



Citation: *LM v Minister of Employment and Social Development*, 2022 SST 409

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

Decision

Appellant: L. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated February 24, 2021 (issued by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Teleconference

Hearing date: February 24, 2022

Hearing participant: Appellant

Decision date: March 14, 2022

File number: GP-21-1188

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant is a 59 year old former cook. She stopped working in 2012 and alleges a number of medical conditions that precluded her from continuing her employment at that time. These included, chronic pain, forgetfulness, anxiety, and a general inability to do many daily activities.

[4] The Appellant applied for a CPP disability pension in July 2019. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that her medical conditions prevented her from maintaining employment and that she cannot work in any capacity.

[6] The Minister says there is a lack of objective medical evidence at the time of the Appellant's MQP that points to a severe and prolonged disability. As a result, she cannot be found disabled.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2011. This date is based on her contributions to the CPP.¹

¹ Service Canada uses an Appellant'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 Appellant's CPP contributions are on GD2-53-55.

[8] The Appellant had CPP contributions in 2012 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if she became disabled by the end of January 2012.²

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

[10] A disability is **severe** if it makes an Appellant incapable regularly of pursuing any substantially gainful occupation.³

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

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

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

[14] The Appellant has to prove she has 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 is disabled.

Matters I have to consider first

Medical Evidence

[15] The parties met on more than one occasion prior to the hearing being set down. The purpose of those meetings was to discuss the lack of objective medical evidence

² This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

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

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

prior to the Appellant's MQP. Objective medical evidence is important and is a requirement for an Appellant to obtain CPP disability benefits.⁵

[16] In this case, the Appellant provided the Minister with multiple sources from which it could obtain medical evidence that she said would demonstrate objective medical evidence. The Minister set out to obtain this information and provided what it could on December 23, 2021.⁶

[17] Once these documents were provided to the Tribunal, I called a further case conference to confirm that the Appellant was now ready to proceed. She advised me that she was. As a result, I held a hearing with her on February 24, 2022.

Reasons for my decision

[18] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2011 or January 31, 2012.

Was the Appellant's disability severe?

[19] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations didn't affect her ability to work

[20] The Appellant has multiple diagnoses. However, I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁸ When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affect her ability to work.⁹

⁵ *Warren v. Canada (Attorney General)*, [2008] F.C.J. N. 1802, 2008 FCA 377

⁶ See GD-13.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[21] I find that the Appellant has functional limitations.

– **What the Appellant says about her functional limitations**

[22] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says she has the following difficulties:

- Unable to sit or stand for extended periods
- Difficulty getting up after sitting for too long
- She is tired and has no ability to do anything
- She is always fatigued
- She is forgetful
- She has to use a walker and a cane to move around
- She suffers from depression
- She sleeps a lot
- She is unable to leave her house due to fear of falling

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

[23] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work by December 31, 2011 or January 31, 2012.¹⁰

[24] The medical evidence doesn't support what the Appellant says.

[25] The medical evidence doesn't show that the Appellant had functional limitations that affected her ability to work by December 31, 2011 or prorated to January 31, 2012. As a result, she hasn't proven she had a severe disability.

¹⁰ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

[26] As noted above the Minister set out to obtain medical records for 2011 and 2012 on the Appellant's behalf. Letters requesting medical information were sent to Birchmount Hospital, Campbellton Regional Hospital, Chaleur Regional Hospital, Jacket River Health Centre, and St. Joseph Community Health Centre.¹¹

[27] Birchmount Hospital, Chaleur Regional Hospital and St. Joseph Community Health Center stated they had no documents on file for the Appellant in 2011 or 2012.¹²

[28] The information obtained from Campbellton Regional Hospital was dated July 2012 to December 2012. This was after the Appellant's MQP.¹³ The hospital records showed that the Appellant had consulted the outpatient department for discomfort or pain in the upper abdomen.¹⁴

[29] The information obtained from Jacket River Health Centre included progress notes from October 1, 2012 to February 19, 2013.¹⁵ These visits occurred after the Appellant's MQP. In any event, she was seen on three occasions. During these times, she was noted to have gastroesophageal reflux with anxiety, increased pancreatic enzyme and anxiety, and for gastritis.¹⁶ While these are medical conditions, they do not suggest a severe medical condition that may have impacted the Appellant's ability to regularly pursue any substantially gainful occupation. Moreover, the fact these conditions are not described until after the MQP means that I cannot consider them for the purpose of establishing a severe disability on or before the MQP.

[30] Finally, Dr. Vona MacMillan, family physician, submitted various chart notes and operative records for the Appellant dating back to 1991 when she had a right carpal tunnel release.¹⁷ What is clear from these documents is that the Appellant was

¹¹ GD12-2-38

¹² GD13-2; GD13-32; GD13-68

¹³ GD13-8-31

¹⁴ GD13-8-31

¹⁵ GD13-58

¹⁶ GD13-58

¹⁷ GD11-4 and 19

investigated for only epigastric issues and anxiety prior to her MQP. However, there is no indication of a severe pathology prior to December 31, 2011 or January 31, 2012.

[31] I am sympathetic to the Appellant's claim for a CPP disability benefit. When I spoke to her at the oral hearing, it was clear to me that she is suffering and unable to support herself through work. However, without any objective medical evidence on or before her MQP, I am unable to make a determination that she was disabled within the meaning of the CPP.

[32] When I am deciding whether a disability is severe, I usually have to consider an Appellant's personal characteristics.

[33] This allows me to realistically assess an Appellant's ability to work.¹⁸

[34] I don't have to do that here because the Appellant's functional limitations didn't affect her ability to work by December 31, 2011 or January 31, 2012. This means she didn't prove her disability was severe by then.¹⁹

Conclusion

[35] I find that the Appellant isn't eligible for a CPP disability pension because her disability isn't severe. Because I have found that her disability isn't severe, I didn't have to consider whether it is prolonged.

[36] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section

¹⁸ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁹ See *Giannaros v Minister of Social Development*, 2005 FCA 187.