



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SH v Minister of Employment and Social Development*, 2021 SST 424

Tribunal File Number: GP-21-73

BETWEEN:

S. H.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Claimant represented by: Paul Sacco

Teleconference hearing on: June 10, 2021

Date of decision: June 14, 2021

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of July 2018.

OVERVIEW

[2] The Claimant stopped working as an administrative assistant in May 2017 owing to her medical condition. The Claimant suffered from cognitive dysfunction, memory impairment, fibromyalgia, and chronic pain. The Claimant tried to work again at her sister-in-law's bookstore, but only lasted a half-a-day owing to her medical condition. The Claimant has not worked at any gainful employment since May 2017.

[3] The Minister received the Claimant's application for the disability pension on June 27, 2019. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] 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.

ISSUES

[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, 2019?

[6] If so, was the Claimant's disability also long continued and of indefinite duration?

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

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

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] I must assess the severe part of the test in a real world context². 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.

[9] 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's 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 work³.

[10] 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.

[11] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of the person's health condition⁵.

Did the Claimant have a severe disability by December 31, 2019?

[12] I find on a balance of probabilities the Claimant had a severe disability by December 31, 2019, for the following reasons:

[13] First: The Claimant's oral testimony on her chronic pain and functional limitations was credible because her statements were plausible, detailed, and corroborated by a Witness (the Claimant's daughter). Specifically, the Claimant testified that she suffered from memory impairment, chronic pain, vertigo, concentration problems, nausea, and difficulties standing. I recognize the Minister submitted that the Claimant's scores in terms of memory function were

² *Villani v. Canada (A.G.)*, 2001 FCA 248

³ *Klabouch v. Canada (A.G.)*, 2008 FCA 33

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

⁵ *Inclima v. Canada (A.G.)*, 2003 FCA 117

within the above average range for her age group. Nevertheless, I place more weight on the Claimant's testimony because her statements were forthright and corroborated by a Witness. Furthermore, Dr. Vogel did diagnose the Claimant with "dementia," small fibre neuropathy, fibromyalgia, and unspecified "cognitive dysfunction" (GD2-88).

[14] Second: The report from Dr. Vogel explained that the Claimant could not function at any employment. Specifically, Dr. Vogel wrote that the Claimant's diagnoses were such that they contributed to her overall disability. Dr. Vogel further recommended the Claimant stop working in May 2017. I realize the Minister submitted that no pathology or cause had been identified for the Claimant's complaints. However, I place considerable weight on the report from Dr. Vogel because she had been treating the Claimant since March 2017 and her assessment was comprehensive.

[15] Third: The Claimant has followed treatment recommendations. Specifically, the Claimant tried Cognitive Behaviour Therapy and laser treatment. Nevertheless, the Claimant testified her symptoms had not improved. I realize the Minister submitted that the Claimant was offered psychological therapy by a psychiatrist, but declined the treatment. However, the Claimant testified she did not decline this psychiatric treatment. The Claimant explained that she attempted to contact the psychiatrist's office but received no response. I will accept the Claimant's explanation on this matter because her statements were plausible, detailed, and corroborated by a Witness.

[16] Fourth: The Claimant attempted to work at other employment, but was unsuccessful owing to her medical condition. Specifically, the Claimant tried to work at her sister-in-law's bookstore but only lasted half-a-day owing to her cognitive dysfunction.

Additional Submissions from the Minister

[17] The Minister did submit that the Claimant's age of 56-years-old might affect her ability to adjust to alternative work. Still, the Minister maintained that the Claimant's previous work experience indicated she possessed the necessary skills to obtain suitable work in another capacity. Nevertheless, I place more weight on Dr. Vogel's report that the Claimant could not

work at any employment because her assessment was comprehensive. Furthermore, Dr. Vogel explained that the Claimant's many diagnoses contributed to her overall disability.

Prolonged disability

Was the Claimant's disability long continued and of indefinite duration?

[18] I find on a balance of probabilities the Claimant's disability was long continued and of indefinite duration for the following reasons:

[19] First: Dr. Vogel's report from June 2020 indicated the Claimant still had daily symptoms and could not function at any employment.

[20] Second: The Claimant's testimony on her memory impairment and functional limitations persuaded me her disability was long continued and of indefinite duration.

[21] Third: The testimony from the Witness further persuaded me that the Claimant's disability was long continued and of indefinite duration.

CONCLUSION

[22] The Claimant had a severe and prolonged disability in May 2017, when she stopped working as an administrative assistant and Dr. Vogel recommended she stop working. However, to calculate the date of payment of the pension, a person cannot be deemed disabled more than fifteen-months before the Minister received the application for the pension⁶. The application was received in June 2019 so the deemed date of disability is March 2018. Payments start four-months after the deemed date of disability, as of July 2018⁷.

[23] The appeal is allowed.

Gerry McCarthy
Member, General Division

⁶ Paragraph 42(2)(b) *Canada Pension Plan*

⁷ Section 69 *Canada Pension Plan*