



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *LA v Minister of Employment and Social Development*, 2021 SST 608

Tribunal File Number: GP-20-450

BETWEEN:

L. A.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Teleconference hearing on: May 27, 2021

Date of decision: June 2, 2021

DECISION

[1] The Claimant is not entitled to a *Canada Pension Plan* (CPP) disability pension.

OVERVIEW

[2] The Claimant was 56 years old when he applied for a CPP disability pension in March 2019. He last worked as a self-employed home renovator. In June 2016, he suffered a traumatic brain injury in a car accident. In his application, he stated that he had been unable to work since the accident.¹ The Minister denied the application initially and upon reconsideration. The Claimant appealed to the Social Security Tribunal.

[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.²

[4] The CPP defines “severe” and “prolonged”. A disability is severe if it makes a person incapable regularly of pursuing any substantially gainful occupation.³ It is prolonged if it is likely to be long continued and of indefinite duration.⁴

[5] The Minister acknowledges that the Claimant’s ability to function has been limited since his June 2016 car injury. However, its position is that the evidence does not establish that he was continuously unable to work since December 2011. He was able to work full-time in a physically demanding job after his MQP.

ISSUES

1. Did the Claimant’s medical conditions result in his being incapable regularly of pursuing any substantially gainful employment by December 31, 2011?

¹ GD2-30

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 page GD3- 12 of the hearing file. The Claimant had substantial earnings in 2015 and 2016. However, since this was for only two years it does not improve his MQP. To improve his MQP he required three years of sufficient earnings in six years.

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

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

2. If so, was his disability long continued and of indefinite duration by that date?

ANALYSIS

Severe Disability

[6] The Claimant was diagnosed with hepatitis C in 2009. As a result, he was off work from 2010 to 2013. When he attempted to return to work, he was fired after 4 hours. He then became severely depressed and was not capable of returning to work until 2014.⁵ His long-term disability insurer stopped paying him in September 2014 because his doctors had stated that he was able to return to work.

[7] The Claimant then started his own home renovating business. He took electrical courses and learned how to do tiling and plumbing. His record of CPP contributions records that he had no employment earnings in 2014, \$17,006 in 2015, and \$12,493 in 2016.⁶ In his application, he stated that he last worked as a self-employed renovator on June 20, 2016. He renovated kitchens, bathrooms, and basements.⁷

[8] In the February 2019 CPP medical report, Dr. Rahman stated that Claimant's medical conditions were a traumatic brain injury and dental fractures. Both of these conditions started in June 2016.⁸ In May 2017, the Claimant told Dr. Watson, clinical psychologist, that his health was good in the year prior to the car accident.⁹

[9] The Claimant may have been severely disabled at the end of December 2011 because of hepatitis C. However, he recovered and was able to return to work by 2014. He was regularly capable of pursuing substantially gainful employment until he was injured in a June 2016 car accident.

⁵ July 2019 report from Dr. Rahman, family doctor, at GD2-1162.

⁶ GD3-13

⁷ GD2-42

⁸ GD2-77, 78

⁹ GD2-338

[10] The CPP disability is a government insurance regime based on contributions. The Claimant is covered only for conditions that became severe by his MQP. It does not cover him for conditions that became severe afterwards.

[11] The Claimant is severely disabled because of the injuries he sustained in June 2016. These injuries occurred long after he last qualified for CPP disability on December 31, 2011. Accordingly, he does not meet the test for a severe disability in accordance with the CPP criteria. This is because he was able to pursue substantially gainful employment after the MQP.

[12] Since I am not persuaded that the Claimant suffered from a severe disability, it is not necessary for me to apply the “real world” approach.¹⁰ The Claimant has failed to establish that it is more likely than not that he suffered a severe disability in accordance with the CPP requirements.

[13] Both the Claimant and his wife M. spoke passionately at the hearing. They argued that the situation was unfair and unjust. The Claimant worked and contributed to the CPP for more than 25 years. They were not warned about the potential consequences of his not making CPP contributions during the years he was off work because of hepatitis and depression. His long-term disability insurer did not contribute on his behalf. He is now disabled because of a car accident, which was not his fault. Even though he is now disabled, he is not entitled to CPP disability.

[14] I am sympathetic to the Claimant’s situation. However, the CPP provisions bind me. I am a statutory decision-maker and I am required to interpret and apply the provisions as they are set out in the CPP. I have no authority to make exceptions to the provisions of the CPP nor can I render decisions based on fairness, compassion, or extenuating circumstances.

CONCLUSION

[15] I reluctantly dismiss the appeal.

Raymond Raphael

¹⁰ *Giannaros*, 2005 FCA 187

Member, General Division - Income Security