



Citation: *LM v Minister of Employment and Social Development*, 2022 SST 368

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Claimant: L. M.

Minister: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 28, 2021 (issued by
Service Canada)

Tribunal member: Antoinette Cardillo

Type of hearing: Teleconference

Hearing date: March 2, 2022

Hearing participants: Claimant
Claimant's representative

Decision date: April 12, 2022

File number: GP-21-1743

Decision

[1] The appeal is allowed in part.

[2] The Claimant, L. M., is eligible for the Post-Retirement Disability Benefit (PRDB). Payments start as of September 2020. However, the Claimant is not eligible for the Canada Pension Plan (CPP) disability pension. This decision explains why I am allowing the appeal in part.

Overview

[3] The Claimant is 62 years of age with primary education. She bases her disability claim on depression and anxiety. She worked as a dietary aid from August 2000 to May 2020, when she was no longer able to work due to her medical conditions.

[4] The Claimant applied for a CPP disability pension on February 27, 2021¹. When she submitted her application, she was in receipt of an early CPP retirement pension. Therefore, the application was for both the CPP disability pension and the PRDB.

[5] The Minister refused her CPP disability application because her depression and anxiety were controlled for over 20 years on the same medications, thereby demonstrating that she was able to work with her conditions. She worked past her minimum qualifying period (MQP) of January 2020, until May 2020. Also, her family physician advised her that she could work in another line of work. There was no indication she required any aggressive psychiatric interventions as would be expected with a severe psychiatric condition. The evidence did not support a determination that the Claimant's condition met the definition of a severe and prolonged disability on or before January 31, 2020, the month prior to when she first started received the CPP retirement pension, and therefore did not qualify for a CPP disability pension. Also, the Minister determined that the evidence did not support a determination that her condition met the definition of a severe and prolonged disability for the PRDB.

¹ See the application at GD2-29 in the appeal record.

[6] The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

Issues

[7] First, I have to determine whether the Claimant had a severe and prolonged disability on or prior to January 31, 2020, (the month before the retirement pension became payable), to be eligible to receive the CPP disability pension.

[8] If I determine that the Claimant is not eligible to receive a CPP disability pension, then I have to determine whether the Claimant has established that she has a severe and prolonged disability to be eligible for the PRDB prior to December 31, 2023. Since this date is in the future, I must assess the Claimant's medical condition as of the date of the hearing.

What the Claimant must prove

- CPP Disability pension

[9] For the Claimant to succeed, she must prove she had a disability that was severe and prolonged by her MQP, which is based on her contributions to the CPP.²

[10] In this case, the Claimant was in receipt of a CPP retirement pension since February 2020. The CPP states that once a person starts to receive a CPP retirement pension, that person cannot apply or re-apply, at any time, for a disability pension.³ There is however an exception, if the person cancels the benefit in writing, within six (6) months after payment of the benefit has started.⁴

² 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 at page GD5-9 in the appeal record.

³ Subsection 70(3) of the CPP sets out this rule.

⁴ Section 66.1 of the CPP and section 46.2 of the CPP Regulations set out this exception.

[11] The Claimant did not cancel her retirement pension within six (6) months after payment of the benefit had started. Instead, she applied for the CPP disability pension on February 2021.

[12] The CPP says that if a person does not cancel a benefit within six (6) months after payment of the benefit has started, the only way a retirement pension can be cancelled in favour of a disability pension is if the person is deemed to be disabled before the month the retirement pension first became payable⁵. The CPP also says that the earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Minister⁶.

[13] This means that the CPP does not allow for the cancellation of a retirement pension in favour of a disability pension where the disability application is made 15 months or more after the retirement pension first became payable; and that a person needs to be found disabled, the month before the retirement pension became payable.

[14] In this case, the Minister received the Claimant's CPP disability pension application in February 2021. Therefore, the earliest date the Claimant can be deemed disabled is November 2019, which is before she began receiving her retirement pension. This means she can cancel her retirement pension for the disability pension. However, to be eligible to receive a disability pension, the Claimant must establish that her condition was severe and prolonged within the meaning of the CPP on or prior to January 31, 2020, (the month before the retirement pension became payable).

[15] The CPP defines "severe" and "prolonged."

[16] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.⁷

⁵ Subsection 66.1(1.1) of the CPP sets out this rule.

⁶ Paragraph 42(2)(b) of the CPP sets out this rule.

⁷ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

[17] This means I have to look at all of the Claimant'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 Claimant 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.

[18] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁸ 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.

[19] The Claimant has to prove she has a severe and prolonged disability on a balance of probabilities meaning that she has to show that it is more likely than not she is disabled.

- **Post Retirement Disability Benefit (PRDB)**

[20] A PRDB benefit is payable to a beneficiary of a CPP retirement pension who has not reached 65 years of age, is disabled and who has made base contributions for not less than the MQP⁹. As the PRDB did not come into effect until January 2019, a claimant must have an MQP into January 2019 or later in order to be considered for the PRDB.

[21] The calculation of the MQP for the PRDB is set out in the CPP.¹⁰ A claimant is considered to have made contributions for not less than the MQP if she made contributions to the CPP for at least three (3) of the last six (6) years (if she has 25 years of valid contributions) or four (4) of the last six (6) years. The "last six years" refers to the six (6) preceding full calendar years immediately before her application

⁸ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

⁹ Paragraph 44(1)(h) of the CPP explains this benefit.

¹⁰ Subsection 44(4) of the CPP sets out this rule.

date.¹¹ In this case, when the Claimant applied for the PRDB in February 2021, the six (6) preceding full calendar years were 2015, 2016, 2017, 2018, 2019, and 2020.

Because the Claimant had 25 years of valid contributions, she had to show she had valid contributions for three (3) out of the last six (6) years and her record of earnings showed that she did. Based on the Claimant's CPP contributions, her MQP for the PRDB is December 31, 2023. However, since this date is in the future, I will have to assess the Claimant's medical condition as of the date of the hearing.

Reasons for my decision

1. CPP Disability pension - Was the Claimant's disability severe?

[22] I find that the Claimant hasn't proven she had a severe and prolonged disability on or prior to January 31, 2020, (the month before the retirement pension became payable). I reached this finding by considering several factors. I explain these factors below.

i. The Claimant's functional limitations don't affect her ability to work

[23] The Claimant suffers from depression and anxiety. However, I can't focus on the Claimant's diagnoses.¹² Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.¹³ 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 her ability to work.¹⁴

[24] I find that the Claimant doesn't have functional limitations.

¹¹ See *NL v. Minister of Employment and Social Development*, 2020 SST 741.

¹² See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

¹³ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

¹⁴ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

ii. What the Claimant says about her functional limitations

[25] The Claimant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[26] She said that she worked part-time for 20 years until May 25, 2020, in a nursing home as a dietary aid. She worked 30 hours every two (2) weeks. She explained that she always worked part-time because of stress and constant fatigue.

[27] On her last day, she went to work stressed. When she arrived, she started feeling dizzy, she laid down and could not get back up.

[28] She explained that she had symptoms of stress and depression since 2000. She has been seeing Dr. Jim (family doctor) for 20 years and Dr. Brennagh (psychiatrist) on a regular basis. She has been on medication since she was 30 years old.

[29] When she was working, she had good and bad days, however, since the pandemic, her condition got worse. Her tasks were to set the tables for meals, feed the elderly and then clean up after the meals. She always found it difficult to do some of these tasks but when the pandemic started, she became more stressed and was no longer able to handle her daily tasks.

[30] She said that she began to feel confused; she could not stand up because she felt dizzy and she had panic attacks. She also found it hard to concentrate. She added that she also started having heart palpitations.

[31] The Claimant explained that Dr. Brennagh tried to change her medication but she could not swallow the new pills, therefore the medication she had been taking was increased.

[32] She said that she cannot function on a daily basis. She starts crying when she is in new places or when she sees new people. She is easily confused and she is

forgetting things more and more. As an example, she has trouble at the bank machine or using a computer.

[33] She manages to do some cleaning during the day, but she does not go out. She is often very tired, therefore she rests most days. She does not drive because she has tunnel vision.

iii. What the medical evidence says about the Claimant's functional limitations

[34] The Claimant must provide medical evidence that shows that her functional limitations affected her ability to work on or prior to January 31, 2020, (the month before the retirement pension became payable).

[35] First, the Claimant has shown capacity to work after her MQP of January 2020. She was able to work on a part-time basis for 20 years until May 25, 2020, in a nursing home as a dietary aid despite the fact that she suffered from stress and depression since 2000. She had been on medication since she was 30 years old and she was followed by Dr. Jim and Dr. Brennagh for many years. At the hearing, she explained that her condition got worse since the pandemic which is after her MQP of January 2020.

[36] Second, the medical evidence did not show that the Claimant had functional limitations that affected her ability to work on or prior to January 31, 2020. A Functional Abilities Form was completed by Dr. Jim in June 2020 indicating that although the Claimant had symptoms of decreased concentration and focus and difficulty following instructions or complex tasks, she was expected to return to work within 30 days.¹⁵ It was in September 2020 that Dr. Jim stated that the Claimant was disabled and would be absent from work for an indefinite period due to illness. A medical report dated March 5, 2021, from Dr. Jim indicated that the Claimant's diagnosis was major depression with anxiety.¹⁶ He noted she had symptoms for over 20 years and listed her impairments as low mood and motivation, decreased concentration, fatigue and

¹⁵ See the evidence at GD2-60 in the appeal record.

¹⁶ See the report at GD2-48 in the appeal record.

difficulty making decisions. She had a fear of working in a long term care facility due to the COVID-19 pandemic. Her treatment included taking an antidepressant and a mood stabilizer which she had taken for over 20 years and kept her condition stable, until the pandemic. He did not wish to change her medications, as she had been on them for years.

[37] Also, it was only in June 2021 that her psychiatrist, Dr. Brennagh stated that he had been the Claimant's psychiatrist in the past and she had returned to see him as her major depression had worsened.¹⁷ As a result, she hasn't proven she had a severe disability by January 31, 2020.

2. PRDB - Was the Claimant's disability severe?

[38] Since I found that the Claimant did not have a severe disability by January 31, 2020, to be eligible for the CPP disability pension, I now have to determine whether she has established that she has a severe and prolonged disability within the meaning of the CPP for entitlement to the PRDB by the date of the hearing.

i. Reports from the Claimant's Family Physician

[39] In June 2020, a Functional Abilities Form was completed by Dr. Jim indicating the Claimant had symptoms of decreased concentration and focus, difficulty working with others, fatigue, a labile mood, irritability and difficulty following instructions or complex tasks. However, she had no physical restrictions and that she was expected to return to work within 30 days.¹⁸

¹⁷ See the evidence at GD2-13 in the appeal record.

¹⁸ See the evidence at GD2-60 in the appeal record.

[40] In letters dated September 21, 2020, January 11, 2021, and July 31, 2021, Dr. Jim stated that the Claimant was disabled and would be absent from work for an indefinite period due to illness.¹⁹

[41] The medical report dated March 5, 2021, from Dr. Jim in support of the Claimant's CPP benefits application indicated that she suffered from major depression with anxiety. He noted she had symptoms for over 20 years and listed her impairments as low mood and motivation, decreased concentration, fatigue and difficulty making decisions. She had a fear of working in a long term care facility due to the COVID-19 pandemic. Her treatment included taking an antidepressant and a mood stabilizer which she had taken for over 20 years and kept her condition stable, until the pandemic.²⁰

[42] In a letter dated February 4, 2022, Dr. Jim said that the Claimant would be absent from work for an indefinite period due to illness.²¹

ii. Reports from the Claimant's Psychiatrist

[43] On June 25, 2021, Dr. Brennagh stated that he had been the Claimant's psychiatrist in the past and she had returned to see him as her major depression had worsened.²² He noted her medications included Amitriptyline and Seroquel which he reduced and added Prozac (antidepressant). Then, in an undated letter, Dr. Brennagh wrote that the Claimant had a major depressive disorder for many years and that she was unable to work. Her disability was permanent.²³

[44] On February 4, 2022²⁴, Dr. Brennagh noted that the Claimant had a total permanent disability related to her diagnosis of major depression.

¹⁹ See the letters at GD2-18, GD1-19 and GD1-15 in the appeal record.

²⁰ See the report at GD2-48 in the appeal record.

²¹ See the letter at GD6-3 in the appeal record.

²² See the evidence at GD2-13 in the appeal record.

²³ See the letter at GD1-14 in the appeal record.

²⁴ See the evidence at GD6-4 in the appeal record.

[45] Based on the evidence, I find that the Claimant had a severe disability by the date of the hearing.

[46] I now have to decide whether the Claimant can regularly do other types of work. To be severe, the Claimant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.²⁵

iii. The Claimant can't work in the real world

[47] When I am deciding whether the Claimant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

- age
- level of education
- language abilities
- past work and life experience

[48] These factors help me decide whether the Claimant can work in the real world—in other words, whether it is realistic to say that she can work.²⁶

[49] I find that the Claimant can't work in the real world.

[50] In letters from September 21, 2020 to February 4, 2022, Dr. Jim stated that the Claimant was disabled and would be absent from work for an indefinite period due to illness.²⁷

[51] In June 2021, Dr. Brennagh stated that the Claimant had returned to see him as her major depression had worsened.²⁸ Then, in an undated letter, Dr. Brennagh wrote

²⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁷ See the letters at GD2-18, GD1-19, GD1-15 and GD6-4 in the appeal record.

²⁸ See the evidence at GD2-13 in the appeal record.

that the Claimant had a major depressive disorder for many years and that she was unable to work. Her disability was permanent.²⁹

[52] Based on the evidence, the Claimant suffers from disabling conditions that have deteriorated since she last worked in May 2020. The Claimant is also 62 years of age with only primary education. She also had a single job as a dietary aid on a part-time basis from August 2000 to May 2020. These factors support a finding that she does not have the capacity to pursue alternative employment. She would not be a regular and reliable employee.

[53] I find that the Claimant has established that she suffers from a severe disability.

iv. Is the Claimant's disability prolonged?

[54] The Claimant's conditions began 20 years ago. These conditions have continued since then, and they will more than likely continue indefinitely.³⁰ As stated by the Claimant's psychiatrist on February 4, 2022, she had a total permanent disability related to her diagnosis of major depression.³¹

[55] I find that the Claimant's disability was prolonged by the date of the hearing.

When payments start

[56] The Claimant's disability became severe and prolonged in May 2020, when she stopped working. There is a four-month waiting period before payments start.³² This means that payments start as of September 2020.

²⁹ See the letter at GD1-14 in the appeal record.

³⁰ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that a claimant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

³¹ See the evidence at GD6-4 in the appeal record.

³² Section 69 of the *Canada Pension Plan* sets out this rule.

Conclusion

[57] I find that the Claimant is eligible for PRDB. Payments start as of September 2020. However, the Claimant is not eligible for the CPP disability pension.

[58] This means the appeal is allowed in part.

Antoinette Cardillo
Member, General Division – Income Security Section