



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AR v Minister of Employment and Social Development*, 2021 SST 507

Tribunal File Number: GP-20-604

BETWEEN:

A. R.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Jackie Laidlaw

Claimant represented by: Chantal Yang

Teleconference hearing on: July 8, 2021

Date of decision ~~July 9, 2021~~

Date of Corrigendum: ~~August 6, 2021~~

Date of Second Corrigendum: September 15, 2021

Decision

[1] The Claimant, A. R., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of ~~July 2017~~ **August 2017**. This decision explains why I am allowing the appeal.

Overview

[2] The Claimant is a 51-year-old man who has working in the mining industry since age 18. In 2016, his gastrointestinal problems worsened and his family physician told him to stop working. He went through a series of tests and was diagnosed with Crohn's disease. He has been unable to manage his condition properly since then. He has not returned to any work since June 2016.

[3] The Claimant applied for a CPP disability pension on ~~June 12, 2018~~. **July 12, 2018**. The Minister of Employment and Social Development (Minister) refused his application because the evidence shows the disease was in remission in November 2018, and he had improved in December 2019. As well, he has not attempted to look for, or perform any other job. 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, 2019. This date is based on his contributions to the CPP.¹

[5] The CPP defines "severe" and "prolonged". A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.² It is prolonged if it is likely to be long continued and of indefinite duration.³

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

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 GD 2-42.

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

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

- **The Claimant asked me to adjourn the hearing twice**

[7] The Claimant initially asked for an adjournment of one week to accommodate the representative. It was granted.

[8] At the hearing, the representative was present requesting another adjournment because the Claimant was currently ill with Crohn's, and she had not been able to prepare him for the hearing. I granted the request of an adjournment for two days.

Reasons for my decision

[9] I find the Claimant has a disability that was severe and prolonged by December 31, 2019. I reached this decision by considering the following issues.

- **The Claimant's disability was severe**
- **The Claimant's limitations do affect his ability to work**

[10] The Claimant has Crohn's disease. He also has abdominal pain, chronic diarrhea and anxiety. My focus though is not on the Claimant's diagnosis.⁴ I must focus on whether he had functional limitations that got in the way of him earning a living.⁵

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

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

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

- a) He has a lot of anxiety going anywhere, such as the grocery store and must be close to a washroom. It is an immediate reaction when the disease flares.
- b) He has frequent diarrhea eight to twelve times a day.

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

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

- c) He is bedridden for a few days once a month. This has been a regular occurrence since 2016 when he worked.
- d) He must visit the emergency room once a month if he cannot see a family doctor.

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

[13] The Claimant must provide objective medical evidence that shows his limitations affected his ability to work by December 31, 2019.⁶ The medical evidence supports what the Claimant says.

[14] The Claimant has had a history of bowel issues. He had two small bowel resections at age 15 in 1984 and later a perianal abscess in 2007. He has been seeing a gastroenterologist since 2007.⁷ In 2016, he stated his condition was at a peak and his family physician, Dr. Nada Bodruzic, sent him to gastroenterologist Dr. Bass. Dr. Bass confirmed recurrent Crohn's and recommended he start biologic therapy, which was treatment with Methotrexate, Remicade, Questran, Tylenol 3 and folic acid.⁸

[15] Dr. Bodruzic took the Claimant off work on July 7, 2016 due to Crohn's.⁹ She felt that with the biologic therapy there would be stabilization with continuing impairment¹⁰.

[16] The evidence shows that there was eventually a period of stabilization of the Crohn's in late 2018 and 2019, but that there may have been another bowel condition causing the symptoms that never stabilized. The Claimant had a continuing impairment.

[17] Dr. Bass increased the Remicade in October 2016 and reduced the Prednisone¹¹. It is widely accepted that a person cannot remain on Prednisone for long periods. The Claimant testified he continues to go on and off the drug and that it does help when he is taking it¹². By

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

⁷ GD 2 187 according to Dr. Bass, gastroenterologist June 22, 2016

⁸GD 2 187 Dr. Bass June 22, 2016; GD 2 186 Dr. Bass July 4, 2016 and GD 2 262 Dr. Bodruzic prescription list August 25, 2016

⁹ GD 2 266 July 7 2016 Dr. Bodruzic

¹⁰ GD 2 262 August 25, 2016

¹¹ GD 2 185 October 25, 2016 Dr. Bass

¹² It is also confirmed that his pain subsides with Prednisone in the report of Dr. Baath, gastroenterologist on October 3, 2019 at GD 2 60

January 2017¹³ he was somewhat improved however he still had cramps, diarrhea and excessive fatigue. By November 2017, he remained symptomatic despite the increase in Remicade.¹⁴

[18] The Minister has denied the claim in part because the Crohn's was in remission in 2018 and 2019. The Claimant does not dispute that the evidence shows his Crohn's was in remission, however, there is evidence of another bowel obstruction at the time, and the Claimant still had symptoms of chronic diarrhea, fatigue, and anxiety.

[19] In April 2018, a colonoscopy showed no active disease but a low-grade small bowel obstruction and a benign cyst of the liver.¹⁵ Dr. Bodruzic's medical report of July 2018 shows no improvement despite the Remicade, and opines he may need surgery.¹⁶ Dr. Bass again notes in November 2018 that there is no evidence of active inflammatory bowel disease and find the Crohn's was in remission, however, acknowledges that there is pain that he found may be irritable bowel syndrome (IBS).¹⁷

[20] At this point, the Claimant moved to Ontario from Alberta and found a new gastroenterologist, Dr. Baath, in July 2019. Dr. Baath also notes the Crohn's is in remission but was not convinced his symptoms were a Crohn's related flare. The Claimant's anxiety was out of control and Dr. Baath thought the pain and diarrhea might be due to anxiety or an episode of a partial bowel obstruction.¹⁸ It is clear that at the time of his MQP, the Claimant was still experiencing abdominal pain and watery diarrhea.¹⁹ The condition continued past his MQP with multiple episodes of abdominal pain, despite the negative objective findings for active inflammatory changes related to Crohn's.²⁰

[21] Currently the Claimant is in a holding position looking for a new family physician and a new gastroenterologist. His family physician, Dr. Muller, left his practice in April 2021. His last specialist, Dr. Reich, spoke to him on the phone in February 2021 and explained the outcome

¹³ GD 2 184 Dr. Bass January 17, 2017

¹⁴ GD 2 181 November 29, 2017 Dr. Bass

¹⁵ GD 2 180 Dr. Bass April 20, 2018 and GD 2 179 April 25, 2018 colonoscopy and GD 2175-178 CT scan July 20, 2018

¹⁶ GD 2 239 July 11, 2018

¹⁷ GD 2 173 Dr. Bass November 29, 2018

¹⁸ GD 2 60 October 3, 2019 Dr. Baath

¹⁹ GD 2 60 October 3, 2019 Dr. Baath; GD 3 6 Dr. Muller, family physician December 18, 2019

²⁰ August 18, 2020 family physician Dr. Muller

from his recent blood work and abdominal CT scan showed gallstones, diverticulitis and lesion on his liver. Nothing has been followed up as he awaits an appointment with a new gastroenterologist, Dr. Bignall, who will follow the Claimant for long-term use of Remicade.²¹

[22] While the evidence shows there is no sign of Crohn's disease, or that the disease is in remission, a number of specialists are still not in agreement as to the cause of the constant abdominal pain and diarrhea. I do not agree with the Minister that because his Crohn's was in remission he did not have a severe disability. He has a condition, yet to be determined, with symptoms that have remained consistent since 2016. His family physician took him off work due to these constant symptoms.

[23] The evidence shows the Claimant's diarrhea, abdominal pain and anxiety prevented him from working by June 2016 until his MQP of December 2019 and ongoing.

- The Claimant cannot work at his previous job

[24] As mentioned above, Dr. Bodruzic determined the Claimant could not work due to his symptoms in June 2016. The symptoms never resolved.

[25] The Claimant worked as a pit utility worker in the oil sands. He has worked in mining since he left high school in Grade 11. The jobs he has done over the many years in mining are all manual labour with no administrative tasks or customer care. He stated that his condition affected his work because he would have to take unscheduled, immediate washroom breaks requiring his work partner to pick up the slack. He had 8 to 12 bouts of diarrhea daily with severe abdominal pain. This has not changed. He would be bedridden for a few days a month, and would try and do this on his time off, though it was unpredictable. Because he worked away from home one week on, one week off, he had to be very conscious of the food he ate. He was also not allowed to take painkillers at work, so he was limited to Tylenol. He also tried to control his symptoms at work with Imodium and other over-the-counter drugs. As he eventually was put on Remicade, Methotrexate and Prednisone, three very powerful drugs, I find it reasonable that the Tylenol and Imodium would not have been much use.

²¹ GD 3 29 according to Dr. Reich, general surgeon, February 17, 2021

[26] I accept the Claimant was unable to work in the oil sands, or any mining job with his condition.

[27] 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.²²

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

[28] 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.²³ These factors help me decide if the Claimant has any ability to work in the real world.

[29] I find that the Claimant cannot work in the real world. He has only worked in mining and has no other skills. He is not computer literate. He quit school in Grade 11 and did not return years later to get his Grade 12 in order to get work when he moved to Alberta. He does not have the education, or any transferable skills that would allow him to find a suitable occupation.

[30] Because the Claimant cannot return to his usual form of work in mining, and is prevented from finding other gainful employment because of his education and lack of transferable skills, I find that the Claimant's disability was severe by December 31, 2019.

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

[31] The Claimant's condition began before 2016, has continued since then, and will more than likely continue indefinitely.²⁴

[32] The doctors are still trying to find the cause of his symptoms. Despite years of treatment, his condition has persisted.

²² The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

²³ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

²⁴ 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.

[33] Dr. Bodruzic found in 2016 that he would have a continuing impairment even with medication.²⁵

[34] The Claimant's disability was likely to be long continued and of indefinite duration. I find his disability was prolonged by December 31, 2019.

When payment begins

[35] The Claimant had a severe and prolonged disability in June 2016 when he stopped working on his doctor's recommendation. 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.²⁶ The Minister received the Claimant's application in ~~June 2018~~. **July 2018**. That means he is considered to have become disabled in ~~March 2017~~ **April 2017**. Payment of his pension starts as of ~~July 2017~~ **August 2017**.

Conclusion

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

[37] The appeal is allowed.

Jackie Laidlaw
Member, General Division – Income Security Section

²⁵ GD 2 262 August 25, 2016

²⁶ Section 69 of the *Canada Pension Plan* sets out this rule.