



Citation: *DM v Minister of Employment and Social Development*, 2022 SST 811

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

## Decision

**Appellant:** D. M.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated April 15, 2021 (issued by  
Service Canada)

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**Tribunal member:** Sarah Sheaves

**Type of hearing:** Teleconference

**Hearing date:** April 7, 2022

**Hearing participant:** Appellant

**Decision date:** April 22, 2022

**File number:** GP-21-1394

## Decision

[1] The appeal is dismissed.

[2] The Appellant, D. 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 55 year old home care worker. In 2015 she was on a deck that collapsed and she injured her lower back, left shoulder and hips, causing ongoing chronic pain.

[4] The Appellant applied for a CPP disability pension on December 4, 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 she is limited in most of her work tasks and activities of daily living. She needs to modify and take breaks for most activities and is unable to do physical activities she used to enjoy. She says her conditions are slowly worsening and are severe and prolonged.

[6] The Minister says that the Appellant is able to continue working, despite her physical limitations. It also says that she has a good education and transferrable skills that would allow her to do lighter sedentary work, and as a result her conditions can't be considered severe.

## What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by the hearing date.<sup>1</sup>

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<sup>1</sup> 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

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

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup>

[10] 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.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>3</sup>

[12] 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.

[13] 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**

### **I accepted documents sent in after the hearing**

[14] At the hearing the Appellant referred to a report of Dr. Squire dated November 28, 2017, however I didn’t have the report before me. The Appellant thought she had submitted the report and believed the opinion of Dr. Squire was important.

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section 44(2) of the *Canada Pension Plan*. The Appellant’s CPP contributions are on GD7-3. In this case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

<sup>2</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[15] I allowed the Appellant to submit the report of Dr. Squire after the hearing. I also provided the Minister with an opportunity to make written arguments regarding the report before making my decision.

## **Reasons for my decision**

[16] I find that the Appellant hasn't proven she had a severe and prolonged disability by April 7, 2022. Although she has functional limitations in her shoulder, back and hips, they aren't preventing her from working at her usual job by April 7, 2022.

### **Is the Appellant's disability severe?**

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

#### **– The Appellant's functional limitations do affect her ability to work**

[18] The Appellant has pain in her lower back, hips and left shoulder. However, I can't focus on the Appellant's diagnoses.<sup>4</sup> Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.<sup>5</sup> 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.<sup>6</sup>

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

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

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

- She can sit for 10 minutes before she needs to adjust her position. This prevents her from driving long distances.
- She is able to stand for 10 minutes before she needs to change positions.

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<sup>4</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>6</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- She can walk for 15 to 20 minutes. Sometimes she needs to use a cane if she's having a bad pain day.
- She needs to take breaks when doing most tasks including housekeeping and employment tasks.
- She is no longer able to dance, take long walks or do her gardening.
- She isn't able to do heavy lifting or any overhead activities. She can only lift her left arm to shoulder level.

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

[21] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work by April 7, 2022.<sup>7</sup>

[22] The medical evidence supports what the Appellant says about having limitations.

[23] In a report dated November 28, 2017, Dr. Squire, an orthopaedic specialist, noted obvious arthritic changes in both hips. He thought the Appellant was doing pretty well because she was still working and wasn't taking much pain medication.<sup>8</sup>

[24] Dr. Squire thought the Appellant's symptoms would worsen at some point in the future and she might need to think about surgery when that happens.

[25] In the medical report for CPP dated October 16, 2019, Dr. Ramjohn, the family doctor, noted chronic back pain with stenosis, hip pain and impingement. He said there is chronic pain in the cervical spine, shoulders and knees. He said the Appellant has reduced range of motion in each of these areas of her body.<sup>9</sup>

[26] Dr. Ramjohn said the Appellant can't lift more than 10 pounds and has a significantly reduced work tolerance. He suggested she may have to discontinue her work in the future.

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<sup>7</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>8</sup> See GD9-2.

<sup>9</sup> See GD2-148.

[27] A CT scan of the lumbar spine dated April 1, 2020 confirmed a mild disc bulge at the L3-4 and L4-5 levels with mild spinal narrowing. No nerve damage or herniation was identified.<sup>10</sup>

[28] In a report dated June 26, 2020, Dr. Martin, an orthopaedic surgeon, reviewed the Appellant's left shoulder. He said there was some early osteoarthritis present and injections hadn't provided much relief. He said there was restriction at the end ranges of motion and some discomfort, but surgery wasn't an option.<sup>11</sup>

[29] The Appellant had several x-rays in October and December 2020. They showed osteoarthritic changes in her hips, left shoulder and lower back.<sup>12</sup>

[30] In a report dated March 19, 2021, Dr. Ramjohn said the Appellant has chronic pain in multiple joints related to osteoarthritis and degenerative disc disease and that this causes reduction in range of motion in these areas. He said she also has chronic anemia and morbid obesity. He noted she has had thyroid cancer in the past.<sup>13</sup>

[31] The medical evidence supports that the Appellant's back, hip and shoulder pain affect her ability to perform heavy household and employment tasks by April 7, 2022. However, she is still performing these tasks using breaks and modifications.

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

– **The Appellant has followed medical advice**

[33] The Appellant has followed medical advice.

[34] To receive a disability pension, an appellant must follow medical advice.<sup>14</sup> If an appellant doesn't follow medical advice, then she must have a reasonable explanation

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<sup>10</sup> See GD2-95

<sup>11</sup> See GD2-134.

<sup>12</sup> See GD2-88 and GD2-90.

<sup>13</sup> See GD2-86.

<sup>14</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

for not doing so. I must also consider what effect, if any, the medical advice might have had on her disability.<sup>15</sup>

[35] The Appellant has followed medical advice.<sup>16</sup>

[36] The Appellant has taken medications as prescribed, attended physiotherapy and has tried cortisone injections as recommended by her doctors.

[37] There is no suggestion in her medical records that she hasn't complied with treatment and advice.

[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.<sup>17</sup>

– **The Appellant can and does 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.<sup>18</sup>

[41] I find that the Appellant can and does work in the real world.

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<sup>15</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>16</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>17</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>18</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[42] The Appellant is 55 years old and has a college education in business administration that she received in 2008.

[43] She communicates in English and she has worked in a sedentary office position, as an accounts payable clerk, in retail settings, and she currently works as a private home care worker.

[44] Based on these factors, the Appellant can work in the real world. Her age, education and skills aren't a barrier for her in getting an alternate job.

– **The Appellant is current working at gainful employment**

[45] At the time of her application for CPP, the Appellant was working part-time as a homecare personal support worker. Two years ago she moved in with her disabled employer and has been working full-time hours for the past two years at her usual job.

[46] The Appellant told me she hasn't needed to take time off work due to her medical conditions since before the year 2000. She is able to break up her tasks into small chunks or leave tasks to the next day if she is having a bad pain day, because she is there all the time. She can pace herself and take as long as she needs to, to perform a task.

[47] The Appellant receives living accommodation and also earns an hourly wage of \$15.55 for 40 hours of work per week.

[48] I find that this is gainful work and the Appellant is working above the substantially gainful threshold.<sup>19</sup>

[49] A job is considered substantially gainful if it pays a salary or wage equal to or more than the maximum annual amount a person could receive for a disability pension. In 2022, that is \$17,489.40 per year.<sup>20</sup>

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<sup>19</sup> See section 68.1 of the *Canada Pension Plan Regulations*.

<sup>20</sup> See CPP monthly and maximum payment amounts for 2022.



[50] I acknowledge the Appellant is worried about her condition worsening and her ability to work in the future. She is concerned that if she lost her current job she would not be able to work at some other job. However, she does continue to perform gainful full-time work presently, and that means that her condition isn't severe as of April 7, 2022.

## **Conclusion**

[51] 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.

[52] This means the appeal is dismissed.

Sarah Sheaves  
Member, General Division – Income Security Section