



Citation: *JM v Minister of Employment and Social Development*, 2021 SST 869

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: J. M.

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: Tengteng Gai

Type of hearing: Teleconference

Hearing date: October 22, 2021

Hearing participants: Appellant
Appellant's witness
Interpreter

Decision date: December 14, 2021

File number: GP-20-1281

Decision

[1] The appeal is dismissed.

[2] The Claimant, J. M., 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 55 years old. She obtained a mechanical engineering degree in 1989 from a Chinese university. She immigrated to Canada in 2003.

[4] The Claimant worked part-time producing technical drawings and plans from 2005 until 2009, when she was laid off due to the economic recession. She was unemployed from 2010 to 2013.

[5] The Claimant worked in the service industry after 2013. She worked part-time as a gas station cashier for several months in 2014. She then worked full-time in maintenance at a fast food restaurant from late 2016 until July 2018. She also worked part-time as a cashier at a gas station from March to July 2018. She stopped working because she had difficulty standing.

[6] In 2019, the Claimant started a business with her husband selling food items. They continue to run this business together.

[7] The Claimant applied for a CPP disability pension on August 12, 2019. The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[8] The Claimant argues that she had a severe and prolonged disability.

[9] The Minister argues that the Claimant's disability wasn't severe or prolonged. In support of its position, the Minister cites the lack of medical evidence from around December 31, 2011, and substantially gainful earnings in 2017 and 2018.

What the Claimant must prove

[10] For the Claimant to succeed, she must prove she had a disability that was severe and prolonged by her Minimum Qualification Period (MQP) of December 31, 2011.¹ This date is based on her contributions to the CPP.

[11] The *Canada Pension Plan* defines "severe" and "prolonged."

[12] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.²

[13] This means I have to look at all of the Claimant's medical conditions together to see their effect on her ability to work. I also have to consider her background including her age, level of education, and past work and life experience. I do this to get a realistic or "real world" picture of whether her disability was severe. If the Claimant was able to regularly do some kind of work that she could earn a living from, then she isn't entitled to a disability pension.

[14] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

[15] 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.

¹ 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 GD-5.

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

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

[16] The Claimant has to prove she had a severe and prolonged disability. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she was disabled.

Matters I have to consider first

I accept the document sent in after the hearing

[17] At the hearing, the Claimant said that she had income from her business in 2020 and 2021. This income could have changed her MQP date.

[18] I requested an updated record of earnings (ROE) from the Minister after the hearing. The updated ROE showed no income in 2020 and 2021.⁴ I accept the updated ROE and find that the Claimant's MQP date remains December 31, 2011.

Reasons for my decision

[19] I find that the Claimant hasn't proven she had a severe and prolonged disability by December 31, 2011.

The Claimant's disability wasn't severe

[20] I find that the Claimant's disability wasn't severe. I base this on several factors. I explain these factors below.

– The Claimant testified that she had functional limitations

[21] The Claimant had swollen legs, feet pain, back problems from past surgery, joint pain, high blood pressure, vertigo, and diabetes. However, I can't focus on the Claimant's diagnoses.⁵ Instead, I must focus on whether she had resulting functional limitations that got in the way of her earning a living.⁶ 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 affected her ability to work.⁷

⁴ See record of earnings at GD5-2.

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[22] I find the Claimant's testimony sincere.

[23] At the hearing, the Claimant said that she had functional limitations that affected her ability to work in the following ways:

- She had difficulty with prolonged standing and sitting because of leg and back pain.
- She had trouble concentrating.
- She felt dizzy.
- She had difficulty doing household chores.

[24] The Claimant's witness, her husband, testified that the Claimant was depressed and had trouble taking care of herself.

– **The medical evidence doesn't support the Claimant's testimony.**

[25] The Claimant must provide medical evidence that her functional limitations affected her ability to work by December 31, 2011.⁸

[26] The Claimant and her witness genuinely believed that her functional limitations affected her ability to work. However, the medical evidence doesn't support their testimony. I based this finding on the following:

- The medical evidence didn't address the Claimant's medical conditions around her MQP date of December 31, 2011.
- The medical evidence closest to her MQP date is a March 17, 2014 note from Dr. Larmer, her family doctor.⁹ Dr. Larmer noted that the Claimant's back pain started four weeks prior. This would have been around February 2014, well after her MQP date. There was no mention of any issues with her legs or mental health conditions, aside from some unhappiness at home.

⁸ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁹ See Dr. Larmer's note at GD2-76.

- Dr. Larmer's January 10, 2019 report, submitted as part of the Claimant's initial application, didn't mention any physical health conditions.¹⁰ This is a significant omission because the Claimant had been seeing Dr. Larmer since at least July 2011, several months before her MQP date.¹¹
- Dr. Larmer's report mentioned affective psychosis and resulting impairments and functional limitations, but the onset was noted as March 2014, well after the Claimant's MQP date.

[27] When asked about the lack of medical evidence from 2011, the Claimant testified that she was only taking over-the-counter medication and may not have been regularly seeing a doctor at that time.

[28] Unfortunately, the Claimant hasn't provided objective medical evidence of a severe disability existing on or before her MQP date of December 31, 2011.¹² The medical evidence she provided doesn't show that she had functional limitations that affected her ability to work by her MQP date. As a result, she hasn't proven she had a severe disability.

[29] Although the medical evidence showed some physical and mental health issues, these occurred years after her MQP date and therefore aren't relevant to this appeal. This appeal must focus on the medical conditions she had by her MQP date.¹³

[30] When I am deciding whether a disability was severe, I usually have to consider a claimant's personal characteristics. This allows me to realistically assess a claimant's ability to work.¹⁴

¹⁰ See Dr. Larmer's report at GD2-121.

¹¹ See Dr. Larmer's report at GD2-120.

¹² See *Canada (Attorney General) v Angell*, 2020 FC 1093

¹³ See *Johnson v Canada (Attorney General)*, 2016 FC 1254.

¹⁴ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[31] I don't have to do that here because the Claimant's functional limitations didn't affect her ability to work by December 31, 2011. This means she didn't prove her disability was severe by then.¹⁵

Conclusion

[32] I find that the Claimant isn't eligible for a CPP disability pension because her disability wasn't severe. Since I found that her disability wasn't severe, I don't have to consider whether it was prolonged.

[33] This means the appeal is dismissed.

Tengteng Gai
Member, General Division – Income Security Section

¹⁵ See *Giannaros v Minister of Social Development*, 2005 FCA 187.