



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RS v Minister of Employment and Social Development*, 2021 SST 651

Tribunal File Number: GP-21-537

BETWEEN:

R. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Teleconference hearing on: June 14, 2021

Date of decision: June 28, 2021

DECISION

[1] The Claimant, R. 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 last worked as a part-time server/supervisor at Mother's Pizza from October 2016 until September 2017. He previously indicated that he could no longer work as of February 2017 because of his poor mental state.

[3] The Claimant applied for a CPP disability pension on July 31, 2019. The Minister of Employment and Social Development Canada (the Minister) refused the application, because it was irrelevant that the Claimant's condition deteriorated after the minimum qualifying period and prorated dates of December 31, 2015 and February 28, 2016. The Claimant had been able to work with his longstanding psychiatric issues for years. He was also not seeing a mental health professional on a regular basis in December 2015 or by the end of February 2016.

WHAT THE CLAIMANT MUST PROVE

[4] For the Claimant to succeed, he must prove that he had a disability that was severe and prolonged by December 31, 2015. This date is based on his contributions to the CPP.¹

[5] The Claimant also had contributions in 2016 that were below the minimum amount accepted by the CPP. Those contributions let the Claimant qualify for a pension if he became disabled between January 1 and February 28th, 2016.²

[6] A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation. It is prolonged if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

¹ The *CPP* calls this date the 'Minimum Qualifying Period.' See s. 44(2).

² This is based on ss. 19 and 44(2.1) of the *Canada Pension Plan*.

³ The definition is found in s. 42(2)(a) of the *Canada Pension Plan*. The legal test is that the Claimant must prove that they are disabled on a balance of probabilities. In other words, they must show that it is more likely than not that they are disabled.

THE REASONS FOR MY DECISION

[7] I find that the Claimant did not prove that he had a severe and prolonged disability by December 31, 2015, or the possible prorated date of February 28, 2016. I reached this decision by considering the following issues.

WAS THE CLAIMANT'S DISABILITY SEVERE?

The Claimant's condition deteriorated after December 31, 2015 and February 28, 2016

[8] My decision about whether the Claimant's disability was severe is not based on his diagnoses. It is based on whether he had limitations that prevented him from working by the relevant time.⁴ I have to look at his overall medical condition and think about how his health issues might have affected his ability to work.⁵

[9] The Claimant argues that his obsessive compulsive disorder (OCD) was extreme in 2015 and 2016. He did not want to be around other people, and he would isolate himself in his apartment. He spent his time sleeping and trying to hide. He had no ambition. That is why he was not working at the time. He was taking Cipralext, Wellbutrin, and using Synerva. He was not having any other active treatment. He was not hospitalized around that time. He did submit that he could feel good and ambitious for 4-months, and then the littlest thing could set him off. He has been on Ontario Works and then Ontario Disability since 2015.

[10] The medical evidence from Dr. Cooper, Dr. Weesequera, and Dr. Owsianik supports that the Claimant has had longstanding mental health issues, but it was after December 31, 2015 or February 28, 2016 that his overall condition really deteriorated.

[11] In June 2017, Dr. Cooper reported that in February the Claimant had undergone surgery for a basal cell carcinoma of his right lower eyelid. He needed second surgery in May 2017, and only had a 50% improvement. The Claimant testified that the surgeries and changes in his

⁴ *Klabouch v. Canada (A.G.)*, 2008 FCA 33; *Ferreira v. Canada (A.G.)*, 2013 FCA 81

⁵ *Bungay v. Canada (A.G.)*, 2011 FCA 47

physical appearance made him not want to be around others. His skin condition made his anxiety and depression worse. He now has Bell's palsy and the right part of his face sags.

[12] The Claimant's psychiatrist, Dr. Weerasekera, reported in December 2017 that the Claimant was referred for rapid assessment. His depression started getting worse after his dog passed away 2 years earlier. According to Dr. Weerasekera, the Claimant had been admitted to hospital in 2007 after a suicide attempt, but he did not attend any follow-up. The Claimant's diagnoses included major depressive disorder, social anxiety, and OCD.

[13] The Claimant did submit that he saw someone for counselling through Dr. Owsianik's office before he saw Dr. Weerasekera. He could not recall exactly when or with whom that counselling was with, but he saw the person for 8 or 9 sessions. The Claimant did not find it helpful.

[14] In July 2019, Dr. Owsianik reported that the Claimant had increased mood and suicidal ideations. He could not focus, concentrate, or hold down a job. In June 2020, Dr. Owsianik reported that the Claimant had not been able to work for 2 to 3 years. He had gone to several psychiatric consults over the last 8 months, and was seeing a psychotherapist once or twice a month. Dr. Owsianik noted that the Claimant had no physical disabilities. It was his mental illness that rendered him disabled.

[15] There is no question that the Claimant has been dealing with mental illness for a long time. His overall condition got much worse in 2017 after undergoing skin cancer treatment. I accept that he is not currently able to work. In 2017 he was diagnosed with skin cancer and he had to have multiple procedures. He also lost his job at Mother's Pizza when it closed, and the romantic relationship he was involved in ended.

[16] Based on the Claimant's testimony and the medical evidence on file, however, February 2017 is when his condition really started to decline. Despite that, he continued to work on a regular basis at least 20 to 30 hours per week until October 2017. In Dr. Owsianik's most recent June 2020 report, he specified that it had only been for the last 2 to 3 years that the Claimant had not been able to work. That would have been 2017 or 2018.

[17] I am not convinced that the Claimant was incapable regularly of any substantially gainful work by December 31, 2015 or the prorated date of February 28, 2016.

The Claimant retained the capacity to work after December 31, 2015 and February 28, 2016

[18] If the Claimant had some work capacity in the real world, he must show that he tried to obtain or maintain a job. He must also show that the attempts to work did not succeed because of his health condition.⁶

[19] The Claimant had earnings of \$8429 in 2017. He testified that he worked 4 to 8 hours per shift, 4 to 5 days per week as a server/dining room supervisor between October 2016 and September 2017. I find that the Claimant's work efforts during that time demonstrate that he retained the capacity regularly for substantially gainful work, despite his limitations.

[20] The Claimant stopped working in September 2017 because the restaurant he was working at closed. He was able to obtain and maintain a job for nearly a year after December 31, 2015 and February 28, 2016. He also kept looking for work in the hospitality industry until the end of 2018. According to the Claimant, that is when his mental health really got bad.

[21] I have concluded that it is more likely than not that the Claimant did not have a severe disability, as defined by the CPP, by December 31, 2015 or by February 28, 2016. He was able to work consistently for nearly a year after that time, and he stopped working for non-medical reasons.

THE CLAIMANT'S DISABILITY WAS NOT SEVERE

[22] The Claimant's disability was not severe by December 31, 2015 or by the prorated date of February 28, 2016. This means that I do not need to decide whether his disability was prolonged.

CONCLUSION

[23] I am dismissing this appeal.

⁶ This is explained in *Inclima v. Canada (A.G.)*, 2003 FCA 117

Tyler Moore
Member, General Division - Income Security