



Citation: *AS v Minister of Employment and Social Development*, 2022 SST 200

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** A. S.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Rebekah Ferriss

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**Decision under appeal:** General Division decision dated October 21, 2021  
(GP-20-2002)

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**Tribunal member:** Kate Sellar

**Type of hearing:**

**Decision date:** March 23, 2022

**File number:** AD-22-62

## **Decision**

[1] I am allowing the appeal. The General Division made an error of fact. I have given the decision that the General Division should have given: the Claimant is entitled to a Canada Pension Plan disability pension. These reasons explain why.

## **Overview**

[2] A. S. (Claimant) is a tax auditor. She said that she could no longer work because of loss of function in her right shoulder and arm, pain, and a severe rotator cuff tear that required surgery. She applied for a Canada Pension Plan disability pension on December 11, 2019.

[3] The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed the Minister's decision to this Tribunal.

[4] The General Division decided that the Claimant was not entitled to a disability pension because her disability was not severe within the meaning of the CPP. I granted the Claimant permission (leave) to appeal the General Division's decision, finding that it was arguable that the General Division made an error of fact by ignoring some important evidence about the Claimant's functional limitations.

[5] I must decide whether the General Division made that error or any other errors the Claimant alleges. If I find an error, I need to explain what steps I will take to fix (remedy) it.

## **The parties agree on the outcome of the appeal**

[6] The parties asked me to make a decision based on an agreement they reached during a settlement conference on March 23, 2022.

[7] The parties agree that:

- The General Division made an error of fact by ignoring the testimony the Claimant gave about her functional limitations.<sup>1</sup>
- When those functional limitations are considered, the Claimant meets the definition of having a severe and prolonged disability within the meaning of the CPP.
- The Claimant's minimum qualifying period (MQP) ended on December 31, 2020.
- For the purpose of the CPP disability pension, the Claimant's disability started in September 2018 (she applied in December 2019 and cannot be found to be disabled more than 15 months before her application).<sup>2</sup> Payments start four months after September 2018 in January 2019.<sup>3</sup>
- The Appeal Division should allow the Claimant's appeal and give the decision that the General Division should have given: the Claimant is eligible for the CPP disability pension.

## **I accept the proposed outcome**

[8] In my view, the General Division made an important error of fact by ignoring evidence about the Claimant's functional limitations.

[9] The Claimant gave testimony about her functional limitations both when she had been at work and when she was at home. She has a history of needing help from a personal support worker and from family to maintain activities of daily living like grocery shopping, shovelling snow, preparing and eating food, bathing, and more. She explained that her employer modified her work before she stopped working altogether.

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<sup>1</sup> See section 58(1)(c) of the *Department of Employment and Social Development Act* for the definition of an error of fact as a basis for the Appeal Division to allow an appeal of a General Division decision.

<sup>2</sup> See section 42(2)(b) of the *Canada Pension Plan* (CPP) for the 15-month rule.

<sup>3</sup> See section 69 of the CPP for the 4-month payment rule.

In addition, in October 2019, the Claimant's insurer explained that she would remain on benefits because she was disabled from any occupation.

[10] The General Division does not have to refer to every piece of evidence in its decision. The Appeal Division can presume the General Division considered all of the evidence. However, the Claimant can overcome that presumption by showing that the evidence the General Division did not mention in its reasons was important enough that the General Division needed to discuss it.<sup>4</sup>

[11] The Claimant's testimony about her limitations was important enough that the General Division needed to discuss it. The Claimant's functional limitations are a key part of analyzing whether her disability is severe. Ignoring that evidence was an error of fact.

## **Remedy**

[12] I will give the decision that the General Division should have given consistent with the parties' agreement.<sup>5</sup>

[13] The Claimant has multiple functional limitations because of her medical conditions that, considered together, mean that she is incapable regularly of pursuing any substantially gainful work.<sup>6</sup> She has a combination of medical documents and other evidence including her testimony that show her disability is severe.

[14] Claimant does not have some (sometimes called "residual") capacity to work that would trigger the employment efforts test. The Claimant has taken steps to manage her conditions and she has not refused any medical advice unreasonably.

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<sup>4</sup> See *Simpson v Canada (Attorney General)*, 2012 FCA 82; and *Lee Villeneuve v Canada (Attorney General)*, 2013 498.

<sup>5</sup> See section 59(1) of the CPP, which allows me to give the decision that the General Division should have given.

<sup>6</sup> She has a disability that is "severe" within the meaning of section 42(2) of the CPP.

[15] The Claimant's disability is likely to be long continued and of indefinite duration. This means it is prolonged within the meaning of the CPP.<sup>7</sup>

[16] I am satisfied that the Claimant proved she had a severe and prolonged disability. The Claimant is entitled to a CPP disability pension. Payments start in accordance with the agreement.

## **Conclusion**

[17] I allowed the appeal. The General Division made an error of fact. I have given the decision that the General Division should have given. Consistent with the agreement of the parties, the Claimant is entitled to a CPP disability pension.

Kate Sellar

Member, Appeal Division

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<sup>7</sup> See section 42(2) of the CPP.