



Citation: *SC v Minister of Employment and Social Development*, 2021 SST 852

**Social Security Tribunal of Canada  
General Division – Income Security Section**

**Decision**

**Appellant:** S. C.

**Respondent:** Minister of Employment and Social Development

---

**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated June 18, 2020 (issued by  
Service Canada)

---

**Tribunal member:** George Tsakalis

**Type of hearing:** Teleconference

**Decision date:** November 29, 2021

**File number:** GP-20-1188

## Decision

[1] The appeal is dismissed.

[2] The Claimant, S. C., stopped having a disability under the Canada Pension Plan (CPP) after April 30, 2017.

[3] **I do not have jurisdiction to waive or reduce the amount of money she owes for CPP disability benefits she received from May 2017 to June 2019. However, the Claimant can apply to the Minister to reduce or waive her debt.**

[4] This decision explains why I am dismissing the appeal.

## Overview

[5] The Claimant had previously applied for a CPP disability pension in September 2009. The Social Security Tribunal of Canada (the Tribunal) awarded the Claimant a disability pension in a decision dated October 3, 2014. The Tribunal decided that the Claimant's disability under the CPP started in June 2008.<sup>1</sup>

[6] The Minister of Employment and Social Development (the Minister) learned that the Claimant returned to work. The Claimant earned \$20,491 in 2017, \$32,441 in 2018, and \$25,838 in 2019.<sup>2</sup>

[7] The Minister wrote to the Claimant on November 5, 2019. The Minister told the Claimant that she returned to work in January 2017. The Minister decided to stop paying the Claimant a CPP disability pension as of April 30, 2017. The Minister told the Claimant that she owed \$20,738.78 in disability benefits that she received from May 2017 to June 2019.<sup>3</sup>

[8] The Claimant asked the Minister to reconsider its decision. The Minister issued a reconsideration decision on June 18, 2020. The Minister maintained its decision that the

---

<sup>1</sup> See GD2-280-293

<sup>2</sup> See GD3-3

<sup>3</sup> See GD2-19-22

Claimant was no longer disabled under the CPP.<sup>4</sup> The Claimant appealed the Minister's decision to the Tribunal.

[9] The Claimant says she only returned to work under duress, after becoming homeless. She struggled when she returned to work and had many leaves of absences. She suffers from hypertension, depression, insomnia, obstructive sleep apnea, and chronic fatigue.<sup>5</sup>

[10] The Minister says the Claimant stopped having a disability under the CPP after April 30, 2017. The evidence showed the Claimant regained capacity for regular and substantially gainful work.

## **Matters I have to consider first**

### **The Claimant wasn't at the hearing**

[11] The hearing was scheduled to proceed by teleconference on October 13, 2021. The Claimant did not dial into the teleconference. I asked the Registry Office (RO) to contact the Claimant. The RO could not contact the Claimant.

[12] I decided to adjourn the hearing to November 18, 2021 because I was not satisfied the Claimant had received the Notice of Hearing (NOH). The Tribunal records show that the NOH for the October 13, 2021 hearing had been couriered to the address the Claimant provided the Tribunal. However, the Claimant was unavailable when the NOH was delivered.

[13] The Claimant did not dial into the November 18, 2021 teleconference. I asked the RO to contact the Claimant. The RO advised me that it left the Claimant voicemails at two telephone numbers she had provided. However, the Claimant never dialled into the teleconference.

[14] The Tribunal records show that the NOH for the November 18, 2021 hearing had been couriered to the address the Claimant provided. However, the Claimant was

---

<sup>4</sup> See GD2-10

<sup>5</sup> See GD2-246 and 263

unavailable when the NOH was delivered. She did not pick up the NOH, even though it was made available to her.

[15] Subsection 12(1) of the *Social Security Tribunal Regulations* say that if a claimant fails to attend a hearing, the Tribunal can proceed with a decision if the Tribunal is satisfied that the claimant received notice of the hearing.<sup>6</sup>

[16] I do not believe the Claimant received notice of the hearing. But I am satisfied that she is aware of the proceedings. The RO left voicemail messages about the hearing at telephone numbers she provided. In addition, the Claimant has a duty to notify the Tribunal if her contact information changes.<sup>7</sup>

[17] The *Social Security Tribunal Regulations* say that I must conduct proceedings as informally and quickly as the circumstances of fairness and natural justice permit.<sup>8</sup> The *Social Security Tribunal Regulations* also say that if a question of procedure that is not dealt with by the Regulations arises in a proceeding, the Tribunal must proceed by analogy to the Regulations.<sup>9</sup>

[18] I have decided to proceed by analogy to subsection 12(1) of *the Social Security Tribunal Regulations*. I have decided to proceed in the Claimant's absence and make a decision based on the documents and submissions contained in the hearing file.

## Issue

[19] Did the Minister prove that the Claimant stopped having a disability under the CPP after April 30, 2017?

## Analysis

[20] In order to stop paying a CPP disability pension, the Minister must show that it is more likely than not that the Claimant ceased being disabled under the CPP.<sup>10</sup> A

---

<sup>6</sup> See subsection 12(1) of the *Social Security Tribunal Regulations*

<sup>7</sup> See section 6 of the *Social Security Tribunal Regulations*

<sup>8</sup> See paragraph 3(1)(a) of the *Social Security Tribunal Regulations*

<sup>9</sup> See subsection 3(2) of the *Social Security Tribunal Regulations*

<sup>10</sup> See *Atkinson v. Canada (A.G.)*, 2014 FCA 187

disability ceases to be payable for the month in which a claimant ceases to be disabled.<sup>11</sup>

[21] To be disabled under the CPP, the disability must be severe and prolonged. A disability is severe if it causes a person to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.<sup>12</sup>

[22] The measure of whether a disability is “severe” is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living.<sup>13</sup>

– **The Minister proved the Claimant stopped having a disability under the CPP after April 30, 2017**

[23] The Minister relies on the Claimant’s earnings from 2017 and onward to show she no longer had a disability under the CPP. The Minister takes the position that the Claimant’s earnings showed she had regained the capacity to regularly pursue substantially gainful employment.

[24] Significant earnings can show that a claimant has regained capacity to regularly pursue substantially gainful employment. It is one factor that I have to consider. The determination of whether a claimant’s employment is substantially gainful cannot be decided on a one-size fits all approach. Each case should be assessed on its own facts.<sup>14</sup>

[25] I find that the Minister proved that the Claimant regained capacity to regularly substantially gainful employment after April 30, 2017. I find that the work the Claimant

---

<sup>11</sup> See paragraph 70(1)(a) of the CPP

<sup>12</sup> See paragraph 42(2)(a) of the CPP

<sup>13</sup> See *Klabouch v. Canada (A.G.)*, 2008 FCA 33

<sup>14</sup> See *Boles v. Minister of Employment and Immigration* (March 14, 1994), CP 02794 (PAB); *Minister of Human Resources Development v. Porter* (December 3, 1998), CP 05616 (PAB); *Minister of Social Development v. Nicholson* (April 17, 2007), CP 24143 (PAB). These decision are not binding, but I find them persuasive.

performed from January 2017 to August 2019 was both regular and substantially gainful.

[26] The Claimant was born in 1954. She finished Grade 12 and obtained a Bachelor of Arts degree in Sociology. She also obtained a clerk typist certificate. She worked as a personal banking associate from July 1988 to December 2004.<sup>15</sup> The Minister says she returned to work in January 2017 and stopped working in August 2019.<sup>16</sup> The Claimant began collecting an Old Age Security pension and CPP retirement pension in September 2019.<sup>17</sup>

[27] The medical evidence shows the Claimant had been depressed since at least 2005.<sup>18</sup> The Claimant had a heart attack in 2009. She suffered from coronary artery disease, angina, and hypertension. Her family doctor said in a 2009 report that the Claimant suffered from chest pain with minimal exercise, shortness of breath and fatigue. The Claimant also experienced dizziness and impaired coordination because of her medical problems.<sup>19</sup>

[28] A psychologist assessed the Claimant in 2010. The psychologist said the Claimant had major depressive disorder and was disabled from working in any capacity.<sup>20</sup> A psychiatrist diagnosed the Claimant with schizoaffective disorder in 2012, along with chronic fatigue and pain.<sup>21</sup> The psychiatrist believed the Claimant could not work at any job.<sup>22</sup>

[29] The Claimant was in a car accident in 2014 and experienced neck pain and stiffness.<sup>23</sup> X-rays taken in 2014 and 2016 showed degenerative disc disease in her cervical spine.<sup>24</sup> A right shoulder ultrasound taken in 2016 showed right rotator cuff

---

<sup>15</sup> See GD2-69-72

<sup>16</sup> See GD3-10

<sup>17</sup> See GD2-4

<sup>18</sup> See GD2-51

<sup>19</sup> See GD2-139-142

<sup>20</sup> See GD2-83-95

<sup>21</sup> See GD2-310-312

<sup>22</sup> See GD2-328

<sup>23</sup> See GD1-20-21

<sup>24</sup> See GD1-18 and 20-21

tendinopathy.<sup>25</sup> A lumbar spine x-ray taken in 2018 showed degenerative disc disease.<sup>26</sup>

[30] The Claimant saw a cardiologist in March 2019. The cardiologist said the Claimant worked part time as a bank teller. The Claimant had not been to the cardiology clinic since 2014. The cardiologist noted the Claimant had been diagnosed with sleep apnea, but had not went for a sleep study.<sup>27</sup>

[31] The Claimant saw the cardiologist again in July 2019. The cardiologist said the Claimant had gone off work for a few months. The Claimant experienced pain in her hands and legs. The Claimant was taking medications for chronic pain. The cardiologist did not believe the Claimant's chest pain symptoms were cardiac related, but were related to chronic pain or fibromyalgia.<sup>28</sup>

[32] The Claimant went to a diabetes clinic in September 2019. She was started on Metformin and she was told to discuss stress and mental health concerns with her family doctor.<sup>29</sup>

[33] The Claimant underwent a left shoulder ultrasound in April 2020 that showed degenerative changes and a tendon tear.<sup>30</sup>

[34] The Claimant's family doctor sent a report to the Minister in May 2020. The Claimant's family doctor said the Claimant's physical and mental health problems worsened after she sustained whiplash and bilateral shoulder injuries in a car accident. He recommended that the Claimant limit herself to part-time work and that she reduce her work hours to the point where she would no longer work.<sup>31</sup>

[35] I agree with the Minister's submission that the medical evidence did not show the Claimant continued to have a severe disability under the CPP after April 30, 2017. The

---

<sup>25</sup> See GD1-18-19

<sup>26</sup> See GD2-234

<sup>27</sup> See GD2-237

<sup>28</sup> See GD2-239

<sup>29</sup> See GD2-230

<sup>30</sup> See GD1-14

<sup>31</sup> See GD2-229

cardiologist the Claimant saw in 2019 did not say the Claimant should not have been working. The Claimant's family doctor in May 2020 said the Claimant should limit herself to part-time work, which suggests the Claimant had work capacity after April 30, 2017. I

[36] The documentary evidence also does not show that the Claimant continued to have a severe disability under the CPP after April 30, 2017.

[37] The Claimant earned \$20,491 in 2017, \$32,441 in 2018, and \$25,838 in 2019. The CPP *Regulations* define "substantially gainful" as salary or wages equal to or greater than the maximum amount that a person can receive as a disability pension.<sup>32</sup> The Claimant earned more than the maximum amount she could have received as a disability pension in 2017, 2018, and 2019.<sup>33</sup> Using the CPP *Regulations* as a guide, I find that the Claimant engaged in substantially gainful employment after April 30, 2017.

[38] I also find the Claimant engaged in regular employment after April 30, 2017. The Claimant said in a questionnaire that she worked part-time at a bank under duress.<sup>34</sup> A report confirmed she returned to part-time work in January 2017.<sup>35</sup> The Claimant told the Minister that she only returned to work because of her dire financial circumstances. She returned to part-time work and could barely handle working 20 hours a week. She had to take many extended leaves of absence because of her poor health.<sup>36</sup>

[39] However, the measure of whether a disability is severe is not whether the Claimant suffers from severe impairments, but whether the disability prevents the Claimant from earning a living.<sup>37</sup> I accept that the Claimant worked under difficulty conditions from January 2017 to August 2019. But the evidence showed she earned a substantially gainful income and that she worked regular part-time hours when she was able to do so.

---

<sup>32</sup> See section 68.1 of the CPP *Regulations*

<sup>33</sup> The maximum amount the Claimant could have received as a disability pension was \$15,764 in 2017, \$16,030 in 2018, and \$16,438 in 2019.

<sup>34</sup> See GD2-260

<sup>35</sup> See GD2-262

<sup>36</sup> See GD2-263

<sup>37</sup> See *Klabouch v. Canada (Attorney General)*, 2008 FCA 33



## **I do not have jurisdiction to waive or reduce the Claimant's overpayment**

[40] The Claimant owes the Minister \$20,738.78 for disability benefits she received from May 2017 to June 2019.

[41] The Tribunal is created by law. My jurisdiction is limited to the powers granted by the Tribunal's enabling legislation.<sup>38</sup> The Tribunal's enabling legislation does not give me jurisdiction to reduce or waive the overpayment.<sup>39</sup>

[42] I am sympathetic to the Claimant. But my jurisdiction is limited to the issue of whether the Minister proved the Claimant stopped having a disability under the CPP after April 30, 2017, and I have found the Minister proved its case. I cannot waive or reduce the Claimant's overpayment on compassionate grounds.

[43] The Claimant can apply to the Minister to waive or reduce her overpayment.<sup>40</sup>

## **Conclusion**

[44] The Minister proved that the Claimant stopped having a disability under the CPP after April 30, 2017.

[45] This means the appeal is dismissed.

George Tsakalis

Member, General Division – Income Security Section

---

<sup>38</sup> See *R. v. Conway*, 2010 SCC, *Canada (Minister of Social Development) v. Kendall* (June 7, 2004), CP 21960 (PAB) and *S.S. v. Minister of Employment and Social Development*, 2018 SST 705

<sup>39</sup> See subsection 64(2) of the *Department of Employment and Social Development Act*

<sup>40</sup> See subsection 66(3) of the CPP