



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KC v Minister of Employment and Social Development*, 2021 SST 720

Tribunal File Number: GP-19-1666

BETWEEN:

K. C.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Claimant represented by: Robert Spencer

Teleconference hearing on: February 23, 2021

Date of decision: April 23, 2021

DECISION

[1] The Claimant, K. C. is not entitled to a *Canada Pension Plan* (CPP) disability pension. Here are my reasons.

OVERVIEW

[2] The Claimant is 36 years old. She has a grade 12 education. She last worked as a seasonal telemarketer from December 2016 until January 2017. Before this, she worked from 2005 to 2008 in various restaurant jobs. She described her main disabling conditions as depression and anxiety. She indicated she could no longer work as of January 2017.¹

[3] The Claimant applied for a CPP disability pension in July 2018. The Minister of Employment and Social Development (the Minister) denied the application because it submits that there is no evidence of a psychiatric issue in close proximity to December 2010.² It further submits that there is no medical evidence that she had limitations that would have continuously prevented her from doing some type of work, in December 2010 and continuously since. The Claimant appealed to the General Division of the Social Security Tribunal (GD-IS).

[4] For the purposes of the CPP, a disability is a physical or mental impairment that is severe and prolonged.³ The Claimant's disability is severe if it causes her to be incapable regularly of pursuing any substantially gainful occupation. Her disability is prolonged if it is likely to be long continued and of indefinite duration.

[5] For the Claimant to succeed, she must prove that it is more likely than not that she became disabled by the end of her Minimum Qualifying Period (MQP), and that she was continuously disabled from that date to the date of the hearing.⁴ Her MQP – the date by which she has to prove she was disabled – is December 31, 2010.⁵

¹ GD2-111

² GD9-2

³ Paragraph 42(2)(a) *Canada Pension Plan*

⁴ Paragraph 44(1)(b) CPP

⁵Service 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 GD2-4.

[6] The Courts have said that for a claimant to succeed, they must provide objective medical evidence of their disability at the time of their MQP.⁶

ISSUES

[7] Did the Claimant's mental health conditions result in her being incapable regularly of pursuing any substantially gainful occupation by her December 31, 2010 MQP?

[8] If so, was her disability long continued and of indefinite duration by her December 31, 2010 MQP?

ANALYSIS

Testimony

Why there is no medical evidence before December 31, 2010

[9] The Claimant testified at the hearing. I found her to be straightforward and sincere. Below is what she told me that was important for my decision.

- The Claimant testified that she started to experience mental health symptoms at age 11. She saw Dr. Lefcoe for this condition in her early teens from 1998 until 1999. At 13, he diagnosed her with depression and anxiety.⁷ Between 1999 and 2017, she did not have a family doctor. She went to walk-in clinics. Dr. Lau was her family doctor in 2017. For the past year, her family doctor is Dr. Mirzi.
- She went to the hospital around 2002-2005 when she slit her wrists. She did not remember the exact date. She was hospitalized for suicidal attempts at age 21/22 around 2011 or 2012⁸ and at age 26. There was no follow up by the hospital for this hospital stay. She went to the hospital once when the police took her after her family called for

⁶ *Canada (A.G.) v. Dean*, 2020 FC 206, citing *Warren v. Canada (A.G.)*, 2008 FCA 377; *Gilroy v. Canada (A.G.)*, 2008 FCA 116; and *Canada (A.G.) v. Hoffman*, 2015 FC 1348; and CPP Regulations: *Attorney General of Canada v Angell*, 2020 FC 1093, para 40

⁷ The Claimant submits that those records do not exist because they were paper records (GD8).

⁸ The Claimant was born in July 1984. This would make her 21 in 2005.

help. She did not know the date. In 2013, she went to the hospital for anxiety and not being able to breathe.

- In 2010 she would try to self soothe when she had an anxiety attack. She talked to her mom, spouse and friends. Nobody really gave her any advice or direction. It would have been good to have a family doctor but there were none available. She could not leave the house and did not go to any walk-in clinics that year. She could go a week without bathing. She did no housework, laundry, grocery shopping, going out and very little cooking. She spent her days in bed.

The Claimant's condition since 2010

- Since 2010, her condition has worsened. In 2018 when she applied for CPP it was a rough time. She has tried different medications but they either made things worse, gave her headaches or affected her memory. In 2019, she had in-person counselling. Today things are worse and she finds herself losing time. She cannot leave the house or get on a computer because of motivation. Concentration and memory are difficult. She relies on her spouse a lot for making meals. Her mood is always low. She feels like she is a burden. She has sleeping problems. Recently she had online trauma therapy. Because of Covid-19, a referral for a psychiatrist to adjust her medication will be a long wait.

The Claimant's work and educational history between 2003 and 2017

- The Claimant testified about her work history. She often missed work due to sleeping. She worked at casual restaurant jobs from 2003 to 2008. In 2010, she worked for Walmart for a week but left because of anxiety. They had to call an ambulance. This was the only time an ambulance was called to a workplace.⁹ Even though the Claimant thought this incident was in 2010, the record shows the incident was after the MQP. In 2011 and 2012, she tried to work at Goodwill but there were too many people around. In 2016 and 2017, she worked taking orders for a telemarketing company. There were too many people around and it was too much for her.

⁹ GD6-46

- She went to college for medical office administration in 2014. She left due to depression and anxiety after a term. She did not go back because of financial reasons, depression and anxiety.

The Medical Evidence

[10] Here is what her healthcare providers and hospital records said about her condition:

- A March 25, 2009 hospital visit for chest pain.¹⁰
- A January 2010 hospital visit for a finger contusion.¹¹
- An October 18, 2011 hospital record includes an assessment documenting the reason for a visit is superficial laceration bilateral wrist. Her mother called authorities noting safety concerns.¹²
- An April 10, 2013 ambulance call report notes dizziness and headache.¹³
- In June 2018, Dr. Lau, family doctor, diagnosed the Claimant with depression and social anxiety. He had been caring for the Claimant for the past 13 months indicating she presented with poor motivation, low mood, passive suicidal ideations, blunted affect and decreased eye contact. He prescribed Venlafaxine with psychiatric follow-up. Her prognosis was uncertain and guarded.¹⁴
- Dr. Lau enclosed a June 2018 report by Dr. Sabesan, psychiatrist.¹⁵ Dr. Sabesan saw the Claimant in urgent care. He diagnosed her with social anxiety and depressive symptoms.¹⁶ He sets out the Claimant's history based on her self-report, noting two previous suicide attempts at age 21 and 26. He adjusted her medication, ordered

¹⁰ GD6-65 and GD6-67. The hospital records from March 2009 to June 2018

¹¹ GD6-8, GD6-28, GD-60 and GD6-62

¹² GD6-55 and GD6-57

¹³ GD6-56

¹⁴ GD2-87

¹⁵ GD2-98

¹⁶ The Claimant first saw Dr. Sabesan in June 2018 (GD2-113)

bloodwork¹⁷ and recommended cognitive behavioural therapy.¹⁸ He said she should follow up with the family doctor.

My Findings

[11] Recent Federal Court decisions have stated that, in order to succeed, a claimant must provide objective medical evidence of their disability at the time of their MQP. The Courts have said that medical evidence dated after the MQP is irrelevant when a claimant fails to prove that they suffered from a severe disability before the MQP.¹⁹

[12] The Court also referred to the CPP Regulations and the requirement that the medical report include the nature, extent and prognosis of the disability; the findings upon which the diagnosis and prognosis were made; limitations resulting from the disability; and any other pertinent information, including recommendations for further diagnostic work or treatment that may be relevant.²⁰

What the Claimant says

[13] The Claimant acknowledges the authority of the *Angell* decision and the requirement that “a claimant must provide evidence of her disability, which must relate to the date of the MQP and show that the disability has been occurring continuously since that date.” The Claimant submits “she has supplementary care documentation that speaks retroactively to a prolonged condition that existed historically.”²¹ This makes her case different from *Angell* and *Dean*.²²

[14] The Claimant submits that there is medical information that supports the finding of disability at the MQP and corroborates her testimony.²³ The Federal Court decisions are not

¹⁷ GD2-105

¹⁸ GD6-5. The Minster notes that it contacted Dr. Sabesan specifically requesting information from December 2010 to the present; however, there was no additional information forthcoming to further consider

¹⁹ *Canada (A.G.) v. Dean*, 2020 FC 206, citing *Warren v. Canada (A.G.)*, 2008 FCA 377; *Gilroy v. Canada (A.G.)*, 2008 FCA 116; and *Canada (A.G.) v. Hoffman*, 2015 FC 1348; and CPP Regulations: *Attorney General of Canada v Angell*, 2020 FC 1093, para 40

²⁰ paragraph 68(1)(a) of the Canada Pension Plan Regulations, CRC, c 385; *Attorney General of Canada v Angell*, 2020 FC 1093, para 40

²¹ Citing *Minister of Employment and Social Development. v. R.Z* 2018 SST 26

²² The Claimant submits that in *Dean* there was no medical information and the matter was based entirely on oral testimony.

¹⁹GD8-7 and GD8-5

applicable because she has provided **some** medical information that supports the finding of a disability at the MQP. The reports on file describe a long history of illness, starting at a young age and continuing through to the MQP until the present time. These qualify as some medical information and clearly relate to the condition through the timeframe under review.²⁴

[15] The Claimant says that she and the Minister tried without success to get medical records from the Claimant's family doctor.²⁵ The Claimant submits that the absence of medical records should not reflect poorly or prejudice the Claimant where the doctor chose not to participate in the process. The Claimant argues that Canada Pension cases state that objective medical evidence is not an absolute requirement and that disability pensions are not restricted to those who can provide such evidence.²⁶

[16] She says that in *Angell* the claimant was unable to provide any medical evidence at the time of the GD-IS hearing. The Claimant submits that the medical report by the family doctor is the objective medical information required by *Angell*. The Claimant says that she has provided limited medical documentation showing a history of psychological problems stretching back as far as 2011 with a reasonable explanation for the earlier gaps (attending walk-in clinics and hospital visits for treatment). Unlike *Dean*, the Claimant submits she has provided some documentary evidence that relates to her psychological condition and shows a history of this condition that stretches from childhood through the MQP period until today.²⁷

[17] The Claimant submits that her participation in the Ontario Disability Support Program (OSDSP) reflects she has a severe disability. She asks that I consider her participation in the program when assessing her condition. The Claimant also acknowledges that the legal test is different for OSDSP.

²⁴ GD8-7

²⁵ GD8-5

²⁶ GD8-5 citing *Canada (Minister of Human Resources Development) v. Hounsell* (2000), 2000 C.E.B. & P.G.R. 8588, 2000 CarswellNat 4289 and *Reilly v. MHRD* (May 7, 1999), CP 08741 (PAB). I note both cases are not binding. I am bound by the decisions of the Federal Court.

²⁷ GD8-8

What the Minister says

[18] The Minister submits that the medical evidence does not show that the Claimant's disability was severely disabling by December 31, 2010.²⁸ There are hospital records for the years 2009, 2010, 2011 and 2013.²⁹ There are post MQP reports in 2018. But, there is no medical evidence related to anxiety or depression on or before her MQP.³⁰

There is no objective medical evidence of the Claimant's disability on or before her December 31, 2010 MQP

[19] I cannot base my decision solely on what the Claimant told me. There has to be objective medical evidence that shows the Claimant's functional limitations affected her ability to work by December 31, 2010.³¹

[20] The earliest medical information on file related to her psychological condition is dated October 2011, 10 months after the date the Claimant would have to be found disabled by her December 31, 2010 MQP. However, this report does not assist the Claimant because she last qualified for CPP disability in December 2010.

[21] The Claimant testified that she was diagnosed with depression and anxiety in her early teenage years. I accept that the Claimant was unable to get the doctor's paper record due to the passage of time. The Claimant said she visited walk-in clinics but there are no medical records on file. The hospital records provided span 2009 to 2017 with the first psychological reference in 2011. Regardless of the reason, the lack of medical documents is a major hurdle in the Claimant's ability to show that she had a severe disability as of her MQP.³²

²⁸ The medical documents do not need to be written on or before the MQP

²⁹ GD7

³⁰ Hospital Records from 2009- 2018 and GD9-3

³¹ The Federal Court of Appeal said this in *Warren v. Canada (Attorney General)*, 2008 FCA 377; the Federal Court repeated this in *Canada (Attorney General) v. Dean*, 2020 FC 206 and *Canada (Attorney General) v. Angell*, 2020 FC 1093.

³² *Warren v. Canada (Attorney General)*, 2008 FCA 377

[22] I considered the Claimant argument that *Angell* and *Dean* are not applicable because the Claimant in this case does not have the same lack of evidence. The Claimant says that while there is not a document on file from the MQP, she has “supplementary care documentation that retroactively speaks to a prolonged condition existing historically.”³³

[23] The medical information does not have to be contemporaneous with the MQP. But, I find that the post MQP reports of the family doctor and psychiatrist are not sufficient to meet the Federal Court’s requirements for objective medical evidence at the time of the MQP. This is because the psychiatrist’s report, enclosed with the family doctor’s medical report, sets out the Claimant’s history based on her self-report. I find this is not objective medical evidence because it is written eight years after the Claimant’s MQP and it was not based on clinical observations or assessments the psychiatrist made in December 2010, or a review of medical records from the time. That would not have been possible, because the family doctor³⁴ and the psychiatrist did not know the Claimant in 2010 and there are no medical records related to her psychological condition before October 2011.

[24] Since the Claimant has not provided documentation that she was severely disabled by December 31, 2010, there is a lack of medical evidence on which to base a finding that her medical conditions, depression and anxiety, prevented her from working by December 31, 2010.

[25] In some circumstances, an assessment of whether a person’s disability is severe has to include consideration of things like age, level of education, language proficiency, and past work and life experience. That is so there can be a realistic, or “real world” assessment of their work capacity.³⁵ However, since there is no medical evidence to establish that the Claimant suffered from a severe disability on or before December 31 2010, it is not necessary for me to apply the “real world” approach.³⁶

³³ GD8-9 citing *Minister of Employment and Social Development. v.R.Z* 2018 SST 26 that medical evidence does not need to be contemporaneous with the MQP.

³⁴ The family doctor did not know the Claimant until 2017. The psychiatrist did not know the Claimant until 2018.

³⁵ *Villani v. Canada (A.G.)*, 2001 FCA 248

³⁶ *Giannaros v. Canada (Minister of Social Development)*, 2005 FCA 187

[26] The Claimant has not established that it was more likely than not that she had a severe disability in accordance with the CPP requirements.

Issues I am not going to consider

[27] I cannot find the Claimant is disabled because the law requires that I have objective medical evidence of her condition on or before her MQP date. Therefore, it is not necessary for me to consider her work and school history in reaching my decision. For this reason, I have also not considered the Claimant's argument about her work not being a substantially gainful occupation. The Claimant is currently on OSDP. She asks that I consider her participation in that program. But, if a Claimant qualifies for a disability benefit under another government program this does not mean she will necessarily qualify for a CPP disability benefit. Since there is no medical evidence at her MQP, I do not need to consider her compliance with treatment.³⁷

[28] There is no need for me to consider whether the Claimant's disability was prolonged because the medical evidence on file has not shown that her disability was severe on or before her MQP.

CONCLUSION

[29] While I am sympathetic to the Claimant's circumstances, I have to apply the law and cannot make a decision based on compassion.

[30] The appeal is dismissed.

Kelly Temkin
Member, General Division - Income Security

³⁷ GD8-3