



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AH v Minister of Employment and Social Development*, 2021 SST 411

Tribunal File Number: GP-20-1301

BETWEEN:

A. H.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Teresa Jaenen

Teleconference hearing on: February 8, 2021

Date of decision: February 18, 2021

Decision

[1] The Claimant, A. H., is not eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[2] The Claimant was 26 years old at her MQP. She was employed as an administrative assistant when she stopped working in December 2014, due to her medical conditions. The Claimant suffers from stage 4 endometriosis, irritable bowel syndrome (IBS) interstitial cystitis (chronic bladder). In addition, she says, she has erythema nodosum (skin inflammation), chronic fatigue, depression and anxiety. She suffers from severe pain in her pelvis, abdomen, bladder and joints. She experiences severe constipation and diarrhea. As well as back and leg pains, hot flashes, insomnia and mood swings.

[3] The Claimant applied for a CPP disability pension on April 12, 2019. The Minister of Employment and Social Development (Minister) says they refused her application because there was insufficient evidence to support that her conditions were severe and prolonged. And the conditions did not preclude her from all types of regular work at the expiration of her MQP on December 31, 2014, and continuously since. 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 it is more likely than not that she has a disability that was severe and prolonged by December 31, 2014. This date is based on her contributions to the CPP.¹

[5] The Minister considered her eligibility under the Late Applicant provision, which may allow a person to qualify for disability benefits, if it can be established that the person was

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 GD2-49 to GD2-51

disabled, within the meaning of the CPP, at the time the person last satisfied the minimum contributory requirements.²

[6] At the time of Claimant's initial application, she had met the earnings and contributions qualification under the Late Applicant Provision, with valid earnings and contributions in four (4) of the last six (6) years, providing a minimum qualifying period of December 2014. Therefore, I find the Claimants MQP to be December 31, 2014.

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

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

Reasons for my decision

The Claimant's disability was not severe

[9] I find the Claimant has not proven she has a disability that was severe and prolonged by December 31, 2014. I reached this decision by considering the following issues.

The Claimant's limitations did not affect her ability to work by December 31, 2014

[10] My focus is not on the Claimant's diagnosis.⁵ I must focus on whether she had functional limitations that got in the way of her earning a living.⁶ This means I have to look at **all** the Claimant's medical conditions (not just the main one) and think about how her conditions affect her ability to work.⁷

[11] I find the Claimant does not have functional limitations on or before December 31, 2014. Here is what I considered.

² It is found at section 44(1)(b) of the Canada Pension Plan

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

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

⁵ The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

⁶ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

⁷ The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

What the Claimant says about her limitations

[12] The Claimant says she has limitations from her medical conditions that affect her ability to work in the following ways. She says she never knows how she will feel when she wakes up and most days she is so depressed she cannot get out of bed. She says every day can be something different. From chronic fatigue, uncomfortable and uncontrollable bowel movements, bladder spasms, pain in her abdomen, pelvis and rectum. Swelling in her hands and feet along with mood swings. She says she suffers from medical trauma caused by years of being misdiagnosed and misunderstood. She has social anxiety leaving her feeling alone and isolated.

[13] The Claimant says that she had been working at Royal Le Page as a receptionist. She would answer phones, complete paperwork, photograph properties. She says she cannot recall when she started but thinks it was sometime in 2013 and she left in December of 2014. She says that her employer understood her condition and was very accommodating. She says that she missed work because of her pain and the need to go to appointments so she decided it would be best that she quit.

What the medical evidence says about the Claimant's limitations

[14] I acknowledge that the Claimant genuinely believes her limitations affect her ability to work and more so from 2016 to present. However, in this case the Claimant must provide objective medical evidence that shows her functional limitations affected her ability to work on or before December 31, 2014.⁸ The medical evidence up to the December 31, 2014, does not support what the Claimant says.

[15] The medical evidence must prove that her functional limitations affected her ability to work by December 31, 2014. Reports written afterward must be based on clinical observations or assessments by December 31, 2014.⁹

⁸ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

⁹ The Federal Court said this in *Canada (Attorney General) v. Angell*, 2020 FC 1093.

[16] I find there is minimal medical evidence on or before December 31, 2014, that proves the Claimant had functional limitations that affected her ability to work by December 31, 2014. As a result, she has not proven that she had a severe disability.

[17] I accept that the Claimant had received a diagnosis of endometriosis and that she experiences the symptoms associated with the disease. The medical report dated October 27, 2009, supports this finding of a diagnosis of endometriosis.¹⁰ I also accept that sometime before December 31, 2014, the Claimant had been diagnosed with interstitial cystitis and was having increasing problems with abdominal bloating and left quadrant pain. However, I do not find there is medical evidence on or before December 31, 2014, to support that she was experiencing functional limitations regarding her anxiety and mental health.

[18] There is a report dated October 8, 2014,¹¹ where Dr. Bajzak reported the Claimant was originally referred to her regarding query painful bladder syndrome for bladder instillations. However, this report does not have any indication that the Claimant's had functional limitations that were severe on or before December 31, 2014. In the report, it says the Claimant received bladder instillation treatments that provided significant improvement. The report also indicates the Claimant was recommended further treatment of a prescription for Elmiron (for the sake of compliance). And she was advised to start an over-the counter antihistamine and once again gave her information on the interstitial cystitis diet.

[19] On April 8, 2015, Dr. Bajzak wrote in her notes said that the Claimant did not take the recommended medications she was prescribed in October 2014, nor by April 8, 2015. This would demonstrate that the Claimant's conditions were manageable from October to December 31, 2014, and approximately the next few months.

[20] I considered the medical evidence from the Claimant's previous family doctor. On April 4, 2019, Dr. Blundell wrote that the Claimant was her patient from 2006 to December 2015. She has a history of severe endometriosis with her symptoms that predated 2006. She says the Claimant had been tried on multiple medicines and seen multiple specialists over the years and really had no relief from her symptoms. She is in full support of the fact that the Claimant was

¹⁰ GD2-118 GD2-149

¹¹GD2-116 to GD2-117

unable to work intermittently throughout her illness but certainly from 2014 to 2016 when she was looking after her.¹²

[21] On July 19, 2019, Dr. Blundell, family doctor reported that between January to December 2014, she treated the Claimant. Her main medical condition during that time was stage 4 endometriosis. She was having chronic pelvic pain and symptoms of dysuria. She was seen a total of eight times of the year with pelvic pain and bloating. She was treated for at least three UTIs. She receives Lupron for treatment of her endometriosis. She believes her dysuria and bloating is related to her endometriosis. Dr. Blundell says that this was five years ago and she did not make any comments in her notes as to whether or not she was working. She says certainly, her symptoms over the years are bad enough to prevent her from any gainful employment. She has very severe endometriosis, which she thinks can account for most of her symptoms she complained of, through the 2014 year.¹³

[22] I give less weight to Dr. Blundell's opinion about the Claimant's abilities to work in 2014 because there are not any corroborating statements in the doctor's note. And she wrote the report in 2019, several years after December 31, 2014.

[23] On April 2, 2019, Dr. Ghobrial, a family doctor, reported he has been treating the Claimant since July 2016. He reported that in September 2016 she was diagnosed with anal cancer and received excisions of the lesions. She has anxiety associated with this diagnosis.¹⁴

[24] I do accept that the Claimant has experienced new medical conditions such as her anal cancer, anxiety and depression; however, the medical evidence supports these conditions began in 2016. It was in 2016 that Dr. Ghobrial recommended she stops working, outside her qualifying period. Per the above, the Claimant needs to be found disabled on or before December 31, 2014, so I cannot consider evidence about her condition after that date.

[25] On November 26, 2019, Dr. Christopher Dick's report indicates he is the Claimant's family doctor. He confirmed the Claimant suffers from endometriosis since 2009, and that she

¹² GD2-184

¹³ GD2-131

¹⁴ GD2-164 to GD2-172

continues to have medical conditions.¹⁵ He says it is difficult for him to comment on the last five years and he relies on Dr. Bajzak's reports to assume the Claimant's unemployment was based on medical reasons. However, I am giving more weight to Dr. Bajzak's notes from October 2014 and April 2015 reports as they relate to the Claimant's conditions on or before December 31, 2014. And I found that they do not support that the Claimant had functional limitations that were severe as of December 31, 2014.

[26] I note there are several medical assessments and observations dated in 2016 and going forward that support the Claimant began experiencing new medical conditions; however, they did not exist on or before December 31, 2014.¹⁶

The Claimant has not followed medical advice

[27] To receive a disability pension, a person must follow medical advice.¹⁷ 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.¹⁸

[28] I must now consider if following medical advice might have affected the Claimant's disability. I find the medical advice might have made a difference to the Claimant's disability.

[29] On October 8, 2014, Dr. Bajzak reported that on at least the last couple of occasions in the past the appellant had been counselled regarding treatment for interstitial cystitis. This was in the form of Elmiron and Amitriptyline as well as an antihistamine. However, she has never elected to take the medication. The last time she had seen her was approximately one year ago. The appointment today (October 8, 2014) she presents for a repeat bladder installation because she feels her pain is under poor control and she finds the installations have provided her with significant and lasting relief. She says she is having increasing problems with abdominal bloating and left quadrant pain. She is concerned the pain is related to endometriosis involving the bowel. In the past, she has described episodes of dysuria that are suspicious of dietary triggers.

¹⁵ GD2-11

¹⁶ GD2-173 Dr. Mathieson report of June 15, 2017, regarding anal surgery; GD2-179 to GD2-180, Dr. Carpentier report of January 10, 2018, regarding bowel issues;

¹⁷ The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

¹⁸ The Federal Court of Appeal said this in *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

Discussed diet as in the past. There was further discussion about her painful bladder. They talked about the controversies regarding diagnosis and treatment. Pathophysiology of the disease as well and the rationale for different treatment options. Dr. Bajzak says, in conclusion, the Claimant did not want to try some therapy at this point. She was given a prescription for Elmiron (for the sake of compliance) and amitriptyline and advised to start an over-the-counter antihistamine and once again gave her information on the interstitial cystitis diet. They had a discussion on the indications for each medication and potential side effects. Dr. Bajzak provided the Claimant with her card and advised to call if she had any difficulties between now and her next visit. The Claimant says she is planning for endometriosis excision within the year. She advised the Claimant it was recommended trying to control her bladder symptoms first and then make the decision. And if there were a concern with bowel involvement, a preoperative MRI would help with surgical planning. She is waiting for a full chronic pelvic pain assessment. At her initial assessment, she had some features of irritable bowel so she was given a questionnaire regarding the ROME criteria to which she was negative. A return appointment was booked for February 2015.¹⁹

[30] The medical evidence from Dr. Bajzak, prior to December 31, 2014, shows the Claimant did not follow medical advice. I asked the Claimant why she did not and she said it was because she did not trust the doctors. She says she has bags and bags of prescriptions she has filled and not taken. She says that she fills the prescriptions and when she gets home and reads the side effects, she decides not to take them.

[31] The Claimant told me that she did not care for Dr. Blundell (who was her primary care giver for many years) and she was happy she was gone. However, when I asked her about Dr. Bajzak, she replied that she loved her and that she has been wonderful.

[32] I find that Dr. Bajzak notes are quite thorough and that sometime in 2013, she began treating the Claimant. It would appear that at that time and the subsequent visit on October 8, 2014, she discussed and offered the Claimant treatment options. However, the Claimant either refused to take them or was not interested in trying them. But the evidence shows the Claimant found relief from other treatments Dr. Bajzak provided. Especially when after her first visit

¹⁹ GD2-116 to GD2-117

(about a year prior) she received bladder instillation treatments that appear were successful and provided the Claimant with relief.

[33] The Claimant told me that she had a good relationship with Dr. Bajzak and success with other treatments from her. Therefore I do not accept the Claimant's reason that she did not attempt the treatments based on trust to be reasonable.

[34] The evidence of a medical report shows that the Claimant did not follow the treatment that had been recommended at her October 2014 appointment. On April 8, 2015, Dr. Bajzak reported the Claimant was seen for a follow-up. She has been counselled on several occasions regarding treatment for interstitial cystitis in the form of Elmiron, Amitriptyline as well as an antihistamine but again she has not started any medical management. The Claimant told the doctor that she did not start the medication for her bladder due to concerns about side effects and if it had an affect her work performance. Then agreed she will start it now as she is on employment insurance.

[35] I do not accept that the Claimant's did not take the recommended medication because she was worried about the side effects reasonable. I find Dr. Bajzak's note show that she had a discussion on the indications for each medication and potential side effects. Dr. Bajzak provided the Claimant with her card and advised to call if she had any difficulties between now and her next visit.²⁰

[36] I find the Claimant was given a prescription at that time and a discussion on the side effects. She was also encouraged to call the doctor if she had any issues before her next visit. Therefore, I find it would have been reasonable for the Claimant to take the medical recommendation from Dr. Bajzak.

[37] I find that Dr. Bajzak's notes show there were treatments available. I find on the balance of probabilities and based on Dr. Bajzak's recommendations that the Claimant would benefit, however, without trying she will never know.

²⁰ GD2-116 to GD2-117

[38] Dr. Bajzak's notes indicate the Claimant continued to choose not to follow recommended treatments even after December 31, 2014. The Claimant testified at the hearing that she has been offered other therapies including surgery but it remains her decision not to go that route. Therefore, I find that further treatment options remain.

[39] I find that although the Claimant had limitations regarding her stage 4 endometriosis, irritable bowel syndrome (IBS) interstitial cystitis (chronic bladder) that existed by December 31, 2014; the evidence supports that these conditions or any related symptoms impacted her functional ability on or before December 31, 2014.

[40] On October 28, 2020, Dr. Bajzak, the Claimant's gynecologist wrote that she has followed her for several years for advanced stage endometriosis and chronic pelvic pain. She says that as other chronic conditions, management rather than a cure is the realistic goal. In the case of the Claimant, the goals of therapeutic management are to reduce the impact on that the chronic pain has on her quality of life and improve her daily functioning. At the time of writing, she says that the Claimant is currently stable with chronic pain and it is very unlikely that she will significantly improve from her current level of pain and function.²¹

[41] I considered Dr. Bajzak's report at the time of writing and reflects on the Claimant's current condition. However, it does not support that the Claimant's condition was severe as of December 31, 2014.

[42] When I am deciding if a disability is severe, I sometimes have to think about a person's age, level of education, language ability, and past work and life experience. This allows a realistic assessment of their work capacity.²² I do not have to do that here because the Claimant did not follow medical advice and did not give a reasonable explanation for not following the advice. This means she did not prove her disability was severe by December 31, 2014.²³

²¹ GD4-1

²² The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

²³ The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

Conclusion

[43] I find the Claimant is not eligible for a CPP disability pension because her disability is not severe. Because I found the disability is not severe, I did not have to consider if it is prolonged.

[44] This means the appeal is dismissed.

Teresa Jaenen
Member, General Division – Income Security Section