



Citation: *MM v Minister of Employment and Social Development*, 2021 SST 556

**Social Security Tribunal of Canada  
General Division – Income Security Section**

**Decision**

**Appellant: (Claimant)** M. M.  
**Respondent: (Minister)** Minister of Employment and Social Development

---

**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 30, 2021 (issued by  
Service Canada)

---

**Tribunal member:** Raymond Raphael  
**Type of hearing:** Questions and answers  
**Decision date:** September 10, 2021  
**File number:** GP-21-928

## DECISION

[1] I cannot consider whether the Claimant is disabled because the principle of *res judicata* (the matter has been decided) applies. A Tribunal Member has already decided that he does not meet the eligibility requirements for *Canada Pension Plan* (CPP) disability benefits. There are no special circumstances that would cause an injustice if *res judicata* were applied.

## OVERVIEW

[2] The Claimant applied for a CPP disability pension in November 2020. He last worked as a custodian at a school in September 2020.<sup>1</sup> He stated that he had been unable to work since April 2007 because of several conditions. These included several mental health disorders<sup>2</sup>, chronic obstructive pulmonary disease (COPD), osteoarthritis in all joints, type two diabetes, declining night vision, shrunken vessel syndrome, sleep apnea, chronic pain syndrome/fibromyalgia, failed carpal tunnel corrections, and a torn meniscus in his left knee.<sup>3</sup>

[3] For the Claimant to succeed, he must prove that it is more likely than not that he has a disability that was severe and prolonged by December 31, 2011. This date is based on his contributions to the CPP and the applicable Child Rearing Provisions (CRP).<sup>4</sup>

[4] The CPP defines “severe” and “prolonged”. A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.<sup>5</sup> It is prolonged if it is likely to be long continued and of indefinite duration.<sup>6</sup>

---

<sup>1</sup> GD2-38

<sup>2</sup> Anti-social personality disorder, paranoia bordering on schizophrenia, and complex post-traumatic stress disorder

<sup>3</sup> GD2-26, 37

<sup>4</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 CPP. The Claimant’s CPP contributions are at GD2-195. The applicable CRP years are at GD2-196.

<sup>5</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>6</sup> Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[5] The Minister denied the application initially and upon reconsideration on the ground that the Claimant's entitlement to CPP disability had already been decided by a June 2016 decision.<sup>7</sup> The Claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

### **FORM OF HEARING**

[6] I conducted a case conference on June 7, 2021. The Claimant and a representative for the Minister participated. The Claimant started to read a statement he had prepared. Unfortunately, he was not able to continue because he was overwhelmed by the stress of participating in the conference.

[7] I determined that this matter should proceed by questions and answers. This was because the Claimant's anxiety level was too high for him to participate in an oral hearing. The Claimant told Tribunal staff that he was agreeable to proceeding by questions and answers.

[8] I told the parties that I would initially deal with the issue as to whether *res judicata* applies. If I decided it applies, I would dismiss the appeal. If I decided it does not apply, I would decide the appeal based on the merits of the Claimant's disability claim.<sup>8</sup>

### **PRIOR PROCEEDINGS**

[9] This is the Claimant's third application for a CPP disability pension. A chronology of significant proceedings is as follows:

#### ***First application***

- The Claimant initially applied for CPP disability in July 2007. On that application, the last date the Claimant qualified for CPP disability (MQP) was December 31, 2008 (the 2008 MQP). The Minister denied his application both initially and on

---

<sup>7</sup> GD2-19, 12

<sup>8</sup> GD12: Report on Case Conference

reconsideration. The Claimant appealed to the Office of Commissioner of Review Tribunals (OCRT).<sup>9</sup>

- An OCRT Review Tribunal heard the Claimant's appeal on March 24, 2009. The Claimant and his wife attended the hearing in person. In May 2009, the Review Tribunal dismissed the appeal. It found that the Claimant had not established that he suffered from a severe and prolonged disability by the 2008 MQP.<sup>10</sup>
- In July 2009, the Pension Appeal Board refused the Claimant's application for leave to appeal the Review Tribunal decision.<sup>11</sup>

### ***Second application***

- The Claimant applied again for CPP disability in February 2013. On that application, his MQP was December 31, 2011 (the 2011 MQP). The Minister denied his application both initially and on reconsideration. The Claimant appealed to the Social Security Tribunal.
- A member of the General Division of the Tribunal heard the Claimant's appeal on June 20, 2016. The Claimant attended the appeal in person and testified. His wife attended as an observer.
- On June 30, 2016 the General Division member dismissed the Claimant's appeal. He found that the Claimant had not established a severe disability by the 2011 MQP; that he had unreasonably failed to follow recommended treatment; and that as of the hearing date he had the regular capacity to pursue a substantially gainful occupation.<sup>12</sup> The Claimant did not seek leave to appeal the General Division decision to the Appeal Division.

### ***Current application***

---

<sup>9</sup> The OCRT is the predecessor Tribunal to the Social Security Tribunal.

<sup>10</sup> Review Tribunal decision: GD2-482 to 489

<sup>11</sup> GD2-479

<sup>12</sup> General Division decision: GD2-143 to 162

- The Claimant made the current application in November 2020. His MQP on this application is the 2011 MQP.

## ISSUES

[10] I must decide if the principle of *res judicata* prevents the Claimant from pursuing this appeal and, if not, whether it is more likely that not he was disabled as defined in the CPP on or before the expiry of the MQP date on December 31, 2011.

## ANALYSIS

### ***Does the Principle of Res Judicata Apply?***

[11] *Res Judicata* precludes the rehearing or re-litigation of matters that have already been decided.

#### ***Pre-conditions***

[12] The principle of *res judicata* applies to administrative tribunals like the Social Security Tribunal.<sup>13</sup> For the principle to apply, three preconditions must be met:

- a) the issue must be the same as the one decided in the prior decision;
- b) the prior decision must have been final; and
- c) the parties to both proceedings must be the same.

[13] I find that all of the three pre-conditions for *res judicata* have been met:

- a) The question to be decided on this appeal is whether the Claimant suffered from a severe and prolonged disability<sup>14</sup> by his December 31, 2011 MQP. This is the same issue that was decided by General Division its June 2016 decision.

---

<sup>13</sup> *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 and *Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100

<sup>14</sup> See para 4, above

- b) The June 2016 decision is a final decision because the Claimant did not seek leave to appeal it to the Appeal Division.
- c) The parties are the same in both proceedings.

***Are there special circumstances so that res judicata does not apply?***

[14] The Supreme Court of Canada (SCC) has held that even if the three preconditions are met, the court must still determine whether as a matter of discretion, *res judicata* ought to be applied.<sup>15</sup>

[15] While a discretion exists, I cannot exercise that discretion randomly. In other words, I cannot decide for just any reason that *res judicata* should not apply. My objective is to ensure that the operation of *res judicata* promotes the orderly administration of justice, but not at the cost of real injustice.

[16] There is an open list of discretionary factors to consider when deciding whether or not to exercise the discretion. These may include:

- a) the wording of the statute from which the power to issue the administrative order derives;
- b) the purpose of the legislation;
- c) the availability of an appeal;
- d) the safeguards available to the parties in the administrative procedure;
- e) the expertise of the initial decision-maker;
- f) the circumstances giving rise to the first proceedings; and
- g) any potential injustice.

---

<sup>15</sup> *Danyluk*, supra

[17] This list of factors is open. This means that all of these factors may not be relevant in every case. It also means that these factors may not be the only factors to consider. These factors are not meant to be a checklist, and they are not an invitation to engage in a mechanical analysis. I must address the factors for and against the exercise of discretion. Of all the factors to consider, the potential injustice factor is the most important. I should stand back and ask myself whether, given all of the circumstances, the application of *res judicata* in this particular case would work an injustice.

[18] The Claimant submits that they are special circumstances as to why *res judicata* should not apply in this case.<sup>16</sup>

[19] He argues that his overall health has worsened. He now suffers from medical conditions that were not mentioned in his first two cases. He now has COPD and is limited by the Covid-19 pandemic. Although his mental health issues were mentioned in his first two applications, there were no diagnoses from a psychiatrist. Those applications were mostly about his chronic pain and seizures – not his mental health and respiratory conditions.

[20] However, even if this is true, it does not assist the Claimant. The June 2016 General Division decision addressed the issues raised by the Claimant on his second disability application. These included chronic pain, fibromyalgia, mental health, obstructive sleep apnea, plantar fasciitis, haemorrhoids, seizures, diabetes, and obesity.<sup>17</sup> A deterioration in his condition, and/or new conditions that arose after December 31, 2011, are irrelevant. Under the CPP, the Claimant is only covered for conditions that became severe by his December 31, 2011 MQP.

[21] The Claimant also makes allegations of unfair treatment in relation to his second disability application. He alleges that a CPP employee harassed his then family doctor to the point that she refused to continue to help him obtain CPP disability benefits. The

---

<sup>16</sup> GD15

<sup>17</sup> June 2016 General Division decision: GD2-143 to 162, at paras 9–45 & 51–58

CPP employee allegedly threatened to take away his doctor's license if she continued to help him.

[22] I do not accept these allegations. They are implausible. I cannot envision that a CPP employee would act in this way. Further, I cannot envision that a family doctor would succumb to this type of harassment. The CPP had no authority to revoke a doctor's license and a doctor refusing to assist a patient under such circumstances would be a serious breach of her own professional obligations. There is no evidence corroborating these allegations. There is no evidence that the Claimant raised them prior to his responding to my questions. Nor has he explained why he waited for this appeal to raise them.

[23] The Claimant further argues that at the 2008 Review Tribunal hearing, the Tribunal lawyer lied about the Claimant's health. Further, the Minister's representative kept saying "over and over" without explanation that his condition was not severe and prolonged.

[24] There is nothing in the record to substantiate these allegations. The Claimant's complaint seems to be about how first hearing was conducted. That would have been a matter for appeal from the first decision and leave to appeal was refused. Further, the principle of *res judicata* arises from the June 2016 decision – not the 2009 decision, which was based on a different MQP (December 31, 2008 as opposed to December 31, 2011).

[25] The Claimant has not raised any credible allegations of injustice that would justify my not applying the principle of *res judicata*. This case cries out for finality. The application of *res judicata* promotes the orderly administration of justice. The Claimant attended in person and gave evidence under oath at both of the prior proceedings. His wife also attended. He filed medical documents and was given the opportunity to make submissions. He had appeal rights from both decision and chose not to appeal the June 2016 decision. Both Tribunals were applying their home statute in an area where they had expertise. There is no evidence of any deficiencies in the procedure leading up to either the May 2009 or the June 2016 decision.



[26] What the Claimant is really asking me to do is re-hear his claim for CPP disability because he disagrees with the previous decisions. But the principle of *res judicata* prevents the rehearing or re-litigation of matters that have previously been decided.

[27] I find that there are no special circumstances that would bring the appeal within the exception to the doctrine of *res judicata*.

[28] *Res judicata* applies to this case. Since I have decided that *res judicata* applies, the issue of severe and prolonged as of the MQP cannot be relitigated.

### **CONCLUSION**

[29] The appeal is dismissed.

Raymond Raphael  
Member, General Division - Income Security