



Citation: *MC v Minister of Employment and Social Development*, 2021 SST 835

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

## Decision

**Appellant:** M. C.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated November 25, 2020 (issued  
by Service Canada)

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**Tribunal member:** Pierre Vanderhout

**Type of hearing:** Teleconference

**Hearing date:** September 23, 2021

**Hearing participants:** Appellant

**Decision date:** October 1, 2021

**File number:** GP-21-271

## Decision

[1] The appeal is dismissed.

[2] The Claimant, M. C., isn't eligible for a Canada Pension Plan ("CPP") disability pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Claimant is 54 years old. His most recent full-time work was as a factory worker. His last day of work was in September 2016. In his latest application for the CPP disability pension, he said he was no longer able to work as of September 16, 2016, due to chronic severe back pain. He also reported leg pain and pain in the back of his head. He said his pain first appeared about 20 years ago. He says his severe daily pain stops him from sitting, standing, bending, or lifting heavy items.<sup>1</sup> He sometimes mentions anxiety as well.

[4] The Claimant applied for a CPP disability pension on March 17, 2020. This was his third such application. The Minister of Employment and Social Development ("Minister") refused his application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Claimant says his back pain existed by early 2002, when he quit his job as a taxi driver in Calgary. He is tall, and says the confined space inside the taxi aggravated his back pain. He then returned to Pakistan, his birthplace, where he ran a garment shop for 12 years. His pain was relieved while he was in Pakistan, despite working six days per week, because of the warmer weather and the physically less demanding work. He came back to Canada in May 2014, due to worsening living conditions in Pakistan. He started working full-time in a factory in March 2015. However, by the end of 2015, the physical labour caused an increase in his back pain. He worked less and less, and finally stopped working altogether in September 2016 after having an MRI exam.

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<sup>1</sup> GD2-64 to GD2-66

[6] The Minister says the Claimant only claims to have been disabled since September 2016, which is long after December 31, 2002 (the date by which he must prove he was disabled). The Minister says there is no evidence of any disabling medical conditions by the end of 2002. The Minister also says the Claimant was capable of suitable work through his 12 years of self-employment in Pakistan and at least part of his factory work in Canada. The Minister says it is irrelevant that the Claimant's condition got worse after December 31, 2002.

## What the Claimant must prove

[7] For the Claimant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2002. This date is based on his CPP contributions.<sup>2</sup>

[8] The *Canada Pension Plan* defines “severe” and “prolonged.”

[9] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup>

[10] This means I have to look at all of the Claimant's medical conditions together to see what effect they have on his ability to work. Usually, I must also look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Claimant can regularly do some kind of work from which he could earn a living, he isn't entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>4</sup>

[12] This means the Claimant's disability can't have an expected recovery date. The disability must be expected to keep the Claimant out of the workforce for a long time.

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<sup>2</sup> Service Canada uses a claimant'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 section 44(2) of the *Canada Pension Plan*. The Claimant's CPP contributions are on page GD4-13.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[13] The Claimant must prove he has a severe and prolonged disability. He must prove this on a balance of probabilities. This means that he must show that it is more likely than not he is disabled.

## **Matter I must consider first**

### **I accepted the document sent in after the hearing**

[14] The Minister filed submissions (indexed as “GD11”) on September 29, 2021. The Minister filed GD11 only because the Claimant filed a late document (indexed as “GD7”) on September 18, 2021. I accepted GD7 into evidence because it was potentially relevant.<sup>5</sup> However, as GD7 was filed only five days before the hearing, I gave the Minister until October 13, 2021, to respond to it.<sup>6</sup> As the Minister met this deadline, I accepted GD11 as well.

## **Reasons for my decision**

[15] I find that the Claimant hasn’t proven he had a severe and prolonged disability by December 31, 2002.

### **Was the Claimant’s disability severe?**

[16] The Claimant’s disability wasn’t severe by December 31, 2002. I reached this finding by considering several factors. I explain these factors below.

#### **– The Claimant’s functional limitations didn’t affect his ability to work by December 31, 2002**

[17] In March 2021, Dr. Ismat-Raheem (Family Doctor) said the Claimant had an underactive thyroid (January 2017), Vitamin D deficiency (October 2017), anxiety (2018), hyperlipidemia (2019), and chronic lumbar radiculopathy (May 2017).<sup>7</sup> However, I can’t focus on the Claimant’s diagnoses.<sup>8</sup> Instead, I must focus on whether he had

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<sup>5</sup> See GD8-1.

<sup>6</sup> See GD10-1. The original deadline of October 4, 2021 (see GD8-1), was extended at the Minister’s request (see GD9-1). However, the extension was not needed.

<sup>7</sup> GD3-2

<sup>8</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

functional limitations that got in the way of him earning a living.<sup>9</sup> When I do this, I have to look at **all** of the Claimant's medical conditions (not just the main one) and think about how they affect his ability to work.<sup>10</sup>

[18] Dr. Ismat-Raheem said the Claimant's symptoms included severe back pain (with radiation to the left leg), inability to bend, and anxiety. He limped and could not sit still. He could not sit in the car for hours, and it was hard for him to get in and out of the car. She said he was unable to work due to those symptoms, which had been persistent for a "few years."<sup>11</sup>

[19] I have no reason to doubt Dr. Ismat-Raheem's findings. I accept that the Claimant had functional limitations that eventually affected his ability to work after he came back to Canada in 2014. However, as I will explain below, these functional limitations are not proven by December 31, 2002.

– **What the Claimant says about his functional limitations**

[20] The Claimant says his medical conditions resulted in functional limitations that affect his ability to work. He says his back pain first appeared by 2002, because he is quite tall but the driver's seat in his taxi was not adjustable. As a result, he could not sit straight in the taxi. He had to sit slanted.<sup>12</sup>

[21] The Claimant worked six days per week, for nearly ten hours per day, in Pakistan between 2002 and 2014.<sup>13</sup> He said his severe back pain started again by the end of 2015, because he had to do heavy lifting in his factory job. He would lift anywhere from 10 kg to 35 kg at a time. The pain would radiate into his left leg and into the back of his head. He had a burning sensation in his back. Severe pain episodes could go on for 10-12 days, during which time he could not take even one step. He could not get in and out of the car without help.

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<sup>9</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>10</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>11</sup> GD3-2

<sup>12</sup> GD5-2

<sup>13</sup> At the hearing, he said he worked each day from about 10:00 a.m. to 9:00 p.m., taking three 30-minute breaks for prayers.

[22] Even when the Claimant had no severe pain episodes, he could not bend and take anything out of the fridge easily. He could only drive for 15-20 minutes, and he could only do that by sitting on one thigh. He relied on his wife to help with his daily routines. He says he also had increased anxiety: it caused sleeping difficulties and a lack of concentration.<sup>14</sup>

– **What the medical evidence says about the Claimant's functional limitations**

[23] The Claimant genuinely believes that his functional limitations affect his ability to work. He says he could no longer drive a taxi in 2002, and pain affected his ability to work in a factory by the end of 2015. In 2016, he started doing lighter duties and eventually reduced his shifts to two or three per week. However, he must prove a severe disability by December 31, 2002. He must provide medical evidence that shows that his functional limitations affected his ability to work by December 31, 2002.<sup>15</sup>

[24] The medical evidence doesn't support what the Claimant says. The earliest medical document in the file appears to be from September 1, 2016. On that date, his spinal MRI revealed mild degenerative changes at L4-L5 and L5-S1. While he had an annular fissure at L4-L5, he did not have focal herniation, spinal stenosis, or impinged nerve roots. This does not support functional limitations by December 31, 2002.

[25] I reviewed the later medical documents to see if they supported what the Claimant said about his conditions by the end of 2002. However, the earliest reference was to 2014: in January 2018, Dr. Lilani (Family Doctor) said she started treating the Claimant's main condition in January 2014.<sup>16</sup> While this is still more than 10 years too late, even this evidence is not reliable. In June 2018, Dr. Lilani said she had only known the Claimant since October 2015.<sup>17</sup> The Claimant has also repeatedly said that he did not return to Canada until May 2014.<sup>18</sup>

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<sup>14</sup> GD5-2

<sup>15</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>16</sup> GD2-186

<sup>17</sup> GD2-138

<sup>18</sup> At both GD2-147 and GD2-195, he said he stopped working in Pakistan in May 2014 because he moved back to Canada. See also GD5-3. He also said this at the hearing.

[26] I asked the Claimant if he sought medical treatment for his conditions before going back to Pakistan in 2002. He said he did not seek treatment because he “knew the pain was due to sitting in a tight place.” He said he “knew that if I left I would feel better.” This is not persuasive evidence, particularly without any medical documentation.

[27] The medical evidence doesn’t show that the Claimant had functional limitations that affected his ability to work by December 31, 2002. As a result, he hasn’t proven he had a severe disability.

[28] Multiple references to a disability onset date in 2015 or 2016 support this finding. For example, when the Claimant applied for CPP disability benefits in 2020, he said he could no longer work because of his medical condition in September 2016.<sup>19</sup> Both he and Dr. Ismat-Raheem said his pain started in December 2015 when he was working in the factory.<sup>20</sup> The Claimant also said that “all this would not have happened,” and he “would not be suffering from this back pain now,” if he didn’t have to wait from February 2016 to September 2016 for an MRI.<sup>21</sup> His factory work in Canada involved loading and unloading heavy skids of food products.

[29] When I am deciding whether a disability is severe, I usually have to consider a claimant’s personal characteristics. This lets me realistically assess a claimant’s ability to work.<sup>22</sup> I don’t have to do that here, because I found that the Claimant’s functional limitations didn’t affect his ability to work by December 31, 2002. This means he didn’t prove his disability was severe by then.<sup>23</sup>

#### *Additional Comments*

[30] While I do not need to analyze the matter further, I would like to make some brief additional comments on the Claimant’s situation. The following issues might have been relevant if medical evidence for 2002 (or earlier) had been filed.

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<sup>19</sup> GD2-66. He affirmed this at GD2-184.

<sup>20</sup> See GD2-19 and GD2-60.

<sup>21</sup> The Claimant says this many times between pages GD5-4 and GD5-7

<sup>22</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>23</sup> See *Giannaros v Minister of Social Development*, 2005 FCA 187.

[31] The Claimant may have been unable to continue driving his taxi in 2002. But being unable to do one's current job is not, by itself, evidence of a severe disability. The Claimant repeatedly mentioned that his driver's seat was inadequate, and this caused problems.<sup>24</sup> However, he may have been able to drive a taxi with a better seat. He might also have been able to do another job.

[32] The Claimant worked well over 50 hours per week in Pakistan from 2002 to 2014. This strongly suggests that any limitations by 2002 pertained only to certain jobs. His limitations did not stop him from making a living by buying and selling garments. He said he had no difficulty working then because he wasn't doing heavy lifting or bending.<sup>25</sup> At the hearing, he said that he could walk, sit, and stand at his Pakistan job with no problems. He also said he looked for similar work in Canada when he returned in 2014, but felt it would have been too expensive for him to start his own business.

## **Conclusion**

[33] I find that the Claimant isn't eligible for a CPP disability pension because his disability wasn't severe. Because I found that his disability wasn't severe, I don't have to consider whether it is prolonged.

[34] This means the appeal is dismissed.

Pierre Vanderhout  
Member, General Division – Income Security Section

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<sup>24</sup> See GD5-2 to GD5-3 and GD2-19. He also said this at the hearing.

<sup>25</sup> GD2-19