Citation: *MA v Minister of Employment and Social Development*, 2021 SST 445

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	M. A. (Claimant)
Representative:	Self-represented
Respondent:	Minister of Employment and Social Development (Minister)
Representative:	Viola Herbert

Decision under appeal:	General Division decision dated February 2, 2021 (GP-20-227)

Tribunal member:	Neil Nawaz
Type of hearing:	Teleconference
Hearing date:	August 6, 2021
Hearing participants:	Claimant Minister's representative
Decision date:	August 26, 2021
File number:	AD-21-147

Decision

[1] The appeal is dismissed.

Overview

[2] The Claimant is a 66-year-old former computer programmer. He was laid off in 2011 and has not worked since. In September 2013, he enrolled in a government-sponsored retraining program. The following month, he went to the emergency department complaining of weakness, dizziness, and vomiting. He was released the next day with no definite diagnosis. He later withdrew from his retraining program without completing any courses.

[3] The Claimant has applied for Canada Pension Plan (CPP) disability benefits twice. In January 2015, he claimed that he could no longer work because he had suffered a stroke. In December 2018, he again cited stroke symptoms, specifically cognitive problems and weakness in his arms and legs.

[4] The Minister turned down both applications. In its view, the Claimant had not shown that he had a severe and prolonged disability on December 31, 2013, the last time he had CPP disability coverage.[1]

[5] The Claimant appealed the Minister's more recent refusal to the General Division of the Social Security Tribunal. The General Division held a hearing by teleconference and, in a decision dated February 2, 2021, dismissed the appeal. The General Division reviewed the available medical evidence and found that none of the Claimant's health conditions prevented him from working during the coverage period and continuously thereafter. The General Division also noted inconsistencies between reports prepared for the Claimant's two disability applications by his family doctor.

[1] CPP disability coverage is established by working and contributing to the Canada Pension Plan. The period in which a claimant last had coverage for CPP disability benefits is formally known as the minimum qualifying period.

[6] On April 24, 2021, the Claimant requested leave to appeal from the Tribunal's Appeal Division. The Claimant alleged that the General Division had made various errors in coming to its decision, among them:

- The General Division noted that the Claimant's medical file contained a gap of 2½ years. The Claimant maintains that he continued to regularly see his family doctor during that period and that the General Division should have requested Dr. Carbyn's records for the missing period.
- The General Division found no medical evidence that the Claimant had suffered a stroke. The Claimant alleges that the General Division ignored his testimony that his treatment providers kept incomplete records and gave him substandard care.
- The General Division found that it was the Claimant's responsibility to find a capable doctor to report on his condition. The Claimant argues that the General Division ignored the fact that he lives in Nova Scotia, a province with a shortage of qualified mental health professionals.
- The General Division found that the Claimant was suited for "sedentary computer-related work." The Claimant alleges that the General Division disregarded the fact that he had to withdraw from his retraining program after only two months because of cognitive difficulties.

[7] Earlier this year, I granted the Claimant permission to proceed because I thought his appeal has a reasonable chance of success. Last month, I held a hearing by teleconference to discuss the Claimant's allegations in full.

[8] Now that I have heard submissions from both parties, I have concluded that the Claimant's allegations do not justify overturning the General Division's decision.

Issues

[9] There are only four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important factual error.[2]

[10] My job is to determine whether any of the Claimant's allegations fall into one or more of the permitted grounds of appeal and, if so, whether any of them have merit

Analysis

The General Division was under no obligation to request medical records

[11] The General Division based its decision, in part, on the absence in the hearing file of any medical records from April 2016 to October 2018. The General Division took this 2½-year gap as evidence that, even if the Claimant had had a severe and prolonged disability as of December 31, 2013, he ceased to have one after that date. The Claimant insists that he never stopped seeing Dr. Carbyn and that the General Division should have requested any missing records.

[12] I don't see any merit in this argument.

[13] It is important to keep in mind that the burden of proof lies with the person claiming a CPP disability pension.[3] The Claimant had to show that he was entitled to the disability pension, and neither the Minister or the General Division were under any obligation to prove otherwise. It was up to the Claimant to present the best possible evidence in support of his claim. In doing so, he owed it to himself to identify potential weaknesses in that evidence and, where possible, address those weaknesses. By the time the Claimant appeared before the General Division, he had had more than two years to gather evidence showing that he had been continuously disabled for the previous seven years. He knew, or should have known, that an extended gap in his

[2] *Department of Employment and Social Development Act* (DESDA), s 58(1).
[3] *De Carolis v Canada (Attorney General),* 2013 FC 366.

medical records would raise questions about the severity and/or longevity of his health problems.

[14] The General Division was not required to actively seek out evidence supporting the Claimant's case. It cannot be blamed for relying on only the material that was made available to it.

The General Division did not ignore the Claimant's testimony that his treatment providers gave him substandard care

[15] The Claimant has always maintained that he suffered a stroke in October 2013. He claims that emergency personnel failed to adequately document his symptoms. He says that none of his doctors has ever recognized the seriousness of his condition.

[16] I don't find this argument persuasive.

[17] A tribunal presumed to have considered all the evidence before it.[4] However, in this case, it is not necessary to make such a presumption, because the General Division's decision squarely addressed the Claimant's accusations of substandard care:

> In support of his allegations, the Claimant provided links to online reviews of Dartmouth General Hospital and Dr. MacDougall. However, I am not prepared to rely on unverified online reviews to assess the credibility of doctors. Nor does the involvement of specialists-in-training raise any concerns, as a specialist supervised their work. I see nothing in the documents to justify ignoring any of the impugned evidence, particularly given my concerns about the Claimant's retrospective evidence. I acknowledge that the Claimant may not agree with the medical evidence. However, this does not mean I can disregard it.[5]

[18] In its role as finder of fact, the General Division was entitled to weigh the evidence and draw reasoned conclusions from it. In the end, the General Division preferred the documentary medical evidence to the Claimant's testimony. I see nothing to suggest that it made an error in doing so.

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[4] *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[5] General Division decision, para 31.

The General Division made no error in finding that it was the Claimant's responsibility to find a capable doctor

[19] The General Division also suggested that it was up to the Claimant to seek out competent care if he was dissatisfied with the way in which his doctors had managed his health condition. The Claimant argues that the General Division ignored the fact that he lives in Nova Scotia, a province with a shortage of qualified mental health professionals.

[20] Again, I don't see how the General Division erred here. As the General Division rightly noted, the burden of proving disability lies with the claimant. This rule makes no allowances for the real or perceived disparity in the availability of medical resources across regions. Nova Scotia may indeed have a shortage of mental health professionals, but the Claimant has nevertheless been examined by at least two of them: Dr. MacDougall, a neurologist, and Dr. MacKnight, a specialist in geriatric medicine who runs a memory clinic.[6] The Claimant provided no compelling evidence to suggest that these specialists were incompetent. His real concern with their opinions is that he disagrees with them.

[21] As noted above, the General Division was entitled to make its decision based on the information made available to it. It was under no obligation to speculate how much more compelling the Claimant's case might have been if he had somehow had access to "better" treatment providers.

The General Division did not disregard the Claimant's reasons for quitting retraining

[22] The Claimant lost his job as a computer programmer in 2011 and enrolled in a community college retraining program in September 2013. The Claimant alleges that the General Division ignored why he quit the program—his memory was impaired and he could no longer concentrate on his studies.

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[6] See reports dated February 3, 2014 by Dr. Alexander MacDougall (GD2-176) and Dr. Chris McKnight, February 24, 2016 (GD2-230).

[23] I carefully reviewed the Claimant's submissions on this point but was ultimately unable to agree with them.

[24] When I look at the General Division's decision, I see that it dismissed the Claimant's appeal for a number of reasons:

- There was no medical evidence indicating that the Claimant had ever had a stroke;
- There was evidence that he recovered from the episodes that sent him to emergency in late 2013; and
- There was no evidence that he received treatment between April 2016 and October 2018.

[25] However, I don't think that the General Division attached any great significance to either the Claimant's enrollment in the retraining program or the reasons he left it:

> The Claimant clearly had an upsetting event in October 2013 when he had to go to the emergency department. Around this time, **he had anxiety related to school stress.** Dr. Carbyn wrote a doctor's note on November 1, 2013. This note advised moving from full-time to part-time status at college, **due to stress**. Soon after, it appears the Claimant withdrew from college altogether.[7]

[26] This passage indicates that the General Division was aware of the Claimant's reasons for leaving school. However, the General Division attributed the Claimant's withdrawal to psychological issues rather than cognitive deficits. My review of the file confirms this finding: Dr. Carbyn's notes during this period relay the Claimant's "stress," "anxiety," and "worry," but they don't say anything about loss of memory or focus.[8] As the General Division noted, Dr. Carbyn did not recommend that the Claimant withdraw from school completely—only that he reduce his hours.

[27] A case called *Inclima* requires disability claimants with at least some work capacity to make reasonable efforts to pursue alternative employment and to show that

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[7] General Division decision, para 17.
[8] Dr. Carbyn's office notes, October 18, 2013 to December 16, 2013, GD2-294–95.

those efforts have been unsuccessful because of their health condition.[9] The General Division concluded that, despite his health issues, the Claimant still had the ability to resume retraining or attempt some other type of job:

> My findings are problematic for the Claimant, because he has not pursued or applied for any work since leaving school in 2013. In fact, in December 2018, he suggests that he did not pursue work or school because he did not want to suffer another stroke.[10]

[28] The General Division looked at the Claimant's activities after he left his retraining program and decided that he had not fulfilled his obligation to pursue alternative work. I see no indication that the General Division committed either an error of fact or law incoming to this conclusion.

Conclusion

[29] For the above reasons, the Claimant has not demonstrated to me that the General Division committed an error that falls within the permitted grounds of appeal.

[30] The appeal is therefore dismissed.

Member, Appeal Division

[9] *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[10] General Division decision, para 24.