



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CB v Minister of Employment and Social Development*, 2021 SST 425

Tribunal File Number: GP-20-1089

BETWEEN:

C. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Gerry McCarthy

Teleconference hearing on: June 8, 2021

Date of decision: June 9, 2021

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of April 2019.

OVERVIEW

[2] The Claimant stopped working in the dialysis unit with “Alberta Health Services” as a service worker in January 2018 owing to her medical condition. The Claimant’s employer (“Alberta Health Services”) advised the Claimant in September 2020 that due to reports provided by her private insurer she was unable to return to work and her employment was terminated. The Claimant has not worked at any employment since January 2018.

[3] The Minister received the Claimant’s application for the disability pension on March 3, 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, epilepsy, depression, and functional limitations was credible because her statements were consistent and forthright. Specifically, the Claimant testified that she used a walker and could not perform basic household tasks like cleaning. The Claimant explained that her daughter assisted with numerous household tasks on a regular basis, because she could not bend over. Furthermore, the Claimant explained

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

that her hip pain was chronic and had not improved even with recent surgery. The Claimant also testified that her tremor had become worse. I realize the Minister submitted that given the Claimant's age, education, and work experience they expected she would have been able to re-train or perform alternate work in December 2019. However, I place more weight on the Claimant's testimony that her chronic pain, tremor, and functional limitations prevented her from re-training or performing sedentary employment by her MQP date.

[14] Second: There are medical reports on file that support the Claimant could not work by her MQP date. For example, Dr. Zayani reported in December 2018 that the Claimant was unable to work due to an uncontrolled epilepsy attack and functional limitations in her lower back, hip, and legs (GD2-99). I realize the Minister submitted that the medical evidence did not support the Claimant was unable to work in December 2019. Nevertheless, I place considerable weight on Dr. Zayani's report because his assessment was forthright and took into account the Claimant's continuing problem with epilepsy.

[15] Third: The totality of the Claimant's condition must be considered. Specifically, the Claimant suffered from epilepsy and chronic pain. However, the Claimant further suffered from depression, a Baker cyst in her knees, a worsening tremor, and scoliosis in her back.

[16] Fourth: The Claimant has followed treatment recommendations. For example, the Claimant takes medication for epilepsy (Topamax) and Tramacet for pain. The Claimant has also participated in rehabilitation and attended counselling for depression. I realize the Minister submitted that a rehabilitation status report indicated the Claimant reported an overall significant reduction in her symptoms. However, the Claimant testified that during the rehabilitation program she fractured her toe. The Claimant also testified that her hip pain had not improved even with surgery in February 2021.

Additional Submissions from the Minister

[17] I realize the Minister submitted that it was reasonable to expect the Claimant would obtain some improvement because of receiving treatment for her hip condition and participating in rehabilitation. However, I place more weight on the Claimant's testimony that her hip condition had not improved and the rehabilitation program did not help her functional limitations.

[18] I further realize the Minister submitted that the Claimant's fibromyalgia diagnosis in March 2020 did not support she had significant limitations that would have affected her ability to work in December 2019. Nevertheless, I place more weight on the Claimant's testimony that her chronic pain did affect her ability to work prior in December 2019 because her statements were forthright and supported by medical reports.

Prolonged disability

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

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

[20] First: Dr. Enenajor wrote in May 2021 that that owing to her multiple medical condition and surgical intervention, the Claimant was "unlikely to recover fully well" at this time or work in any capacity in the nearest future (GD9-4).

[21] Second: The Claimant's oral testimony on her chronic pain and functional limitations persuaded me her disability was long continued and of indefinite duration.

CONCLUSION

[22] The Claimant had a severe and prolonged disability in December 2018 when Dr. Zayani reported the Claimant was unable to work and the Claimant testified she could not work. Payments start four-months after the date of disability, as of April 2019⁶.

[23] The appeal is allowed.

Gerry McCarthy
Member, General Division - Income Security

⁶ Section 69 *Canada Pension Plan*