



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *HT v Minister of Employment and Social Development*, 2020 SST 1250

Tribunal File Number: GP-19-74

BETWEEN:

H. T.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Claimant represented by: Geoffrey Hume

Teleconference hearing on: May 21, 2020

Date of decision: May 28, 2020

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) disability pension. My reasons are as follows.

OVERVIEW

[2] The Claimant has been receiving a CPP retirement pension that became in pay as of October 2017. She worked as a college instructor from 1991 until January 2013, and started working in journalism around the same time. She last worked as a journalist in 2018. She stopped working because of worsening headaches, stress, anxiety, depression, panic attacks, sensitivity to noise, sleep problems, stomach issues, a sore right wrist, Meniere's disease, and fatigue.

[3] The Minister received the Claimant's application for the disability pension on September 21, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] To qualify for a CPP disability pension, the Claimant must meet the requirements that are set out in the CPP. More specifically, she must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The calculation of the MQP is based on her contributions to the CPP. I find the Claimant's MQP to be December 31, 2016.

ISSUES

[5] Did the Claimant's conditions result in her having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2016?

[6] If so, was the Claimant's disability also long continued and of indefinite duration by December 31, 2016?

[7] Can the Claimant cancel her CPP retirement pension in favour of a CPP disability pension?

ANALYSIS

[8] Disability is defined as a physical or mental disability that is severe and prolonged¹. A person is considered to have a severe disability if incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. The Claimant must prove on a balance of probabilities that her disability meets both parts of the test. That means that if she meets only one part, she does not qualify for disability benefits.

[9] I found the Claimant to be credible. Her testimony was forthright in answering questions related to her work and health history, as well as the impact her condition has had on her daily life.

Severe disability

The Claimant had not exhausted or participated in all recommended treatment.

[10] In order to be successful, a Claimant is obligated to abide by and submit to treatment recommendations. If this is not done, they need to establish the reasonableness for why that has not been the case².

[11] The Claimant refused recommended treatment for her primary mental health condition on at least two separate occasions. In December 2016, Ms. Wilcocks, nurse practitioner, recommended counselling with a social worker. According to the Hearing File, the Claimant declined counselling because she did not think it would benefit her. Then, in October 2017, Dr. Wolder referred her to a psychiatrist, Dr. Mammoliti. When a staff member from that office contacted her to set up an appointment, the Claimant declined because she was not comfortable with how the intake call went. She felt that the office was not sensitive to her condition.

[12] The Claimant testified at the hearing that she refused seeing a social worker in 2016 because a social worker is not a doctor specializing in mental health. I can accept that as a reason for waiting to see a psychologist or psychiatrist. But, a short time later, she refused an appointment with a psychiatrist. I do not find the reason for that refusal to be reasonable. The

¹ Paragraph 42(2)(a) *Canada Pension Plan*

² *Tracey v. Canada (A.G.)*, 2015 FC 1300

Claimant also testified that she has recently been re-referred to a psychiatrist and that she was waiting for an appointment. She does plan to attend.

[13] The Claimant's representative submitted that the Claimant's anxiety is a barrier to treatment itself. She has difficulty being in large groups and talking to others about her condition. According to the evidence on file, however, that is not why she refused treatment in 2016 and 2017³. Even if that were the case, without exploring psychological/psychiatric treatment, I find that the Claimant has not exhausted all treatment options. The Claimant has been on the same single anti-anxiety medication since 2005. That has really been the only treatment she has had for depression or anxiety.

Though significant, the Claimant's overall health condition did not regularly preclude all substantially gainful work at the time of the MQP.

[14] I must assess the Claimant's condition in its totality. That means considering all of the possible impairments, not just the biggest impairments or the main impairment⁴.

[15] The Claimant submitted that she attributes her stomach issues, fatigue, difficulty sleeping, and general aches to her depression and anxiety. Her symptoms have been longstanding, since at least 2005. She also suffers from Meniere's disease. To date, the treatment she has had for all of her conditions has been conservative. She has not required any hospitalizations or acute care.

[16] At the time of the MQP, she was taking Serc medication for Meniere's disease and Cloazepam for depression/anxiety. She has been taking both of those medications since around 2006. The only other medication she has tried was Paxil for a very short time in 2005. In December 2016, the Claimant reported that she could have up to four panic attacks per week. She felt overwhelmed and had a constant feeling of dread. She had a really hard time completing her work and meeting deadlines. Since 2011 or 2012, her anxiety has caused nausea and diarrhea to the point that she could have to spend a few hours in the bathroom each day. Her stomach symptoms vary depending on her stress/anxiety level.

³ GD4-23 and GD4-33 of the Hearing File

⁴ *Bungay v. Canada (A.G.)*, 2011 FCA 47

[17] At first, the Claimant submitted that Serc has kept her Meniere's symptoms at bay. She later testified that stress aggravates her symptoms and in December 2016 she could have up to four attacks per week. There were also many weeks she didn't have any attacks at all. The attacks were unpredictable, but they would cause extreme fatigue to the point that she had to lay down and rest for several hours. The Claimant last saw a specialist related to Meniere's two or three years ago.

[18] The Claimant submitted that she has had right wrist discomfort for several years. It has improved since she stopped working because she has not been using the computer as much. She can use a computer for up to an hour and then her wrist will hurt. She takes the occasional Advil, but she has not had any other treatment. She submitted that X-rays of the right wrist were done in 2016, but there is no report of that on file. For her other general aches and pains she does some gentle exercises and stretching. She has not had any other treatment. She last went to a local gym to exercise in 2016 or 2017. She stopped going because of the big crowds and loud noise.

[19] By following through with additional and recommended treatment, I find that there is the potential to improve the Claimant's health status. She has yet to have any physical treatment for her aches and pains, and her secondary symptoms of stomach issues, headaches, sleep problems, and fatigue could be improved with better control of her mental health condition.

[20] I have placed considerable weight on the fact that the Claimant has not yet consulted a mental health professional, especially since she submits that depression and anxiety are major factors precluding her from work. There are also no medical report on file related to the severity of her Meniere's disease, or that it has precluded her regularly from any substantially gainful work at the time of the MQP.

The Claimant was employable and did not seek alternate work.

[21] I must also assess the severe part of the test in a real world context⁵. That means considering factors such as the Claimant's age, level of education, language proficiency, and past work and life experience.

[22] The Claimant was 59 years old and fluent in English at the time of the MQP. She completed high school and one year of university. She possesses many transferable skills given her work experience as a journalist and college professor teaching fashion, esthetics, photojournalism, and writing/publishing. While I have considered the Claimant's age and limitations, those elements are overshadowed by the fact that she had not fully explored ways to mitigate her circumstances or seek alternate work.

[23] The Claimant submitted that she stopped teaching because she felt she could not do the job to the best of her ability because of her condition. She also submitted that her journalism role changed in 2012, at least in part, due to changes within the industry and less funding. While I accept that the Claimant had difficulty working as a journalist because of the deadlines and need to be sharp/focused to be write, but she has not looked into any alternatives.

[24] Where there is evidence of work capacity, a person must show that efforts at obtaining and maintaining employment have been unsuccessful because of their health condition⁶.

[25] Up until 2012, the Claimant worked around 70 hours per week. She spent 50 hours writing articles for SUN media, and about 20 hours as a college professor. She officially stopped working as a college professor when her contract ended in January 2013. The Claimant did not require accommodations and her attendance was good. She submitted that she only missed a few classes or had to leave early because of a Meniere's attack.

[26] The Claimant submitted that in 2012 she and her journalism employer mutually decided not to renew her regular contract. There were changes going on in the industry and funds were not available. Between 2012 and 2018, the Claimant continued to write the occasional magazine article, but the hours she worked varied. She wrote 1 story about every 2 months and each story took about 10 to 20 hours to write. She described increasing difficulty producing work and

⁵ *Villani v. Canada (A.G.)*, 2001 FCA 248

⁶ *Inclima v. Canada (A.G.)*, 2003 FCA 117

sitting at the computer. By 2016, she was had to request deadline extensions. By 2018, she refused any more assignments. The Claimant has never applied for alternate less stressful work that did not involve deadlines.

[27] The Claimant submitted that the work she did after 2016 was not substantially gainful. I agree. However, I am not convinced that her health condition regularly precluded her from any substantially gainful at the time of the MQP. Again, she did not look for other work, and she had yet to exhaust several treatment options.

[28] I have concluded that it is more likely than not that the Claimant did not meet the definition of a severe disability, according to the CPP, by December 31, 2016.

CONCLUSION

[29] The appeal is dismissed. The Claimant is not able to cancel her CPP retirement pension in favour of a disability pension.

Tyler Moore
Member, General Division - Income Security