



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *VS v Minister of Employment and Social Development*, 2021 SST 494

Tribunal File Number: GP-20-1925

BETWEEN:

V. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Teleconference hearing on: April 6, 2021

Date of decision: April 10, 2021

Decision

[1] The Claimant, V. S., is not eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[2] The Claimant was 37 years old when he applied for a CPP disability pension in April 2020.¹ For his application to succeed, he must have a disability that is severe and prolonged by December 31, 2007 or he must have become disabled between January 1, 2008 and November 30, 2008.

[3] The Claimant says he was diagnosed with schizophrenia with persecutory (paranoid) delusions in 2010. However, he has had this condition since he was in his early 20s. He was hospitalized in 2012 and is treated with medication and psychiatric care. He says this condition has interfered with his ability to retrain and maintain a job.

[4] The Minister refused his application because the evidence does not support a severe degree of impairment when he last qualified for benefits.

[5] The Claimant disagreed with the Minister's decision and appealed that decision to the Social Security Tribunal's General Division.

Hearing Issue

[6] On February 25, 2021, the Claimant told his navigator that his parents (who were to attend as witnesses) would need a Punjabi interpreter. He explained that their English is good, but his father would like to speak in his mother tongue. An interpreter was arranged by the Tribunal.

[7] Unfortunately, the interpreter did not attend the hearing. The Claimant's father also did not attend the hearing as a witness. Although the interpreter was arranged primarily for his father's request, I offered to adjourn the hearing and arrange for another

¹ The application is at GD 2-33.

interpreter. The Claimant said this would not be necessary because he and his mother was fluent in English. The Claimant's mother also did not want an interpreter. I explained to both the Claimant and his mother if at any time, either did not understand what I was asking, or changed their mind and wanted an interpreter, I was willing to adjourn the hearing. I also offered that if the Claimant's mother felt more comfortable giving a reply or a statement in Punjabi, she could have her son provide the English translation. The Claimant's mother provided uninterrupted and detailed testimony in English describing her son's limitations and the history of his conditions. At no time did she require any help interpreting her testimony.

What the Claimant must prove

[8] For the Claimant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2007. This date is based on his contributions to the CPP.²

[9] The Claimant had CPP contributions in 2008 that were below the minimum amount the CPP accepts. These contributions will also let the Claimant qualify for a pension but only if he became disabled between January 1, 2008 and November 30, 2008.³

[10] The CPP defines "severe" and "prolonged". A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.⁴ It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

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

² 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 2-62.

³ This is based on section 19 and subsection 44(2.1) of the *Canada Pension Plan*.

⁴ Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁵ Paragraph 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

The Claimant's disability was not severe

[12] The Claimant has schizophrenia with persecutory (paranoid) delusions.⁶ My focus though is not on the Claimant's diagnosis.⁷ I must focus on whether he had functional limitations that affect his work capacity.⁸ This means I have to look at all the Claimant's medical conditions (not just the main one) and think about how his conditions affect his ability to work.⁹

[13] I find the Claimant has not proven he has a disability that was severe and prolonged by December 31, 2007 or that he became disabled in 2008 by November 30. I reached this decision by considering the following issues.

What the Claimant says about his limitations

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

- He was diagnosed with paranoid schizophrenia in 2010. Because of this condition, he has not been able to keep working at one job. He has not been able to live a normal and productive life since 2010.¹⁰
- He was admitted to the hospital in 2012 and 2013 because of a severe episode of paranoid schizophrenia.¹¹
- He was affected by his disability as early as 2007 because he had "persecutory delusions".¹²
- He had problems at home and at school since 2002. Since May 2008, he has not had a long-term job.

⁶ This is at GD 2-145 – GD 2-150.

⁷ The Federal Court of Appeal said this in *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.

⁸ The Federal Court of Appeal said this in *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

⁹ The Federal Court of Appeal said this in *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

¹⁰ This information is in the Claimant's Notice of Appeal at GD 1-4.

¹¹ This information is at GD 5-1.

¹² The Claimant relies on the information of Dr. Lekha Kurup.

- The fact that he was able to complete his University degree does not mean that his disability is not 'severe'. He says he had accommodations at University.¹³ It took him nine years to complete a three-year program.

There is no medical evidence on file for the period before November 30, 2008

[15] The Claimant must provide objective medical evidence that shows his functional limitations affected his ability to work by November 30, 2008.¹⁴

[16] If the medical evidence does not prove that his functional limitations affected his ability to work by November 30, 2008, medical evidence dated after is irrelevant. Reports written afterward must be based on clinical observations or assessments by November 30, 2008.¹⁵ I recognize that there are many medical reports and progress notes regarding the Claimant's condition from 2012 to the present day. However, the only medical evidence that references the Claimant's condition before November 2008 is by Dr. Kurup in August 2013.¹⁶

[17] Dr. Kurup said the Claimant had a history of having persecutory delusions and interpretation for many years, "probably since 2007, however, it got worse in 2009 and 2010..."¹⁷ Although the Claimant's condition continued to worsen resulting in hospitalization in 2012, there is no medical evidence that supports that this condition was 'severe' by November 2008. This means that the condition would have made him incapable of pursuing any substantially gainful employment.

[18] I accept the Claimant's mother's testimony that the Claimant had some paranoid thinking as early as 2002. She gave a specific example of how he thought jokes among family members were targeted at him. The testimony of the Claimant's mother and the likelihood presumed by Dr. Kurup both support that the Claimant had symptoms of

¹³ This information is at GD 5-1

¹⁴ *Canada (A.G.) v. Dean*, 2020 FC 206 citing, *Warren v. Canada (A.G.)*, 2008 FCA 377.

¹⁵ The Federal Court said this in *Canada (Attorney General) v. Angell*, 2020 FC 1093.

¹⁶ The report is at GD 2-76.

¹⁷ Dr. Kurup's report is at GD 2-76.

paranoid delusions prior to his MQP. However, there is no evidence that these symptoms rendered him incapable regularly of pursuing substantially gainful employment. The Claimant was not receiving any treatment with medicine or psychotherapy and he continued to work and attend school after his MQP.

The Claimant had capacity to work in 2008

[19] In fact, the Claimant was working part-time while going to school after December 31, 2007. He started working at X (a retail store) in January 2007 and started attending university in May 2007. He was not using any medication or in any therapy or treatment for his mental health condition in 2007 and 2008. The Claimant told me that his job was a sales associate. He processed sales and provided customer service. He had product knowledge and made recommendations to the customers and he received shipments and merchandised the product. He testified that the manager who hired him was happy with his work. He explained the job ended In May 2008, not because of his medical condition but because of a change in management. The new manager gave him additional duties that he was not doing before. Also, the environment changed and there was “a lot of politics in the store”. There is no evidence to support that the Claimant was disabled by December 31, 2007 or became disabled in 2008 by November 30.

[20] The Claimant testified that he continues to look for work today and will occasionally apply for a customer service job. He said he had an interview with Service Canada to be an officer, but he was not selected for the position. He told me this job had a starting salary of \$60,000. If he had been hired, he would have made the effort to keep the job. He said that if he is paid well and the job is rewarding, he would stay and try to keep the job. The Claimant testified that he started a part-time customer service job in November 2019. He would sell services and set up televisions and phones to people who were hospitalized. He said he stopped this job in January 2020 because he was concerned he would get sick. He testified that he was having flu-like symptoms after each shift. He was prescribed antibiotics and quit this job. Presently, he is unsure is he should return to work or if he should return to school.

The Claimant's efforts at attending university

[21] The Claimant said he started a Bachelor of Public Administration program in May 2007. He said his efforts were always focused on going and finishing his studies, but there were times when there were issues/troubles at home and he was able to cope. He said there were times he changed his major when he realized there were some courses (such as certain math courses) that he would not be able to do. He also said he saw a registrar counsellor in 2008/2009 at X advising him that he was having some problems coping. The Claimant said he needed some accommodations at school such as recording lectures, extra time for assignments and a memory aid to help trigger his memory during exams.¹⁸ Although the Claimant required some accommodations, this is not evidence that his condition was 'severe'. I recognize that there were periods of time when the Claimant's school efforts were put on hold. However, he returned to school (full-time) after he was diagnosed and in regular treatment with therapy and medication. The Claimant testified that he went back in 2015 and although he only took two courses, because of his diagnosis, this was considered full-time. He graduated with a Bachelor of Public Administration in 2016.

[22] The medical evidence does not show the Claimant had functional limitations that affected his ability to work by November 30, 2008. His work efforts at X support that he had capacity to work at December 31, 2007. There is no medical evidence to support that he became disabled in 2008 by November 30. As a result, he has not proven that he had a severe disability.

[23] When I am deciding if a disability is severe, I have to think about a person's age, level of education, language ability, and past work and life experience. This allows a realistic assessment of their work capacity.¹⁹ The Claimant was only 26 years old by November 2008. He had a grade 12 education and had completed some courses towards his Bachelor of Public Administration degree. He is fluent in English. He also had work experience in customer service, which provided him with transferable skills.

¹⁸ This information was provided at the hearing and at GD 2-30.

¹⁹ The Federal Court of Appeal said this in *Villani v. Canada (Attorney General)*, 2001 FCA 248.

The Claimant's personal circumstances would not have interfered with his ability to work in the real world.

The CPP is not a social welfare regime

[24] The Claimant submitted that the Minister was taking an overly restrictive and narrow interpretation of the CPP Disability Benefits program and legislation. He believed the Minister was losing sight of its purpose as a benefit for people who cannot maintain gainful employment.²⁰

[25] However, the CPP is a contributory scheme that provides certain benefits to people who have paid into it or who qualify based on very specific criteria.²¹ It is not a social welfare regime that provides benefits to all. The Plan's viability and affordability depend on the drawing of difficult lines about whether a person qualifies or not. It is Parliament's job to draw those lines.²²

CONCLUSION

[26] I find the Claimant is not eligible for a CPP disability pension because his disability was not severe by December 31, 2007 and he did not become disabled in 2008 by November 30. Because I found the disability is not severe, I did not have to consider if it is prolonged.

[27] This means the appeal is dismissed.

Connie Dyck
Member, General Division – Income Security Section

²⁰ This is at GD 5-1.

²¹ The courts described the purposes of the CPP in *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28 at para 9 and *Miceli-Riggins v Canada (Attorney General)*, 2013 FCA 158 at paras 67 to 74.

²² Although not binding on me, I considered the Appeal Division decision AD 20-851