Citation: *Minister of Employment and Social Development v RP*, 2022 SST 744

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Minister of Employment and Social Development
Representative:	Jared Porter
Respondent:	R. P.
Representative:	Chantelle Yang and Allison Schmidt

Decision under appeal:	General Division decision dated January 14, 2022 (GP-20-1102)

Tribunal member:	Neil Nawaz
Type of hearing:	Teleconference
Hearing date:	July 13, 2022
Hearing participants:	Appellant's representative Respondent Respondent's representative
Decision date:	August 10, 2022
File number:	AD-22-222

Decision

[1] The appeal is dismissed. The General Division did not make any errors.

Overview

[2] The Respondent, R. P., is a 58-year-old former machine operator who is seeking a Canada Pension Plan (CPP) disability pension. In 2012, he began experiencing shortness of breath, and he was later diagnosed with chronic obstructive pulmonary disease. He hasn't worked since 2014.

[3] In January 2019, the Respondent applied for the CPP disability pension. He claimed that he could no longer work because of ongoing pain, fatigue, dizziness, depression, anxiety, and hearing loss.

[4] The Minister refused the application because, in her view, the Respondent had not shown that he had a severe and prolonged disability as of coverage period.[1] The Respondent appealed the Minister's refusal to the Social Security Tribunal's General Division.

[5] The General Division held a hearing by teleconference and allowed the appeal. It found that the Respondent was disabled. It found that he was no longer regularly capable of substantially gainful employment given his medical conditions and his background and personal characteristics. It found that, although he had declined some of the treatments advised by his doctors, he had good reason to do so.

[6] The Minister then asked the Tribunal's Appeal Division for permission to appeal. The Minister's representative alleged that, in coming to its decision, the General Division made the following errors:[2]

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[1] Coverage for the CPP disability pension is established by working and contributing to the CPP. In this case, there is no dispute that the Respondent's earnings and contributions gave him disability coverage until December 31, 2017.

[2] The Minister initially alleged that the General Division had also misapplied the *Canada Pension Plan*'s proration provision (see sections 19 and 44(2.1)) and wrongly extended the Respondent's coverage period. The Minister's representative later dropped this allegation, maintaining that, while the General Division had made an error of law on this point, the error was immaterial to the outcome.

- It failed to properly consider the Respondent's reasons for not complying with medical advice;
- It found, contrary to the evidence, that the Respondent was unable to pay for prescribed medications;
- It failed to address the Respondent's decision to disregard medical advice in favour of self-medication through non-prescription cannabis; and
- It failed to ask whether the Respondent had made an effort to seek an alternative occupation.

[7] I gave the Minister permission to appeal because I thought she had an arguable case. Last month, I held a hearing by teleconference to discuss her allegations in full.

Issues

[8] There are four grounds of appeal to the Appeal Division. An appellant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[3]

[9] To succeed, the Minister has to show that the General Division made an error that falls into one or more of the above grounds of appeal. In this appeal, I had to answer the following questions:

- Did the General Division base its decision on an erroneous finding that the Respondent had reasonable excuses for discontinuing his medications? In particular, did the General Division:
    (a) ignore evidence that the Respondent received long-term disability (LTD) benefits from a group plan?

[3] *Department of Employment and Social Development Act* (DESDA), section 58(1).

(b) ignore evidence that the Respondent was self-medicating with cannabis?

- Did the General Division err in law by applying a subjective standard of reasonableness when it determined that the Respondent had reasonable excuses for not following medical advice?
- Did the General Division err in law by declining to consider whether the Respondent had engaged in efforts to find and maintain employment?

Analysis

[10] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that none of the Minister's allegations has merit.

The General Division didn't err when it found that the Respondent had reasonable explanations for discontinuing his medications

[11] The Minister argues that, by accepting the Respondent's reasons for not continuing with his medications, the General Division based its decision on two erroneous findings of fact. According to the Minister, the General Division wrongly found that the Respondent couldn't afford drugs, ignoring evidence that he was receiving private disability benefits. The Minister also argues that, by any objective standard, the General Division should not have ignored the Respondent's consumption of cannabis, which she alleges he used in lieu of medically recommended antidepressants.

– The law requires claimants to mitigate their disability

[12] Disability claimants must show that they mitigated their disability. That means they have to provide evidence about, not just their disability, but also their efforts to seek treatment for that disability.[4] The Federal Court of Appeal has made it clear that claimants are not entitled to a CPP disability pension unless they do everything reasonably possible to overcome their impairments. The court has also stated that the

[4] This principle is outlined in a case called *Klabouch v Canada (Minister of Social Development)*, 2008 FCA 33.

burden of proof rests entirely with the claimant.[5] In other words, it is up to the claimant to provide evidence that they have attempted to find work and seek treatment.

[13] In its decision, the General Division concluded that the Respondent had failed to follow medical advice. In coming to this conclusion, the General Division followed principles set out in two Federal Court of Appeal cases, *Lalonde* and *Sharma*.[6] However, merely citing legal authorities and their principles does not necessarily mean that the General Division understood those principles or applied them correctly.

[14] In *Lalonde*, the claimant's specialists had recommended that she attend physiotherapy, but she refused to do so because a physiotherapist had once told her that the treatment might be harmful to her. The court concluded that, when claimants refuse to undergo a recommended treatment that is likely to affect their disability status, claimants must then establish that their refusal was reasonable.

[15] In *Sharma*, the evidence showed that the claimant didn't outright refuse treatment recommendations but took them lightly. In that case, the General Division concluded that the claimant was not entitled to a disability pension because he had not used his sleep mask as instructed and had left the hospital prematurely. Even though the claimant had partially complied with treatment, the court, relying on *Lalonde*, upheld the General Division's decision.

[16] More recently, in a case called *Brown*, the Federal Court of Appeal affirmed the obligation on claimants to "make efforts to treat their disability, where this is possible, and to seek employment that accommodates their limitations."[7] The Court found that the General Division was entitled to find that Mr. Brown had no good excuse not to follow his doctors' recommendations to exercise and lose weight.

[17] None of these cases require perfect adherence to every treatment recommendation. They all emphasize the need to consider whether a claimant's non-

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[5] See *Klabouch, supra* note 4.
[6] See *Lalonde v Canada (Minister of Human Resources Development*), 2002 FCA 211 and *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[7] See *Brown v Canada (Attorney General)*, 2022 FCA 104, paragraph 11.

compliance is reasonable and what impact such non-compliance will have on their disability status. As the Appeal Division has previously noted, there is no specific requirement that the evidence be from a claimant's physician, although physicians often include this kind of information in their reports. There is no express requirement that the efforts be substantial, extensive, or otherwise exhaustive.[8]

– The General Division didn't err when it found that the Respondent couldn't afford medication

[18] The Minister alleges that the General Division got an important fact wrong when it found that the Respondent had a reasonable excuse to discontinue his medicines. She criticizes the General Division for not engaging with evidence that the Respondent was receiving LTD benefits from a private insurer. She points to a letter from SSQ Life Insurance indicating that the Respondent hadn't just **pursued** LTD benefits; he had successfully **obtained** them.[9]

[19] In its decision, the General Division found that the Respondent stopped his medication several times due to side effects or his inability to pay for prescriptions:

> In the circumstances, the Respondent's explanation is reasonable. It's well documented in the medical evidence that the Respondent was worried about his finances. He hadn't worked since October 2014. And he was paying child support to his ex-spouse while pursuing long-term disability and CPP disability payments. His reluctance to keep taking medication that was causing negative side effects is also reasonable.[10]

[20] There is no mention of the SSQ letter in the General Division's decision. However, that doesn't mean that the General Division was unaware it. Moreover, administrative tribunal members charged with fact-finding are presumed to have considered all the evidence before them.[11]

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[8] See *T.M. v Minister of Employment and Social Development*, 2018 SST 1279.
[9] See letter from SSQ Life Insurance Company to Service Canada dated May 18, 2017, GD2-165.
[10] See General Division decision, paragraphs 36–37.
[11] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[21] However, presumptions can be rebutted, and the question for me now is whether the SSQ letter contains anything that contradicts the General Division's finding that the Respondent couldn't afford medications.

[22] In the letter, SSQ said that it insured the Respondent for employer-sponsored LTD benefits under a group policy. It asked Service Canada to confirm that the Respondent had applied for CPP disability benefits.

[23] The Respondent also indicated in his application for CPP disability benefits that he was receiving benefits from SSQ.[12] However, the fact that the Respondent receives LTD doesn't mean he is wealthy, and it doesn't necessarily prove that he had the resources to pay for medicines. On top of that, there was no evidence on the record that the Respondent was covered by a drug plan or that he even qualified for one.[13]

[24] The General Division did not say that the Respondent been rejected for LTD benefits; it merely said that, after leaving his job, he had been "pursuing" it—presumably in the expectation that his claim would be ultimately approved. The fact that the Respondent later began receiving LTD does not necessarily negate or diminish the General Division's larger finding that his finances remained tight.

[25] This finding was supported by the Respondent's testimony, which the General Division obviously found credible, as was its right as fact-finder. At the hearing, the Respondent repeatedly referred to his lack of money[14] and explained in vivid terms how it led him to cease some of his medications:

> When I stopped taking my puffers, my [family doctor] wanted nothing more to do with me. And I told him I just couldn't afford

[12] Application for CPP disability benefits dated January 20, 2019, GD2-138.
[13] The Minister also criticized the General Division for not considering whether the Respondent might be eligible for the Ontario Trillium Drug Program, a provincial program that helps low-income Ontarians pay for their medications. However, I don't see an error here. There was no evidence on the record about Trillium, and the General Division couldn't reasonably be expected to conduct a comprehensive inquiry into all potential sources of funding for medications available to someone in the Respondent's position. Moreover, it was open to the Minister to send a representative to the General Division hearing and cross-examine the Respondent about the reasons for his claimed poverty. She chose not to do so.
[14] Refer, for example, to the General Division hearing recording at 43:10 and 1:37:55.

> them. It's not like I had a choice! Well, I did have a choice, but I don't think starving was a good alternative.[15]

[26] It wasn't just his testimony that convinced the General Division the Respondent was impoverished. There was also evidence on file that the Respondent had gone through a divorce after he stopped working, leaving him with significant child support obligations. The General Division recognized—with good reason—that living alone with these obligations would have made it more difficult for him to afford prescription medications.

– The General Division didn't err by not addressing the Respondent's cannabis use

[27] The Minister also alleges that the General Division made an error by ignoring the Respondent's choice to "medicate himself" with cannabis. The Minister says that the file contains no indication that any medical professional ever advised him to treat his health conditions in this way. She also says that the General Division should have addressed a psychiatric report saying that the Respondent continued to consume cannabis even though he knew it was harmful.[16]

[28] I fail to see merit in this argument.

[29] The General Division may not have mentioned "cannabis" or "marijuana" in its decision, but that does not mean it failed to consider the Respondent's use of this now-legal drug. As noted, the General Division is presumed to have considered all the evidence before it.[17] It is likely that the General Division did not overlook the Respondent's cannabis use but simply didn't believe it was relevant.

[30] From what I can see, the General Division had good cause for this belief. The Minister points to Dr. Lucas's September 2018 report, in which the psychiatrist wrote that the Respondent was "painfully aware that both tobacco and marijuana use is self-

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[15] Refer to hearing recording at 119:30.
[16] See psychiatry consultation note by Dr. John Lucas dated September 25, 2018, GD2-111.
[17] See *Simpson, supra* note 11.

destructive."[18] However, this report does not tell the whole story about the Respondent's attempt to "self-medicate," as the Minister puts it. At the General Division hearing, the Respondent extensively discussed his cannabis use and provided some valuable context to Dr. Lucas's comments, for instance:

- The Respondent testified that he took Clonazepam and other medications[19] as prescribed, and at first found them beneficial. But then their positive effects began to diminish, which prompted higher doses, which in turn produced sleeplessness, shaking, heart palpitations, shooting rectal pain and, worst of all, increased dizziness. These side effects, combined with his constrained finances, led him to stop taking psychotropic medication.[20]
- The Respondent testified that he began experimenting with "a little bit" of cannabis only after he gave up on prescription medication. By the Respondent's account, he did not "replace" a medically recommended drug with a recreational one.[21]
- Asked about Dr. Lucas's implicit criticism of his cannabis use, the Respondent testified that he no longer smokes it. He told the General Division that he discovered vaping several years ago and finds it an equally effective means of reducing his anxiety—one that also spare his lungs.[22]
- The Respondent testified that he has never used large quantities of cannabis—whether he was smoking or vaping it. He said that a typical level of consumption would be $100 over an eight-month period.[23]

[31] The Respondent's testimony indicated that the Respondent uses cannabis to address his anxiety but not as a substitute for medically recommended treatment. It suggested that he uses cannabis for recreational, as well as medicinal, purposes. It

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[18] See Dr. Lucas's report, *supra* note 17, GD2-111.
[19] Dr. Lucas's report dated April 2, 2019 indicates that the Claimant also tried Wellbutrin and Pramipexole but stopped them due to unwanted side effects. See GD2-81.
[20] Refer to hearing recording at 40:40 to 43:30.
[21] Refer to hearing recording at 43:20.
[22] Refer to hearing recording at 55:35.
[23] Refer to hearing recording at 58:40.

demonstrated that he has found a way to ingest cannabis that is not harmful to his lungs.

[32] The General Division presumably weighed these factors against Dr. Lucas's comments and decided that the Respondent's cannabis use was not particularly relevant to his prescription drug regime and his reasons for stopping it. I note that Dr. Lucas referred to both the Respondent's "tobacco and marijuana" use as being "self-destructive." This suggests that Dr. Lucas's concern about cannabis lay in its potential effect on the Respondent's cardio-pulmonary condition, rather than his psychological condition. Indeed, Dr. Lucas noted the Respondent's belief that a strain called "blue dream" was "uniquely beneficial to boosting motivation and optimism," but nowhere in his report did the psychiatrist condemn that belief or otherwise suggest that cannabis ingestion was harming his patient's mental health.

[33] The Minister regards the Respondent's cannabis use as information that was so relevant, it had to be addressed in any consideration of his attempts to mitigate his impairments. The General Division didn't see it that way, and neither do I. The Minister may not agree with how the General Division weighed the evidence, but that is not among the permitted grounds of appeal.

– **The General Division is owed deference on findings of credibility**

[34] One of the purposes of a hearing, such as the one before the General Division, is to sort out the truth. As held in *Simpson*, the General Division, as trier of fact, is allowed some leeway in how it assesses the quality of the evidence before it:

> Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.

[35] Deference on factual questions is also built into the Tribunal's grounds of appeal, which permit the Appeal Division to intervene only when the General Division commits a material error that is "perverse or capricious" or made "without regard for the material

before it."[24] This wording suggests that a factual error has to be particularly egregious before it warrants overturning a General Division decision.

[36] In this case, the General Division was faced with many competing, and sometimes contradictory, strands of evidence about the Respondent's treatment. It decided that the Respondent's oral evidence was essentially credible and worthy of weight—together with other evidence that it found also supported his side of the story. In the end, the General Division found that the Respondent had a reasonable explanation for stopping antidepressants and that his use of cannabis was not a factor in his decision to do so. In the absence of any factual error, much less one that rises to the high threshold in the controlling legislation, I see no reason to second-guess the General Division's findings.

The General Division did not incorrectly apply a subjective standard of reasonableness

[37] The Minister alleges that the General Division erred in law by accepting the Respondent's subjective reasons for failing to comply with medical advice. The Minister argues that a case called *Warren* requires a refusal of treatment to be objectively reasonable in light of all circumstances.[25]

[38] I disagree with the Minister. I think the General Division did objectively assess the Respondent's reasons for discontinuing his antidepressants. But I don't think *Warren* applies in this kind of assessment.

[39] *Lalonde* requires claimants to take reasonable steps to seek treatment. That means their reasons for failing to seek treatment must also be reasonable. I agree with the Minister that reasonableness requires an objective standard—what matters is not what the claimant subjectively thinks is reasonable but what an informed and objective third person would think is reasonable.

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[24] These quotes reflect the precise wording of section 58(1)(c) of the DESDA.
[25] See *Warren v Canada (Attorney General)*, 2008 FCA 377.

[40] In my view, the General Division applied the correct standard. It heard the Respondent's testimony about his reasons for stopping his medications, but I saw no indication that it simply swallowed those reasons whole. During the hearing, the Respondent explained that he discontinued his prescription medications because of (i) negative side effects and (ii) an inability to pay for them. These explanations were then tested under questioning from, not only the presiding member, but also the Respondent's legal representative, who took pains to pre-emptively address perceived weaknesses in her client's case. In the end, the General Division found the Respondent's explanations plausible in light of information that he was (i) concerned about the impact of medicinal side effects on his ability to provide care for his children and (ii) worried about his finances following the end of his marriage.[26]

[41] While the Respondent had subjective concerns about his medications' side effects and affordability, that does not mean those concerns were objectively unreasonable. Whether they were or not was for the General Division to decide, and it did so after considering the evidence, including the Respondent's testimony, his medical file, and information about his life circumstances. Although it did not say so explicitly, the General Division concluded that the Respondent's explanations for discontinuing his medications were objectively reasonable.

[42] Citing *Warren*, the Minister argues that disability claimants must provide "some objective medical evidence" to justify not following their doctors' advice. However, Warren is a case about what claimants must do to prove the **severity** of their disability, and I doubt that its principle also applies to secondary issues such as **compliance**. The Minister seems to be arguing that, for the General Division to accept a claimant's explanation for refusing treatment, every aspect of that explanation must be supported by a medical report.

[43] I think this is an unrealistic expectation and, what's more, it ignores the very real probative value of testimony. It is unusual to find objective medical evidence in which a physician analyzes their patient's reasons for not following a particular treatment

[26] See General Division decision, paragraphs 36–37.

recommendation. In any event, evidence about side effects in specific individuals is often purely subjective—particularly where psychotropic medications are concerned—because there is often no way to verify what they are feeling by testing, imaging, or other means. Taken to its logical conclusion, the Minister's argument would make witness testimony all but irrelevant.

[44] The General Division can rely on a claimant's testimony even if its every detail and nuance is uncorroborated by a medical report.[27] In this case, it was open to the General Division to accept the Respondent's verbal explanations for not taking medications, as long as there was nothing else on the record to contradict them. In fact, the record did contain medical evidence that was consistent with the Respondent's story. As noted, the Respondent's divorce gave credence to his plea that he had no money for medications. There were also reports that backed up what the Respondent said about the effects of his medications. Dr. Lucas relayed the Respondent's account that the positive effects of Effexor and Wellbutrin had "dwindled over time" and that Trintellix was discontinued after it seemingly caused anger.[28]

[45] According to a case called *Bulger*, compliance with treatment must be viewed in the context of a claimant's circumstances:

> Persons afflicted with fibromyalgia and experiencing the constant diffuse pain, lack of proper sleep, loss of energy, feelings of despair and associated depression cannot be expected to engage in treatment programs with the same enthusiasm, regularity and positive attitudes as persons recovering from fracture or a trauma injury. Another factor that cannot be overlooked is quite often the lack of publicly funded secondary health care facilities including pharmacotherapy.[29]

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[27] Here, I am following an approach articulated by one of my Appeal Division colleagues in a case called *Minister of Employment and Social Development v K.H.*, 2022 SST 426 .
[28] See Dr. Lucas's September 25, 2018 report, GD2-111.
[29] See *Bulger v Minister of Human Resources Development* (March 30, 2006), CP 0916, Pension Appeals Board.

[46] Although *Bulger* involved a claimant who suffered from fibromyalgia and who lived in an under-serviced area, its principle is no less applicable here: a claimant's particular circumstances are relevant in assessing their non-compliance.

[47] The Minister referred to a case called called *Janiak* for the proposition that "a claimant's "distinctive subjective attributes" may be ignored in favour of an objective assessment of the reasonableness of his choice."[30] However, the General Division based its finding of reasonableness on the Respondent's negative side effects and his inability to afford prescription medications. These explanations arise from factors other than the Respondent's "distinct subjective attributes," as demanded by *Janiak*.

[48] Moreover, *Janiak* is a tort case, one involving a lawsuit for damages following injuries caused by an automobile accident, and I'm not sure how much applicability it has to a claim for government benefits. Claims for damages and claims for CPP disability pensions have different objectives and arise out of different contexts. Damages are a legal mechanism by which parties who are injured seek compensation from parties who are responsible for the injury. By contrast, CPP benefits are the product of a social assistance scheme enacted by Parliament for the purpose of providing contributors and their families with minimum levels of income upon the retirement, disability, or death of the wage earner."[31] A CPP claimant is not equivalent to the plaintiff in a tort action. In a CPP disability claim, the primary question is not who is to blame for loss or impairment but whether the claimant has a severe and prolonged disability.

[49] The General Division did not make any errors of fact, nor did it err in law in conducting its *Lalonde* analysis. It considered the Respondent's testimony along with the medical record and assigned weight to that evidence, as was its prerogative as the trier of fact.[32] The Minister may not agree with how the General Division analyzed the evidence, but that is not among the permitted grounds of appeal.

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[30] See *Janiak v Ippolito*, [1985] 1 SCR 146.
[31] See *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 497.
[32] See *Simpson, supra* note 11.

The General Division made no error in assessing the Respondent's return-to-work efforts

[50] The Minister argues that, since there was evidence of the Respondent running errands with a bicycle, providing childcare according to an agreed schedule, and buying and selling items on eBay, the General Division was required to analyze whether he attempted to obtain and maintain employment, and whether such attempts were unsuccessful because of his health conditions.

[51] I'm not persuaded by this argument.

[52] Disability claimant are required to mitigate their impairments by seeking alternative employment—subject to an important qualification. According to *Inclima*, the leading case on the subject, "Where there is **evidence of work capacity**, a person must show that effort at obtaining and maintaining employment has been unsuccessful by reason of the person's health condition [emphasis added]."[33]

[53] This passage suggests that a decision-maker is relieved from analyzing a claimant's efforts to find and keep a job if they determine that the claimant had no capacity in the first place. In my view, the General Division complied with *Inclima* by finding, above all, that there was no "evidence of work capacity" on the Respondent's part. The General Division made this clear in its decision when it found that the Respondent's disability was severe because "he could not regularly do any work he could earn a living from."[34]

[54] The Minister suggest that the General Division erred in law because the above formulation differs from the wording of the *Canada Pension Plan*, which defines severity as "incapable regularly of pursuing any substantially gainful occupation."[35]

[55] I disagree. I am satisfied that the General Division was aware of the correct test and, what's more, applied it.

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[33] See *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[34] See General Division decision, paragraph 53.
[35] See section 42(2)(a) of the *Canada Pension Plan*.

[56] At paragraph 10 of its decision, the General Division wrote, “A disability is severe if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.” At paragraph 52, the General Division echoed those words, writing, “I am satisfied that the [Respondent] is incapable regularly of pursuing any substantially gainful occupation.”

[57] The General Division reformulated the test in paragraph 53, but I agree with the Respondent’s representative that it did so out of nothing more than a desire for “semantic variety.” In any event, the General Division’s reformulation did not depart in any significant way from the true definition of “severe”—if anything, it expressed a stricter test for severity than the one enacted by Parliament.

[58] There are other indications that the General Division understood the correct test. It considered the Respondent’s activities—his childcare, his cycling, his buying and selling—and concluded that none of them suggested a capacity to perform work on a predictable schedule. It noted that side effects from the Respondent’s medications affected his ability to care for his children.[36] It noted that the Respondent was limited in his ability to ride his bicycle.[37] It engaged in an in-depth analysis of how the Respondent’s symptoms and limitations affected his ability to buy and sell items online and at a local market. In particular, the General Division noted the Respondent’s difficulty in keeping track of purchases, his unpredictable symptoms, his problems with motivation, his episodes of overwhelming anxiety, and his need for significant breaks and recovery time when exerting himself. Above all, the General Division accepted the Claimant’s testimony that, despite his best efforts, his limitations prevented him from making money.[38]

[59] Since the General Division found that the Respondent had no residual capacity, it did not need to analyze whether he engaged in efforts to obtain and maintain

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[36] See General Division decision, paragraph 36.
[37] See General Division decision, paragraphs 19 and 31.
[38] See General Division decision, paragraphs 46 to 50. The Claimant can be heard discussing his business activities at length from 43:35 to 55:40 of the hearing recording.

employment. The General Division otherwise applied the correct test in assessing the severity of the Respondent's disability.

Conclusion

[60] The General Division did not commit an error that falls within the permitted grounds of appeal. From what I can see, it made a full and genuine effort to weigh relevant evidence and apply the law. Its decision stands.

[61] The appeal is therefore dismissed.

Member, Appeal Division