective reports. Chronic pain and mental health conditions, both of which affect the Claimant, are particularly resistant to objective verification. Importantly, Dr. Baxter recognizes the existence of both chronic pain<sup>29</sup> and depression<sup>30</sup> before December 31, 2018.

### **The Claimant's disability is prolonged**

[27] The Claimant's current conditions began by December 31, 2018, have continued since then, and will more than likely continue indefinitely.<sup>31</sup>

[28] Dr. Baxter has not suggested any work capacity since October 2018. I see no discussion of a return to work. In fact, as noted above, Dr. Baxter has specifically denied any work capacity on several occasions.<sup>32</sup>

[29] In both October 2020 and February 2021, Dr. Baxter observed that the Claimant's limitations had been longstanding. His conditions had "remained refractory" despite treatment such as physiotherapy.<sup>33</sup> In June 2020, Dr. Baxter noted that the Claimant's back pain and depression had existed for ten years. Dr. Baxter said they were protracted and prolonged.<sup>34</sup>

[30] The subjective evidence also supports a long-term disability. The Claimant doesn't think he can work again, despite a desire to work. His history suggests he is not averse to work. He worked at the same job for 15 years, and reached the maximum CPP contribution amount for most of those years.<sup>35</sup> His pay was based on the work completed, rather than the number of hours

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<sup>27</sup> See GD2-127 and GD2-112.

<sup>28</sup> GD2-110

<sup>29</sup> See, for example, GD2-132, GD2-129, GD2-112 and GD2-110.

<sup>30</sup> See, for example, GD2-129, GD2-127 and GD2-112.

<sup>31</sup> In *Canada (Attorney General) v. Angell*, 2020 FC 1093, the Federal Court said a person must 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.

<sup>32</sup> See GD2-66, GD2-147, GD2-20, GD1-3, and GD5-2.

<sup>33</sup> See GD1-3 and GD5-2.

<sup>34</sup> GD2-20

<sup>35</sup> GD4-11 to GD4-12.

worked. He says he continues to see Dr. Baxter every 1-2 months, in an attempt to control his pain and depression. Most visits involved the adjustment of medication.

[31] T. P. noted that prior counselling<sup>36</sup> did not help the Claimant's anxiety and depression. The past failure of counselling suggests that it might not help the Claimant even if he had the financial means to pursue it. Physiotherapy and home exercises haven't helped him either. His pain medication does not seem to have a strong effect. She has seen no real change in his pain level since 2016. She has seen only minimal change in his anxiety and depression. She did not think his pain would improve. The Claimant endorsed T. P.'s evidence.

[32] The Claimant's disability is likely to be long continued and of indefinite duration, and has been since December 31, 2018. I find his disability was prolonged by December 31, 2018.

## **When payment begins**

[33] The Claimant had a severe and prolonged disability in October 2018. This was when Dr. Baxter noted more significant pain and activity limitations, after a brief improvement during the summer months.<sup>37</sup> However, the CPP says a person cannot be considered disabled more than 15 months before the Minister receives their disability application. After that, there is a four-month waiting period before payments start.<sup>38</sup> The Minister received the Claimant's application in March 2020. That means he is considered disabled as of December 2018. As a result, his pension payments start in April 2019.

## **Conclusion**

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

[35] This means the appeal is allowed.

Pierre Vanderhout  
Member, General Division - Income Security

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<sup>36</sup> At the hearing, the Claimant said he had counselling from 2016 until the spring of 2017.

<sup>37</sup> GD2-110. Dr. Baxter's reports in July 2018 (GD2-127) and September 2018 (GD2-112) describe a lower pain score and fewer functional limitations.

<sup>38</sup> Section 69 of the *Canada Pension Plan* sets out this rule.