



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *ND v Minister of Employment and Social Development*, 2021 SST 471

Tribunal File Number: GP-19-1678

BETWEEN:

**N. D.**

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: Lianne Byrne

Claimant represented by: I. D.

Videoconference hearing on: December 15, 2020

Date of decision: February 12, 2021

## **DECISION**

[1] The Claimant was not incapable of forming or expressing an intention to apply for the CPP disability benefit before the date of her application.

## **OVERVIEW**

[2] The Claimant was self-employed as a paralegal. She suffered a stroke in May 2014. She then had a progressive decline in her memory and functional status. The Minister received the Claimant's application for the disability pension on January 22, 2018. The Minister approved the application with a date of onset of October 2016, the maximum retroactive payment allowed under the CPP.

[3] The Claimant's son and power of attorney challenged the date of payment on the basis that the Claimant was incapacitated beginning in 2014. He contends that the Claimant was incapable of forming or expressing an intention to apply for CPP disability benefits prior to January 2018.

[4] The Minister denied the request for reconsideration on the basis that the evidence does not support a determination that she met the incapacity provisions. The Claimant appealed this decision to the Social Security Tribunal.

## **PRELIMINARY MATTERS**

[5] The Claimant did not attend the hearing. Her son and power of attorney, I. D., attended the hearing on her behalf to provide evidence and submissions.

## **THE LAW**

[6] The incapacity provisions are set out in paragraphs 60(8), (9) and (10) of the CPP. Pursuant to paragraph 60(8) of the CPP, where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of the evidence, that the person had been incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month proceeding the first month in which the relevant benefit could have commenced to be paid or

in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

[7] Paragraph 60(9) provides that, where an application for a benefit is made by or on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that:

- (a) the person had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made,
- (b) the person had ceased to be so incapable before that day, and
- (c) the application was made (i) within the period that begins on the day on which that person had ceased to be so incapable and that comprises the same number of days, not exceeding twelve months, as in the period of incapacity, or (ii) where the period referred to in subparagraph (i) comprises fewer than thirty days, not more than one month after the month in which that person had ceased to be so incapable, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

[8] Pursuant to paragraph 60(10), for the purposes of subsection (8) and (9), a period of incapacity must be a continuous period except as otherwise prescribed.

## **ISSUE(S)**

[9] I must decide if it is more likely than not that the Claimant was incapable of forming or expressing an intention to apply for the CPP disability before the date of her application (January 22, 2018). If so, I must also decide the period of incapacity.

## **EVIDENCE**

### **I. D.'s Testimony**

[10] The Claimant's son and power of attorney, I. D., testified at the hearing on behalf of the Claimant. He explained that the Claimant became a licensed paralegal in 2010. As of 2012, she was working less than part-time hours from her home as a self-employed paralegal.

[11] The Claimant's situation changed in May 2014 following a fall in a parking lot. She was taken to the emergency room and released the same day. She returned to the emergency room a few days later with symptoms of double vision and difficulty with her memory. She was told she had suffered a stroke.

[12] I. D. described a rapid decline in his mother's health after her stroke in 2014. She stopped driving, which resulted in a loss of her independence. She started to get messy around the house. She paid her bills late. She shopped online for items she did not normally purchase. She was having problems with her memory. For example, she would ask the same question twice.

[13] In March 2016, I. D. went away on a business trip for two weeks. N. D.'s friends helped her while he was away.

[14] In June 2016, I. D. went on another business trip for four days. He asked his uncle in Florida to check-in on his mother by telephone. While he was away, he alleges that his uncle called other family members, who had the Claimant sign documents granting them access to her bank accounts. They depleted her savings and removed nine pieces of furniture from their home. When I. D. returned, he filed a police report. However, charges were not pursued because it was unclear whether the Claimant gave these items to her family members or if they were stolen.

[15] In September 2016, N. D. went to the emergency room four times with elevated liver enzymes. She was diagnosed with an autoimmune disease (liver disease). In October 2016, she was admitted to the hospital with delirium. She was discharged with a diagnosis of vascular dementia. I. D. declined an option to place the Claimant in long term care because he wanted to look after her. She began a hospital day program following her release from the hospital.

[16] In February 2017, the Claimant was very tired and could not get out of bed. I. D. called an ambulance. Testing showed that she had elevated blood sugar. She was admitted to the hospital, where she remained for three months. When she was released from the hospital, her sugar levels were controlled by tapering her Prednisone and going for daily walks. Her blood sugar has been stable since then.

[17] On September 2017, I. D. had the Claimant sign new power of attorney documents. He explained that the previous power of attorney documents, signed in September 2015, nominated I. D. as power of attorney with another family member to be appointed in his absence. I. D. redrafted the document to remove this family member as an alternate power of attorney since he had cut ties with his family. He explained to his mother what he had done and asked her to sign the new power of attorney, which she did. He feels that she was capable of signing this document, but maintains that she was incapable for CPP purposes.

[18] In May 2018, the Claimant was hospitalized for one week with left-sided weakness. This was thought to be another stroke. Since then, the fingers on her left hand have been locked in position. She spent another six days in the hospital in August 2020 because of a mini-stroke. She has stabilized, but will not get any better.

[19] I. D. was asked about the Claimant's work after her stroke. He claims that she "basically" stopped working. He admitted that she continued to work on files that were already open, but did not take on any new work. He stated that they were simple matters, such as notarizing documents and collecting payment after a settlement. He drove her to appointments.

[20] He also explained that a man took advantage of the Claimant. This man had the Claimant provide legal services, but he would collect and keep her fees. I. D. does not know what work she was doing, but thinks she was notarizing documents for immigration files. I. D. called the police, but this incident was not pursued.

[21] I. D. described the drastic changes in his own life since the Claimant's stroke. He cut back significantly on his workload and social life because he became a caregiver to his mother. He did all of the grocery shopping and cooking. He drove her to and attended all of her medical appointments. He filled out her intake forms and provided her medical history so that she did not become aware of her dementia diagnosis.

[22] He addressed the Claimant's application for the CPP disability benefit, which was completed in January 2018. He explained that he is the one who completed all of the applications on her behalf. He is also the one who originally signed the application on her behalf. However, he received a call from Service Canada advising that the Claimant had to sign

the document. He took the Claimant to a Service Canada centre, explained to the Claimant that he is applying for CPP disability benefits for her, and asked her to sign the application, which she did in February 2018.

### **Documentary Evidence**

[23] There are numerous documents on file, all of which were considered, but which have not all been summarized or mentioned in these reasons. I have included the documentation that I find to be most relevant, which includes:

- A Continuing Power of Attorney for Property signed by the Claimant on September 1, 2017. It was witnessed by K. C. and B. G., who confirmed that, “Neither one of us has any reason to believe that the grantor is incapable of giving a continuing power of attorney.”<sup>1</sup>
- A Consent for Service Canada to Obtain Personal Information form dated January 18, 2018, which was signed by both the Claimant and I. D.
- The application for CPP disability benefits, which was signed by I. D. on January 1, 2018 and the Claimant on February 2, 2018. It was also witnessed on January 18, 2018 by Ms. Tracy Kidd.
- A Child Rearing Provision form signed by the Claimant on February 2, 2018.

[24] There are numerous documents and medical reports on file, including multiple reports from Dr. Mina Mousa. In particular, I note that Dr. Mousa completed a Declaration of Incapacity form on July 30, 2018 in which it is indicated that the Claimant’s incapacity began on May 28, 2014 and is ongoing. However, Dr. Mousa was not the Claimant’s treating physician when the incapacity began.

[25] Dr. Mousa completed the CPP Medical Report on January 12, 2018. The Claimant was noted to have autoimmune hepatitis/hepatitis C, mixed vascular dementia/Alzheimer’s disease,

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<sup>1</sup> GD2-52

Type 2 diabetes, and depression. She had two silent strokes diagnosed in May 2014 and May 2015. Since then, she has had cognitive impairment and loss of some activities of daily living.

[26] Dr. Mousa confirmed by letter dated February 15, 2019 that the Claimant has been a patient since September 2017. Dr. Mousa stated that the Claimant does not have the capacity to form of express the intention to make an application for benefits. The Claimant's medical conditions worsened in February 2018.

[27] On October 12, 2020, Dr. Mousa stated that the Claimant meets the CPP criteria for incapacity. It was noted that I. D. has been very involved in the Claimant's care. He attends all appointments and assists with completing forms. Dr. Mousa believes that since late 2017 the Claimant has not be capable of expressing an intent to make an application for CPP disability. Dr. Mousa could not state when her incapacity began because he was not her primary care provider at the time. Dr. Mousa felt that people can be capable of consenting to certain treatments, but be incapable of making complex decisions in their day-to-day life.

[28] There are also numerous medical reports on file from Dr. Michael E. Aubrey, internal medicine. On August 10, 2015, it was noted that the Claimant has stabilized since her stroke. She was noted to be stable again on August 11, 2016. On August 11, 2017, the Claimant stated that she is feeling good and she was noted to look generally well. While I. D.'s attendance is noted at many of these appointments, the Claimant also participated in her own care.

[29] On April 6, 2020, Dr. Aubrey wrote a letter in support of the Claimant's appeal. Dr. Aubrey stated that I. D. has been escorting the Claimant to her appointments. He also provides a list of her medications and updates about her health. Dr. Aubrey stated that his interactions with the Claimant are limited due to her capacity. Dr. Aubrey is of the opinion that she is incapable of making an application herself for benefits or to defend or represent herself, nor does she have the ability to instruct somebody else to apply on her behalf. Her diagnosis was noted to be progressive. I note, however, that this opinion is given several years after the Claimant's application for CPP disability benefits and after a deterioration in her health.

[30] On May 6, 2016, Dr. T. Axelrod, orthopedic surgeon, reported that she is managing to carry out her activities of daily living. It is also evident that the Claimant assisted in providing

her own medical history. On July 13, 2016, Dr. Arun Sundaram, neurologist, stated that history was obtained from the Claimant and her son due to her cognitive impairment.

[31] There are numerous medical reports on file from Dr. Sara Mitchell, cognitive and behavioural neurology. On August 22, 2016, Dr. Mitchell noted that I. D. felt that family members were taking advantage of the Claimant. She apparently lent her nephew \$3,000 for a condo. Dr. Mitchell spoke to the Claimant separately and she was able to provide a coherent explanation of why she gave her nephew the money. The Claimant reportedly discussed her medication, mood, and energy levels with Dr. Mitchell.

[32] On May 4, 2017, Dr. Mitchell noted a large deterioration. She was admitted to the hospital in October 2016 with delirium and in February 2017 for a blood infection. Since discharge from hospital, things have stabilized. She is attending a day program four days per week. She had some cognitive deterioration related to delirium, but these appear to have stabilized.

[33] On May 14, 2017, it was noted that Donepezil is helping her cognition. She is a bit more alert. She has improved since her last visit. On May 19, 2017, it was noted that her diagnosis of mixed dementia affects her cognition and thinking. She is therefore unable to continue her practice as a paralegal. On August 28, 2017, the Claimant feels her memory is good, although I. D. states that he provides quite a bit of cueing. I. D. stated that she is mostly stable, but occasionally is confused. She has improved since her last visit. These reports indicate that the Claimant has had occasional confusion, but remained able to participate in her medical visits.

[34] Dr. Mitchell completed the CPP Medical Report on January 10, 2018, noting that the Claimant has mixed dementia – vascular and Alzheimer’s disease. These are causing significant cognitive impairment affecting her memory, visuospatial function, decision-making, executive function, and mood. She requires 24-hour care related to her cognitive inability to self-care. While her cognitive limitations as of January 2018 are noted, it is evident from Dr. Mitchell’s previous reports that the Claimant had improved, the Claimant felt her memory was good, and she was able to participate in her appointments.



[35] Dr. Mitchell also completed a Certificate of Incapacity dated October 19, 2020. Dr. Mitchell noted that the Claimant has a neurodegenerative process affecting executive function and decision-making. She does not consider the Claimant capable of managing her own affairs and believes her impairment began in December 2015.

[36] There are also numerous reports on file from Dr. Julia Hopyan, stroke prevention clinic, including the following:

- On May 21, 2015, Dr. Hopyan noted that the Claimant was educated about stroke symptoms and knows to call 911 for sudden onset of any focal neurological deficits.
- On September 29, 2015, Dr. Hopyan reported that the Claimant scores within normal range on the MoCA test. She was educated, once again, on her symptoms of stroke and knows to call 911 for sudden onset of neurological deficits.
- On December 11, 2016, Dr. Hopyan reported that an occupational therapist felt that the Claimant is a low risk driver. She was educated on her symptoms of stroke and knows to call 911 for sudden onset of neurological deficits.
- On May 3, 2016, Dr. Hopyan advised the Claimant to increase her Metformin and discussed the importance of exercise with her. She was educated, once again, on her symptoms of stroke and knows to call 911 for sudden onset of neurological deficits.
- On November 8, 2016, Dr. Hopyan noted that the Claimant was educated regarding stroke symptoms and knows to call 911 if they occur.
- On December 4, 2017, Dr. Hopyan that she is stable from stroke perspective. She was educated regarding stroke symptoms and knows to call 911 if they occur.

[37] Dr. Prathiba Shammi, neuropsychologist, reported on April 18, 2016 that the Claimant's cognitive test profile showed deficits in attention and visuospatial skills.

[38] On September 28, 2016, Dr. Majid Iqbal, family and community medicine, reported that she likely had an obstructing stone that has passed. She was advised to return to the emergency room if she experiences increasing abdominal pain.

[39] Dr. Andrea Faris, gastroenterologist, noted on October 20, 2016 that the Claimant was providing information about her medical history. The risks of prednisone were discussed with her and she knows the long term side effects. Similarly, on May 9, 2017, Dr. Faris noted that the Claimant was started on a new medication and the risks were explained to her. She is aware of the increased risk of lymphoma. She was also given a requisition for blood work.

[40] On October 21, 2016, Dr. Mandana Kayedi, internal medicine, noted that the Claimant had a one-week history of confusion and visual hallucination. Her glucose was noted to be elevated.

[41] On October 26, 2016, Dr. Andrea Bida, geriatrics, reported that the Claimant provided verbal consent to allow Dr. Bida to meet with I. D. The Claimant is performing pretty well in cognitive testing. The MoCA score is in normal range. She was noted to have continued involvement in paralegal activities.

[42] On October 31, 2016, Dr. R. Paramsothy, psychiatrist, reported that Montreal Cognitive Assessment indicated a score of 26/30. She was quite aware of the surroundings. Her recall of information appears to be adequate. She is aware of her needs medically.

[43] On October 31, 2016, Dr. Atwal Gulshan reported that the Claimant is showing some cognitive impairment.

[44] On December 6, 2016, Sheila Ingle, social worker, indicated that the Claimant provided written consent to place a copy of this report in her health record.

[45] Jill Hartzog, registered nurse, indicated in an evaluator questionnaire dated December 28, 2016 that the Claimant is incapable for the purposes of making an admissions decision.

[46] On February 9, 2017, Dr. Lucy Lu, gastroenterologist, noted that the Claimant presented to the hospital with confusion and fatigue. She was found to have hyperglycemia. This was treated and she became much more alert and oriented. She was noted to be at a normal level of consciousness.

[47] Dr. Stephanie Tse reported that the Claimant was admitted to the hospital from February 9 to April 7, 2017 with confusion, fatigue, hyperglycemia, nausea, and vomiting. She was

treated for uncontrolled diabetes. She became more alert and oriented and was having normal level of consciousness. The Claimant was advised to monitor her blood sugars at home and record in a diary.

[48] On February 16, 2017, Dr. Usman Moghal, neurologist, noted that he had a conversation with the Claimant about her health. She feels significantly better. I. D. provided most of the details. The Claimant was noted to be stable and much better.

[49] On February 27, 2017, the risks of gastroscopy and colonoscopy were explained to the Claimant and her consent was obtained before the procedure.

[50] On May 1, 2017, Marcia Palonen, occupational therapist, reported that, according to I. D., the Claimant's cognition is variable with some marked confusion at times and some periods of lucidity.

[51] Dr. Mario Masellis, neurology, reported on April 4, 2019 that the Claimant's memory has been stable for the last two years. Her memory decline and behavioural changes responded well to Donepezil since it was initiated in 2017. In February 2018, she had a new tremor. Her thought process seemed impaired as she was not able to engage in full conversations or follow instructions. Her cognitive testing indicates a substantial decline. Although her memory was preserved, her attention and executive functions were decreased substantially. She likely has Lewy Body Dementia with vascular dementia due to prior stroke. This report indicates that the Claimant was relatively stable prior to the date of her application, but deteriorated significant after the date of her application.

[52] Dr. Marc Narayasingh, neurologist, provided a letter of support dated April 14, 2020. Dr. Narayasingh stated that I. D. has been the Claimant's primary caregiver and main decision-maker. He was unable to do a formal capacity assessment, but felt that, based on his observations, the Claimant has been incapable of making her own medical decision since 2015.

[53] Dr. Gary Gimpel wrote a letter of support on May 13, 2020, indicating that the Claimant presented with sudden double vision in June 2014. I. D. has been at every visit and has become very dependent on him.

[54] Dr. Mazen Alsahi wrote on June 11, 2020 that she has been followed at the diabetic clinic since 2016. I. D. attends all appointments and helps in all aspects of her care. She needs help as her cognition and communication ability are very limited.

[55] Tracy Kidd, integrated benefits caseworker, wrote on October 5, 2020 that the Claimant meets the incapacity provision for CPP purposes. Her first meeting with the Claimant was on November 2, 2017 and she did not have the capacity to understand the nature of the appointment. She was fully reliant on I. D. for almost all activities of daily living.

[56] On October 5, 2020, Dr. Konya Kayet, chiropractor, wrote that Mr. Dhall accompanied the Claimant to all appointments since December 2017. I. D. completed all intake forms and provided medical history. It is clear that she did not oppose and was content and satisfied that her son was taking the lead for her care.

[57] Nancy Feasby, physiotherapist, wrote a letter of support dated October 18, 2020, noting that physiotherapy began in October 2016. The Claimant was noted to defer to I. D. to make decisions for her care goals and sign the consent to treatment form.

[58] In an undated report from Christien Soltan, pharmacist, it is noted that I. D. handled the Claimant's affairs with regard to her health.

## **ANALYSIS**

[59] The Claimant must prove on a balance of probabilities that she was incapable of forming or expressing an intention to apply for CPP disability benefits before January 22, 2018. I. D. submitted that the Claimant was incapable of forming or expressing an intention to apply for CPP disability benefits before the date of her application. He submits that this incapacity began in May 2014.

[60] There are several important decisions from the Federal Court of Appeal that are relevant. In *McDonald v. Canada (A.G.)*, 2013 FCA 37, the Federal Court of Appeal stated that the approach to capacity to form or express an intention to apply is now well-settled. The test requires a consideration of the medical evidence and the applicant's activities, which cast light on capacity, between the claimed date of commencement of disability and the date of

application. Similarly, in *Sedrak v. Canada (MSD)*, 2008 FCA 86, the Federal Court of Appeal found that the word “capacity” should be given its ordinary meaning. The capacity to form the intention to apply for benefits is similar in kind to the capacity to form an intention with respect to other choices in life. The fact that a particular choice may not suggest itself to an individual because of his or her world view does not indicate a lack of capacity. In *Canada (A.G.) v. Danielson*, 2008 FCA 78, the Federal Court of Appeal found that the activities of a claimant during the relevant period may cast light on his or her continuous incapacity to form or express the requisite intention.

[61] In this case, I considered the medical evidence during the period of incapacity claimed by the Claimant (from May 2014 until the date of her application in January 2018). Dr. Mousa completed a Declaration of Incapacity dated July 2018, indicating that the Claimant’s condition made her incapable of forming or expressing the intention to make an application beginning in May 2014. Dr. Mousa also provided a letter of support in October 2020, stating that the Claimant has been incapable since late 2017. Dr. Mitchell also completed a Declaration of Incapacity dated October 2015 indicating that the Claimant’s incapacity began in December 2015.

[62] There are also letters of support written after January 2018 by many of the Claimant’s healthcare professionals, including Dr. Gimpel, Dr. Kayet, Mr. Soltan, Dr. Alsahi, Dr. Aubrey, Ms. Hartzog, and Ms. Feasby. There is also a letter of support from Ms. Kidd, integrated benefits caseworker.

[63] Despite the opinions expressed in these letters and the Declarations of Incapacity, the bulk of the medical evidence on file dated prior to January 2018 does not support the conclusion that the Claimant was incapable of forming or expressing an intention to apply. The reports indicate that, although the Claimant has had some challenges with her cognitive abilities, she did not meet the definition of incapacity.

[64] I considered that, although the Claimant was admitted to the hospital with cognitive deficits in October 2016, her cognitive abilities improved significantly following her hospitalization. This is evident from Dr. Bida’s report dated October 2016, in which it is noted that the Claimant is performing well on cognitive testing and her MoCA is in the normal range.

Dr. Paramsothy also wrote that she is quite aware of her surroundings, her recall is adequate, and she is aware of her needs medically. Dr. Lu wrote in February 2017 and Dr. Tse wrote in April 2017 that she had normal levels of consciousness. Dr. Moghal wrote in February 2017 that she is stable and doing much better. Dr. Mitchell noted improvement and that medication is helpful in reports dated May 2017 and August 2017. This is all confirmed by Dr. Masellis in April 2019, who indicated that medication has helped the Claimant's memory since it was initiated in 2017.

[65] The reports also indicate that, while it is true that I. D. assisted the Claimant, the Claimant was nonetheless capable of communicating her symptoms, consenting to medical treatment, and actively participating in her treatments throughout the claimed period of incapacity. For example, she was noted to provide consent to allow Dr. Bida to speak with I. D. in October 2016 and to a gastroscopy and colonoscopy in February 2017. Ms. Ingle obtained her written consent to place a copy of a report in her health record in December 2016.

[66] The Claimant was noted to participate in appointments by providing medical history and answering questions in May 2016 by Dr. Axelrod, July 2016 by Dr. Sundaram, August 2016 and May 2017 by Dr. Mitchell, October 2016 by Dr. Faris, February 2017 by Dr. Moghal, and August 2017 by Dr. Aubrey.

[67] The Claimant was noted to understand the risks of treatment and was given instructions on what to do if her symptoms worsened by Dr. Iqbal in September 2016, and by Dr. Faris in October 2016 and May 2017. Dr. Hopyan also noted from May 2015 until December 2017 that the Claimant was educated regarding stroke symptoms and what to do if they occur.

[68] It is evident from the medical reports on file that the Claimant's cognitive abilities deteriorated significantly after she signed the application for CPP disability benefits. This is stated by Dr. Mousa and Dr. Masellis.

[69] The letters of support and medical reports on file that support the Claimant's claim of incapacity are also inconsistent with the Claimant's activities throughout the claimed period of incapacity. The Claimant continued to work as a paralegal after her stroke in May 2014. I. D. indicated that she completed files that had been opened prior to her stroke. He drove her to

appointments. It is unclear how long she continued to work as a paralegal and how much work she actually did. However, Dr. Bida noted her ongoing involvement in paralegal activities as late as October 2016. It is not until May 2017 that Dr. Mitchell wrote that the Claimant could no longer practice as a paralegal.

[70] The Claimant attended a hearing at the Social Security Tribunal in September 2015. I. D. was dismissed from this hearing. The Claimant was able to testify and represent herself without I. D.'s assistance.

[71] I. D. indicated that the Claimant signed a power of attorney document in September 2015, which is during the claimed period of incapacity. I. D. then prepared a new power of attorney document to remove a family member as alternate. I. D. explained this document to the Claimant. She signed it on September 1, 2017. There is no indication that she did not understand what she was signing or why she was signing it. In fact, there are two witnesses that wrote that they did not believe her to be incapable of giving a continuing power of attorney.

[72] I. D. completed several forms on behalf of the Claimant, including a Consent for Service Canada to Obtain Personal Information, the Claimant's application for CPP disability benefits, and a Child Rearing Provision form. I will focus on the CPP disability application, which was signed by I. D. in January 2018 and subsequently signed by the Claimant in February 2018. Although I accept that I. D. completed this form on the Claimant's behalf, I do not accept that the Claimant was only capable of the physical act of signing the application. This is evident from I. D.'s testimony that he explained the purpose of the application to the Claimant prior to her signature.

[73] Therefore, on the basis of the whole of the evidence, I am not satisfied on the balance of probabilities that the Claimant was incapable of forming or expressing an intention to apply for CPP disability benefits prior to January 2018.

## **CONCLUSION**

[74] The appeal is dismissed.

Lianne Byrne  
Member, General Division - Income Security