



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *RN v Minister of Employment and Social Development*, 2021 SST 417

Tribunal File Number: GP-20-660

BETWEEN:

**R. N.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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

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Decision by: Jackie Laidlaw

Claimant represented by: Megan Niccolls

Videoconference hearing on: June 3, 2021

Date of decision: June 15, 2021

## Decision

[1] The Claimant, R. N., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of September 2018. This decision explains why I am allowing the appeal.

## Overview

[2] The Claimant is a 53-year-old gentleman who has severe liver failure. The symptoms of his liver disease were present for many years prior to a definitive diagnosis of end-stage liver disease in May 2019. At the actual time of the hearing, the Claimant had just been informed he must get to the hospital to receive a new liver. He stopped working in December 2015 and noted he was unable to work as of September 2015 because of the symptoms of his disease. He has not worked since then, but would like to do so once he receives a new liver. His wife was present at the hearing and gave testimony as well.

[3] The Claimant applied for a CPP disability pension on August 28, 2019. The Minister of Employment and Social Development (Minister) refused his application because though he had ongoing symptoms since 2014, he did not see his family physician for three years. 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, 2017. This date is based on his contributions to the CPP.<sup>1</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>2</sup> It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>3</sup>

[6] The Claimant has to prove it is more likely than not he is disabled.

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<sup>1</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 subsection 44(2) of the *Canada Pension Plan*. The Claimant's CPP contributions are on GD 2 51.

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

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

## **Reasons for my decision**

[7] I find the Claimant has a disability that was severe and prolonged by December 31, 2017. I reached this decision by considering the following issues.

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

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

[8] The Claimant has end-stage liver disease. My focus though is not on the Claimant's diagnosis.<sup>4</sup> I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>5</sup>

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

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

[10] The Claimant says he has limitations from his medical conditions that affect his ability to work in the following ways.

- a) He began to have tremors in his hands, neck and shoulders as well as fluttering eyes. When he started having full body shakes at work he found it impossible to pick up items, or fix machinery.
- b) His concentration started failing and he struggles with cognition.
- c) Since leaving work in 2015, he finds he is not reliable. The tremors are constant and daily, and sometime he will stay in bed for two days. He would not be a reliable employee.

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<sup>4</sup> The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

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

[11] The Claimant must provide objective medical evidence that shows his limitations affected his ability to work by December 31, 2017.<sup>6</sup> The medical evidence supports what the Claimant says.

[12] All of the evidence is clear that the Claimant had the symptoms since 2014. According to his family physician, Dr. Jorgensen, his symptoms began in late 2013 or early 2014<sup>7</sup>. He saw an internal medicine specialist, Dr. Tejinder in February 2015<sup>8</sup> for his tremors. Dr. Tejinder suspected it was due to alcohol abuse, a common mistake as noted by the Liver Foundation<sup>9</sup>.

[13] The Minister has denied the claim because after this point, in 2014, he did not see Dr. Jorgensen again until 2018. The Claimant does not dispute that he did consult much with his family physician. Instead, he continued to find the cause of his symptoms through a variety of avenues. He went to a kinesiologist in 2015 for balance, fatigue and lower extremity weakness, as noted by Dr. Jorgensen. The Claimant testified that he went to a physical therapist, a homeopathic doctor, an ophthalmologist because he thought it was a parasite in his eye, and an allergist. He tried special teas to investigate the problem. He changed his diet but the disease got worse. He was taking prednisone for suspected gout, as prescribed by Dr. Jorgensen<sup>10</sup>.

[14] I disagree with the Minister and find the notes show the Claimant did see Dr. Jorgensen in 2015 and 2016. The Claimant also saw a number of other specialists and attempted numerous treatments for his symptoms, at that time of an unknown origin.

[15] Since 2014, as a result of severe liver disease, he has had hepatic encephalopathy, which is a decline in brain function.

[16] The Claimant went to a walk in clinic three times in 2018 and was told he had the flu. He demonstrated signs of ascite, jaundice and weakness, which are all signs of liver failure. By May

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<sup>6</sup> The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377.

<sup>7</sup> GD 2 9 Dr. Jorgensen, December 4, 2019 also GD 2 60 clinical notes from Dr. Jorgensen outlining tremors in February 2015, elevated liver enzymes in January 2015, tremors in December 2014 and abdominal pains in December 2013

<sup>8</sup> GD 2 66 Dr. Tejinder, internal medicine specialist February 13, 2015

<sup>9</sup> GD 8 March 22, 2021 letter from the Claimant to the Tribunal references many reports from the Liver Foundation.

<sup>10</sup> GD 2 90-92 notes of Dr. Jorgensen

2019, he went to emergency for hepatic encephalopathy and ascites.<sup>11</sup> His stomach had blown up to look pregnant.

[17] Once he got to the hospital, he was finally diagnosed with cirrhosis of the liver by gastroenterologist, Dr. Bhanji<sup>12</sup>. His muscle tissue was wasting and he had lost 60 lbs. Dr. Bhanji explained in a letter dated June 3, 2020 supporting his CPP disability application that he had signs of decompensation by February 2019, and it was likely he had had the disease for at least 10 years.<sup>13</sup>

[18] Dr. Bhanji indicated that the Claimant is unable to work due to his illness. He also noted that should he receive a liver transplant, he would require time following the transplant before he can return to work.

[19] I find it reasonable that the Claimant, who has had liver disease since 2010, would have been unable to work by December 2015 due to his uncontrollable body tremors and decline in his brain function. His condition has only deteriorated since then, and was finally diagnosed almost four years later.

[20] The evidence shows the Claimant's severe liver disease prevented him from working by December 31, 2017.

**- The Claimant has followed medical advice**

[21] To receive a disability pension, a person must follow medical advice.<sup>14</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>15</sup>

[22] The Claimant has followed medical advice.<sup>16</sup> Once he was diagnosed, he went through a series of assessments in August 2019 for a liver transplant and was put on the liver transplant list

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<sup>11</sup> *ibid*

<sup>12</sup> GD 2 128 Dr. Ghanji June 13, 2019

<sup>13</sup> GD 4-2 Dr. Bhanji June 3, 2020

<sup>14</sup> The Federal Court of Appeal said this in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

<sup>15</sup> The Federal Court of Appeal said this in *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>16</sup> In *Sharma v. Canada (Attorney General)*, 2018 FCA 48, the Federal Court explains the requirement to follow medical advice.

in September 2019. Unfortunately, as he waited and his condition worsened, COVID-19 stalled all surgery. He has continued to watch his health to be ready for when he gets a call for a liver.

[23] In October 2020, he received a call to be the backup liver recipient. A 'back up' is a person who will receive the liver if the operation did not work for the primary intended recipient. On the day of the hearing, he was called to be the primary recipient. As there is a primary and a backup, it is evidence that surgery may not be successful. If it is, which I sincerely hope for R. N.'s sake it is, then he will require a period of recovery, as noted by Dr. Bhanji.

[24] 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>17</sup>

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

[25] 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>18</sup> These factors help me decide if the Claimant has any ability to work in the real world.

[26] I find that the Claimant cannot work in the real world. He is 53, and was 50 years-old at the time of his MQP. He was in a new career as a photocopy machine technologist from July 2014 until he stopped working in December 2015. He has a college diploma as a machinist, so the training for that new job would not be onerous. I accept that the Claimant has the ability to retrain. He has worked consistently since he was 16. He enjoys working. He wants to return to work once he gets a transplant and heals. Unfortunately, there is no time line to his recovery.

[27] He was unable to do a job, which he successfully retrained for at age 50, due to his condition. If all factors are positive after surgery, it will reasonably be a few more years of recovery before he can return to work. By that point, he will be closer to retirement age, and will

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<sup>17</sup> The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>18</sup> The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

have been out of the workforce for many years. He has already been out of the workforce for over five years. It is unlikely he will find suitable employment because of his age.

[28] I find that the Claimant's disability was severe by December 31, 2017.

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

[29] The Claimant's liver disease began around 2010 and has continued since then.<sup>19</sup>

[30] While I recognize he was supposed to have a liver transplant on the date of the hearing, this is well beyond his MQP. There is no evidence that he had the surgery, or that it was successful.

[31] The Claimant's disability was likely to be long continued and of indefinite duration or likely to result in death. I find his disability was prolonged by December 31, 2017.

### **When payment begins**

[32] The Claimant had a severe and prolonged disability in September 2015, the date he stated he was unable to work. 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>20</sup> The Minister received the Claimant's application in August 2019. That means he is considered to have become disabled in May 2018. Payment of his pension starts as of September 2018.

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<sup>19</sup> In the decision *Canada (Attorney General) v. Angell*, 2020 FC 1093, the Federal Court said a person has to 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>20</sup> Section 69 of the *Canada Pension Plan* sets out this rule.

## **Conclusion**

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

[34] The appeal is allowed.

Jackie Laidlaw

Member, General Division – Income Security Section