



Citation: *LC v Minister of Employment and Social Development*, 2022 SST 527

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

Decision

Appellant: L. C.
Representative: Ashley Silcock

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 12, 2020 (issued
by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Videoconference

Hearing date: May 5, 2022

Hearing participants: Appellant
Appellant's representative
Appellant's husband

Decision date: May 8, 2022

File number: GP-20-664

Decision

[1] The appeal is allowed.

[2] The Appellant, L. C., is eligible for a *Canada Pension Plan* disability benefit. Payments start as of February 2018. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 40 years old with one year of college education. She last worked as a community support worker for people with disabilities from April 2001 to October 2004. She stopped working because she was no longer able to provide care to those in need.

[4] The Appellant says that the combination of her Irritable Bowel Syndrome and her anxiety make her unable to function in the workplace in any meaningful way. She is tied to her washroom most days, is fatigued, and cannot focus on any particular task long enough to do meaningful work.

[5] The Minister agrees that the Appellant has limitations. But her relatively young age, coupled with her work experience and education, has left her with transferrable skills that should enable her to find employment.¹

¹ GD3-8

What the Appellant must prove

[6] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2014.² This date is based on her contributions to the CPP.³

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

[8] A disability is **severe** if it makes an Appellant incapable regularly of pursuing any substantially gainful occupation.⁴

[9] 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.

[10] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

[11] 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.

[12] 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.

² The Appellant’s “minimum qualifying period” (MQP) has been extended by the child rearing provisions of the CPP. Section 44(2)(b)(iv) sets out that for any month for which the contributor was a family allowance recipient in a year for which the contributor’s base unadjusted pensionable earnings are less than the basic exemption of the contributor for the year are to be excluded.

³ Service Canada uses an Appellant’s years of CPP contributions to calculate their coverage period, or 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 GD3-104.

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

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[13] I find that the Appellant had a severe and prolonged disability by December 31, 2014. I reached this decision by considering the following issues:

- Was the Appellant's disability severe?
- Was the Appellant's disability prolonged?

Was the Appellant's disability severe?

[14] The Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

The Appellant's functional limitations affect her ability to work

[15] The Appellant has Irritable Bowel Syndrome, generalized anxiety, and major depressive disorder. However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁷ 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.⁸

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

What the Appellant says about her functional limitations

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

- **Completing difficult tasks** – The Appellant's concentration and anxiety are really bad. If she's anxious she cannot concentrate and she is always anxious. She will start things and not finish them because she is scatter brained.

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- **Responding to stress** – She has a difficult time holding herself together. She cannot breathe properly. She feels like she is going to vomit and avoids being around people and leaving her house.
- **Controlling temper** – The Appellant told me that she is impatient. She does not lash out at people but she does get irritable.
- **Following instructions** – The Appellant is terrible with following instructions. She needs to be constantly prompted and will still forget instructions.
- **Asking for help** – would rather die in a corner than ask for help. She is used to sitting and suffering and by that becomes overwhelmed.
- **Managing anxiety** – The Appellant told me that she is unable to manage anxiety. She has tried medications and nothing seems to work. She is held back from doing many things. Because of the anxiety and Irritable Bowel Syndrome. By having both of them it makes things worse. The anxiety feeds on the Irritable Bowel Syndrome and the Irritable Bowel Syndrome feeds on the anxiety.
- **Doing housekeeping** – The Appellant told me that she cannot keep up and is always behind with her housework. She is unable to hire a housekeeper and feels unable to manage housecleaning because of a lack of energy. Pain, bloating and anxiety.
- **Making decisions** – The Appellant told me that she is always second guessing herself. She feels like she is always going to make the wrong decision and cannot trust her own judgement.

[18] The Appellant's husband attended the oral hearing and provided evidence about what he observed in the Appellant. He noted impairments in three specific areas as follows:

- **Following instructions** – The Appellant tries to follow a task but it is like she does not understand the instructions she is reading. What will happen is the

husband will translate instructions from a recipe or he will modify instructions so that she can understand things.

- **Doing housework** – When she is doing housekeeping tasks, things move slowly. She ends up in the bathroom half a dozen times for 30-40 minutes a day. As a result, housekeeping tasks are stretched out really long. IT's like she is only chipping away at things throughout the day. Things do not get completed until the end of the day.
- **Asking for help** – She has a difficult time asking for help. It is something that often comes between them in their relationship. It is an ongoing problem for them. She will get overwhelmed and will not ask anyone for assistance.

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

[19] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work by December 31, 2014.⁹

[20] The medical evidence supports what the Appellant says. Her anxiety, major depressive disorder and Irritable Bowel Syndrome prevented her from doing any form of work by December 31, 2014.

[21] In an application for a disability tax credit dated December 7, 2018, the Appellant's family physician, Dr. Loewen, wrote that since 1998, she has taken an inordinate amount of time to personally manage bowel functions.¹⁰

[22] Dr. Loewen further noted that the Appellant suffered from a combination of mental health and bowel conditions that left her significantly restricted in her daily functioning and had done so since 1998.¹¹

[23] He noted that, the Appellant reported to him that, since the age of 18, Irritable Bowel Syndrome has complicated the Appellant's life. In addition to a severe version of

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ GD2-43

¹¹ GD2-44

Irritable Bowel Syndrome, she had become physically and psychologically dependent on large doses of laxatives to manage her constipation. This resulted in fecal discharge with incontinence.

[24] As a result, she had to wear a large pad and carry a change of clothing. Dr. Loewen noted that she needs to pull her car over to defecate along the side of the road.¹² This happens often enough that she carries a letter from Dr. Loewen explaining her medical condition.

[25] Dr. Loewen noted that the Appellant's mental health was also poor. She suffered from low moods, irritability, hypervigilance, obsessive thoughts, and social isolation. She remained under the care of a psychiatrist and was on 3 psychiatric medications.¹³

[26] In a medical report from August 30, 2019, Dr. Loewen wrote that the Appellant had been his patient since 2007. He wrote that she suffered from a number of medical conditions, including major depressive disorder and Irritable Bowel Syndrome.

[27] He wrote that these conditions had resulted in low mood, social isolation, irritability, hypervigilance, obsessive thoughts, low tolerance to stress, impulsive self-destructive behaviours, and fatigue.¹⁴

[28] Her Irritable Bowel Syndrome had resulted in constipation. After she has a bowel movement, she would feel bloated and cramped. For this she would take laxatives that result in her being housebound.¹⁵ This creates a cyclical process for the Appellant. She would feel relief but the relief would lead to more bloating. The bloating would require the use of laxatives and so on.

[29] Dr. Loewen further noted that the Appellant is unable to cope with the demands of employment, including interacting collegially with co-workers, meeting work deadlines, and multi-tasking. Given her intermittent and unpredictable bowel habits, she

¹² GD2-45

¹³ GD2-45; These medications included Wellbutrin, Trintellix, and Conazepam.

¹⁴ GD2-57

¹⁵ GD2-58

is unable to consistently attend work in a manner that would be acceptable to an employer.¹⁶

[30] In May 2013, Dr. Loewen noted the Appellant had somatization disorder. She was hyper-focused on her bowels and abused laxatives to the point that she suffered from chronic diarrhea and fecal incontinence.¹⁷

[31] In October 2013, Dr. Loewen noted the Appellant had major depressive disorder, this condition was causing troubles with her memory. She was forgetting to take her medications.¹⁸

[32] A chart note from February 2014, detailed that the Appellant had major depressive disorder. She had seen Dr. Arojoye, Psychiatrist, and received prescriptions for Wellbutrin and Seroquel. He also reported that she had generalized anxiety disorder.¹⁹

[33] Next, I will look at whether the Appellant followed medical advice.

The Appellant has followed medical advice

[34] The Appellant has followed medical advice.

[35] To receive a disability pension, an Appellant must follow medical advice.²⁰ If an Appellant doesn't follow medical advice, then she must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on her disability.²¹

¹⁶ GD2-58

¹⁷ GD3-27

¹⁸ GD3-27

¹⁹ GD3-26

²⁰ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²¹ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

[36] The Appellant has followed medical advice.²² She has maintained her connection with her family physician and her psychiatrist. She has followed their medical recommendations. When she has not done so it has been for religious reasons.²³

[37] When she has not taken her medications, this has been because of her psychological disability, not because of an intention to avoid medical treatment.

[38] I now have to decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.²⁴

The Appellant can't work in the real world

[39] When I am deciding whether the Appellant 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

[40] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.²⁵

[41] I find that the Appellant can't work in the real world.

[42] The Appellant is quite young. She is only 40 and was 32 at the time of her MQP. She has some education and transferrable skills. These factors favour a finding of work

²² See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²³ The Appellant is of the Jehovah's Witness faith and as such she cannot obtain blood transfusions. Blood transfusions may have provided some assistance with low red blood cell counts.

²⁴ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

capacity. However, when I think about her functional impairments and how they impact her daily living, I am certain that she cannot work in any capacity.

[43] I note first that the Appellant's medical conditions have been largely unchanged in the years since her MQP. She has continued to experience the same functional limitations in respect of both her Irritable Bowel Syndrome and anxiety.

[44] The Appellant has little to no control over her bowels. When the urge hits her she must vacate her bowels immediately.

[45] She is constantly anxious, unable to sleep, and unable to use the bathroom with any regularity. She takes a significant amount of laxatives to assist in vacating her bowels. If she does not do this, she may go two weeks without a bowel movement. This in turn causes strain, bloating, and a significant increase in her anxiety.

[46] The Appellant told me that her bowel movements are unpredictable. She has soiled herself while driving and will often end up in the bathroom at home 6-7 times a day. When this happens she may be in the washroom for 30 to 40 minutes at a time.

[47] It is also clear from the medical evidence that these conditions have a severe impairment on the Appellant. Dr. Loewen noted that the Appellant suffers from irritability, hypervigilance, obsessive thoughts, social isolation, impulsive self-destructive behaviour and fatigue.

[48] Given the unpredictability of her Irritably Bowel Syndrome coupled with her generalized anxiety, fatigue, and poor mood, I am unable to see how this Appellant could possibly maintain any form of employment in the real world. She is significantly impaired and unable to cope with the rigors of life.

[49] I find that the Appellant's disability was severe by October 2004 when she stopped working as a community support worker.

Was the Appellant's disability prolonged?

[50] The Appellant's disability was prolonged.

[51] The Appellant's conditions began in 1998. She has been unable to work since October 2004 because of these conditions. They will more than likely continue indefinitely.²⁶

[52] Dr. Loewen wrote that given the persistent nature of her Irritable Bowel Syndrome with a psychiatric overlay, she was likely to have ongoing life-altering symptoms for the foreseeable future.²⁷

[53] I find that the Appellant's disability was prolonged by October 2004.

When payments start

[54] The Appellant's disability became severe and prolonged in October 2004 when she was no longer able to continue working as a community support worker.

[55] However, the *Canada Pension Plan* says an Appellant can't be considered disabled more than 15 months before the Minister receives their disability pension application. After that, there is a four-month waiting period before payments start.²⁸

[56] The Minister received the Appellant's application in January 2019. That means she is considered to have become disabled in October 2017.

[57] Payment of her pension starts as of February 2018.

²⁶ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that a Appellant 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.

²⁷ GD2-70

²⁸ Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.

Conclusion

[58] I find that the Appellant is eligible for a CPP disability pension because her disability is severe and prolonged.

[59] This means the appeal is allowed.

Adam Picotte
Member, General Division – Income Security Section