



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AJ v Minister of Employment and Social Development*, 2021 SST 416

Tribunal File Number: GP-21-41

BETWEEN:

A. J.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Teleconference hearing on: June 3, 2021

Date of decision: June 9, 2021

DECISION

[1] The Claimant is not entitled to a *Canada Pension Plan* (CPP) disability pension.

OVERVIEW

[2] The Claimant was 39 years old when he applied for a CPP disability pension in February 2020. He worked as a hotel manager. He stated that he had been unable to work since March 2015 because of multiple sclerosis.¹ The Minister denied the application initially and upon reconsideration. The Claimant appealed to the Social Security Tribunal.

[3] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2013. This date is based on his contributions to the CPP.²

[4] 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.⁴

[5] The Minister acknowledges that the Claimant had limitations when he applied for CPP disability. However, its position is that the evidence does not establish that he was disabled by the end of December 2013, when he last qualified for CPP disability.

PRELIMINARY MATTERS

[6] At the outset of the hearing, I explained to the Claimant the significance of his December 2013 MQP. I told him that although he may now be disabled, to qualify for CPP disability he has to establish that he was disabled by December 31, 2013. I told him that he would have to provide objective medical evidence at the time of his MQP. I also told him that, if he wished, I would adjourn the hearing so he could provide additional medical evidence. The Claimant wanted to proceed with the hearing and did not want an adjournment.

¹ GD2R-40

² 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 at GDR-56.

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.

ISSUES

1. Did the Claimant's medical conditions result in his being incapable regularly of pursuing any substantially gainful employment by December 31, 2013?
2. If so, was his disability likely to be long continued and of indefinite duration by that date?

ANALYSIS

[7] I must focus on the Claimant's condition as of the end of December 2013.

[8] The CPP is a social insurance regime based on contributions. Under the CPP, the Claimant is covered only for conditions that became severe on or before his MQP. He is not covered for conditions that became severe afterwards.

[9] The Claimant stated that he has been suffering since 2009. During 2010 and 2011, he was always tired and fatigued – but he could not figure out what was wrong with him. His symptoms started getting worse. In his application, he stated that he last worked in November 2015. He was overseeing a management company that managed his hotel.⁵ In his appeal, he changed his position. He stated that he stopped working in late 2013.⁶ At the hearing, he repeated that he was no longer able to work by the end of December 2013. He suffered from “brain fog” and memory problems. His gait was unstable. He suffered from vertigo. He was falling frequently. He recorded that he had stopped working in November 2015 on his application because that was when he sold the hotel.

[10] Federal Court decisions have stated that, in order to succeed, a claimant must provide objective medical evidence of their disability at the time of their MQP. The Federal Court has also stated that medical evidence dated after the MQP is irrelevant when a claimant fails to prove that they suffered from a severe disability prior to the MQP.⁷

⁵ GD2R-49

⁶ GD1-5

⁷ *Canada (A.G.) v. Dean*, 2020 FC 206, citing *Warren v. Canada (A.G.)*, 2008 FCA 377; *Gilroy v. Canada (A.G.)*, 2008 FCA 116; and *Canada (A.G.) v. Hoffman*, 2015 FC 1348; and CPP Regulations: *Attorney General of Canada v Angell*, 2020 FC 1093, para 40

[11] There is no medical evidence that speaks to the Claimant's condition as of the MQP. In view of this, he cannot establish a severe disability in accordance with the CPP requirements.

[12] The Claimant testified that in 2014, Dr. Soumbasis, gait specialist, thought he had multiple sclerosis and recommended that he have an MRI. The Claimant arranged to have the MRI done privately in Calgary. Neither a report from Dr. Soumbasis nor the 2014 MRI is in the file. This medical documentation might have been helpful in assessing the Claimant's condition as of the end of December 2013.

[13] The Claimant also testified that in 2015, Dr. Riley, a neurologist in New York, diagnosed him with multiple sclerosis. There is no report from Dr. Riley in the hearing file. After this, he started to see Dr. Kosh, a neurologist. Dr. Kosh refused to continue treating him because he disagreed with his undergoing a bone marrow transplant in Moscow in September 2015. Since then another neurologist, Dr. Alkhanai, has treated him. There is no report from Dr. Kosh or Dr. Alkhanai in the hearing file.

[14] The Claimant relies on Dr. Sahni's February 2020 CPP medical report.⁸⁸ Dr. Sahni diagnosed relapsing multiple sclerosis. He recorded numerous functional limitations including fatigue, muscle balance issues, falls, memory issues, tremors, and speech impairment. He stated that the Claimant's condition was progressing and that he already suffered from permanent disabilities. The Claimant relies on Dr. Sahni's statement that the Claimant's symptoms started in 2013 – 2014. However, Dr. Sahni also stated that he did not start treating the Claimant for his primary medical condition until 2015.

[15] Although the Claimant may have had some symptoms as of December 2013, Dr. Sahni's report was more than six years after the MQP. He did not state that the Claimant's symptoms had progressed to severe by that time. If they had, it makes no sense that he did not start to treat him for those symptoms until 2015. Significantly, the Claimant did not provide any office notes or other medical records from Dr. Sahni around the December 2013 MQP. Although Dr. Sahni's report speaks to the Claimant's condition as of the February 2020 application, it does not speak to his condition as of the MQP.

⁸⁸ GD2R-14 to 20

[16] The Claimant has also provided a December 2019 report from Dr. McGowan, physiatrist, as well as consultation notes dated November 2015, December 2016, and December 2018.⁹ Dr. McGowan did not start treating the Claimant until November 2015. He did not “go through his history in great detail.” In December 2016, Dr. McGowan stated that the Claimant was managing fairly well. Although Dr. McGowan’s report and consultation notes speak to the Claimant’s condition starting in November 2015, they do not speak to his condition as of the MQP.

[17] The only other medical document in the hearing file is a MRI of the Claimant’s brain, thoracic spine, and cervical spine in December 2019. This was six years after the December 2013 MQP. It does not speak to his condition as of that time.

[18] Since there is no medical evidence as of the MQP, it is not necessary for me to apply the “real world” approach.¹⁰

[19] The Claimant has failed to establish that it is more likely than not that he suffers from a severe disability in accordance with the CPP requirements.

[20] Since he has failed to establish a severe disability, I do not need to make a determination on the prolonged criteria.

CONCLUSION

[21] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security

⁹ GD2R-22 to 25

¹⁰ *Giannaros v. Canada (Minister of Social Development)*, 2005 FCA 187