



Citation: *GG v Minister of Employment and Social Development*, 2022 SST 857

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

Decision

Appellant: G. G.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 8, 2021 (issued by
Service Canada)

Tribunal member: Anita Nathan

Type of hearing: Teleconference

Hearing date: March 10, 2022

Hearing participants: Appellant

Decision date: April 21, 2022

File number: GP-21-958

Decision

[1] The appeal is allowed.

[2] The Appellant, G. G., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of November 2020. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 62 years old. Since 2008, she has worked for the Government of Newfoundland and Labrador in an administrative capacity. She has osteoarthritis of the left hip, osteoporosis, degenerative disk disease, chronic pain, obesity, anxiety and depression. Her primary concern is the chronic pain in her left hip and back.

[4] The Appellant applied for a CPP disability pension on July 15, 2020. 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 she cannot work due to her constant pain, which makes it difficult for her to do simple activities of daily living like showering and dressing herself. The Appellant says that lying down on her back is the only way she gets relief from her chronic pain. She worked until December 13, 2021 out of necessity, as she has no partner, family or friends to support her. She has since retired due to her constant pain and mobility issues, which causes anxiety and makes it difficult to concentrate, and thus do her job.

[6] The Minister says the Appellant is not disabled for a number of reasons. First, the Minister says that the Appellant has been able to continue her long time employment in a full-time capacity, and without accommodation for a period of time past the date she says she could no longer work due to her condition. Secondly, the Minister says there are no limitations that prevent the Appellant from her usual sedentary administrative work, especially in light of the fact that she has been granted accommodation to work

from home. This is supported by her family doctor who said the Appellant could work from home. Finally, the Appellant is waiting for hip replacement surgery, which is expected to improve the Appellant's arthritis related symptoms and functioning.

What the Appellant must prove

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

[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.²

[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.³

[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.

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 Claimant's CPP contributions are on GD27. In this case, the Claimant's coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

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

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

[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 the documents sent in after the hearing

[14] The Appellant raised a number of medical conditions in her application. At the hearing I alerted the Appellant that she did not submit medical documentation to support her claim that she suffered from obesity. As well, she had submitted limited medical records about her claimed anxiety.

[15] After the hearing, the Appellant submitted two documents. The first was a letter from her long time counsellor providing more details of her functional limitations of anxiety. The second was a letter from Dr. Rideout confirming the Appellant is obese. Dr. Rideout also provided additional details about the Appellant's chronic pain and anxiety.

[16] I accepted the documents as they are relevant to the Appellant's medical conditions. Although the Appellant could have provided the records at an earlier time, allowing the documents serves the interests of justice as it ensures the Appellant has a fair hearing. The additional records were only a few pages each, so they did not add anything new to the proceedings. The Minister was not prejudiced as they had an opportunity to respond. Finally, the records were submitted within three weeks of the hearing so they did not cause a significant delay.

Reasons for my decision

[17] I find that the Appellant has a severe and prolonged disability by March 10, 2022, the date of the hearing. I reached this decision by considering the following issues:

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

Is the Appellant's disability severe?

[18] The Appellant's disability is 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

[19] The Appellant listed many medical conditions in her application including osteoarthritis of the left hip, osteoporosis, degenerative disk disease, chronic pain, obesity, anxiety, depression, macular degeneration, seizures, vertigo, hypertension, squamous carcinoma and a pulmonary nodule. At the hearing, the Appellant explained that the pulmonary nodule has grown slightly but is stable. She could not identify any functional limitations associated to this condition. The Appellant has not had a seizure since she was 28 years old as she is taking medication. Similarly she does not have vertigo anymore. The squamous carcinoma (skin cancer) diagnosed on her face has resolved itself. Finally, the Appellant's hypertension is stable on medication. This decision will address only the following conditions:

- osteoarthritis
- osteoporosis
- degenerative disc disease
- chronic pain
- obesity
- anxiety and depression
- macular degeneration.

[20] I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁵ 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.⁶

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁶ 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 has **chronic pain** caused by **osteoarthritis in her left hip, and degenerative disc disease in her spine**. Her pain is between 6/10 – 9/10 during the day, and increases in intensity as the day and week goes by. The only position that relieves her pain is lying flat on her back. However, even at night, the Appellant says she is awoken by severe pain and muscle cramps in both legs. The Appellant said she is unable to move for about 30 minutes, and then has to get up and walk around to relieve the pain. Often she cannot fall back asleep. The Appellant said she has difficulty:

- standing for 20 minutes
- walking a block even with a cane
- going up and down steps
- getting down into a kneeling or squatting position and back up again
- bending down to pick something from the floor
- sitting for 20 minutes
- standing from a sitting or lying position
- unsteadiness on feet even with a cane
- walking with two bags of groceries
- housekeeping, such as cleaning, laundry and cooking without frequent breaks
- dressing
- showering as she cannot bend to reach the lower half of her body
- cleaning herself after toileting
- turning over in bed
- sleeping, resulting in extreme exhaustion.

[23] Many of the above functional limitations are also associated with the Appellant's **obesity** which causes mobility issues. Due to obesity, the Appellant also experiences increased fatigue and breathlessness.

[24] The Appellant also has **osteoporosis** in her spine which causes shortness of breath (as a result of smaller lung capacity due to compressed discs). The Appellant fell and fractured her spine in 2017. The Appellant has found her back pain has been more severe since then.

[25] Due to her chronic pain, the Appellant said she developed **anxiety and depression** which caused her to isolate herself, anticipate failure, have difficulty getting up in the morning, panic attacks, and frequent crying.

[26] Finally, the Appellant said due to **wet macular degeneration**, she has difficulty seeing at night. As a result, she does not drive when it is dark. She used her sick leave in December 2020 to avoid driving in the dark after work. She also required a larger computer screen at work.

[27] The Appellant says she cannot work as her pain is constant and intense. She says all movements like sitting, standing, and walking cause her pain. As a result, she gets everything like food and other necessities of life delivered. The Appellant says that when she was working, she had to use a lot of sick leave to cope with the pain.

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

[28] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work by March 10, 2022.⁷

[29] The medical evidence supports what the Appellant says. The Appellant submitted a number of medical reports regarding the **diagnosis of osteoarthritis and degenerative disc disease**. In September 2016, Dr. Moores, the specialist said she has significant end stage arthritis of her left hip. The Appellant’s range of motion was very limited causing groin and thigh pain and she was limping. Dr. Moore was of the opinion that total hip replacement was the only option.⁸

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

⁸ See GD9 – 4.

[30] In November 2017, Dr. Moores again commented that the Appellant had severe degenerative osteoarthritis in the left hip joint. He also noted that there were degenerative hypertrophic spurring through the spine with mild wedging of the L3 vertebral body.⁹

[31] In October 2019, Dr. Moores' clinical note said that the Appellant's hip pain has gotten progressively worse since September 2018. The Appellant described pain on the lower left side of her back which is worse in the morning and with bending. The Appellant said she could not walk for more than 10-15 minutes without a break. When she takes a break, the pain goes away within 20 minutes and then will build up again with more walking. Dr. Rideout wrote that the Appellant gets flare ups where the pain is more severe and she gets pins and needles and pain down her legs. The Appellant finds the pain is worse when the weather is cold. She takes Tylenol as needed, but finds it does not make a difference.¹⁰

[32] The Appellant saw Dr. Moores again in April 2020. He described the Appellant as debilitated secondary to osteoarthritis in her back as well as her hip. However, her back was noted to be most of her issue now.¹¹

[33] In May 2020, the Appellant's family doctor, Dr. Rideout, filled out an assessment for medical disability retirement. He listed her diagnoses as left hip pain due to severe osteoarthritis, and chronic back pain due to moderate osteoarthritis and degenerative disk disease. Both conditions were noted to have worsened over the last 10 – 15 years, and gotten significantly worse in the past 6 months. Obesity is a contributing factor. It was noted that although the Appellant was not confined to her house, her mobility was significantly affected. Dr. Rideout indicated that the Appellant could barely walk, and had issues with focus, coping and tolerance.¹²

⁹ See GD9 – 5.

¹⁰ See GD9 – 8.

¹¹ See GD2R – 101.

¹² See GD2R – 36.

[34] In a note dated September 2020, Dr. Rideout indicated that the Appellant cannot cut her toenails due to medical reasons, therefore she requires the assistance of a registered nurse.¹³

[35] Dr. Rideout also completed a medical report in September 2020. He identified the Appellant's diagnosis as osteoarthritis and chronic back pain with a progressive onset over ten years. The Appellant's impairments are "significant pain with much activity, getting to work is difficult + sig pain." Functional limitations are "limited physical activity" and "has to pace herself." Dr. Rideout noted that the Appellant's back pain is her most significant issue.¹⁴

[36] Dr. Moores authored a report in November 2020. He said he saw the Appellant with respect to her worsening hip and back pain. The diagnosis was severe osteoarthritis of the left hip. The Appellant was noted to be limping all the time and had significant Trendelenburg gait. The range of motion of her left hip was described as very limited.¹⁵

[37] Dr. Moores saw the Appellant in December 2020 noting she had worsening lumbar pain radiating to her left hip and buttock. He identified a previous fracture, degenerative changes of facet joints, disc bulging and interdisc gas at L5-S1 in keeping with degenerative disc disease.¹⁶

[38] Dr. Rideout filled out a disability accommodation questionnaire and stated the Appellant's diagnosis as moderate to severe osteoarthritis. Workplace accommodation was noted to be likely permanent. Functional limitations were noted as significant pain and stiffness in her back and hips, difficulty getting in/out of a chair, stairs and longer walks. Under physical abilities, Dr. Rideout wrote:

- sitting – not for long periods
- standing/balancing – short periods ok

¹³ See GD1A – 14.

¹⁴ See GD2R – 91.

¹⁵ See GD1A – 12.

¹⁶ See GD2R – 105.

- walking/climbing – not long distances
- lifting/lowering/carrying – less than 10 lbs
- bending/stopping – limited bending
- neck rotation – not repetitive
- pushing/pulling – nothing heavy
- squatting/crouching/kneeling – none¹⁷

[39] In June 2021, an x-ray report noted degenerative facet joint changes throughout the thoracic spine with predominantly right lateral osteophyte formation.¹⁸

[40] In July 2021, Dr. Rideout wrote a letter to the Appellant's employer to request accommodation to work from home. Dr. Rideout said the Appellant has significant back and hip pain from osteoarthritis. As a result, the Appellant was noted to have difficulty getting from home to work, especially in the winter. Alternatively at home, the Appellant would be able to lie down during breaks and lunch time.¹⁹

[41] Dr. Rideout wrote a final letter dated March 2022 again noting the Appellants main issue is chronic back pain and osteoarthritis, which cause significant pain and affect her mobility. The Appellant had trouble climbing stairs in her building, difficulty clearing snow from her car, carrying groceries and many other normal activities of living.²⁰

[42] Dr. Rideout also confirmed the Appellant is **obese**, which complicates her chronic pain.²¹

¹⁷ See GD10.

¹⁸ See GD11.

¹⁹ See GD14.

²⁰ See GD29.

²¹ See GD29.

[43] In February 2018, the Appellant was diagnosed with **osteoporosis** with a moderate fracture risk.²² However, by February 2020, the Appellant's fracture risk rose to high risk and she had low bone mass.²³

[44] With respect to **anxiety**, the Appellant has seen a counsellor since 2013 following her diagnosis of osteoarthritis and osteoporosis. Her counsellor noted these conditions impact her mood causing emotional lows and anxiety. Her counsellor focused on coping skills to help her deal with her medical issues.²⁴

[45] In a letter dated June 2021, the Appellant's counsellor said that as the Appellant's health issues increased so did the Appellant's anxiety. The Appellant began calling the medical health line looking for reassurance. In 2019, when a nodule was found on the Appellant's lung, the Appellant's anxiety was noted to increase to the point of crying at work. By 2020, the Appellant was in constant pain at work and finding it hard to sit for long periods. At that time, her counsellor said her anxiety was very high.²⁵

[46] The Appellant's counsellor also said that due to her mental health conditions, she is very sensitive to criticism, assumes people don't like her, isolates herself, has panic attacks, cries, and has a fear of people in authority.²⁶

[47] Finally, Dr. Rideout said the Appellant has mild generalized anxiety. Although the Appellant does not normally take medication for her anxiety, Dr. Rideout noted that at times stressors seem to add up around her and her coping skills are unable to manage, causing her anxiety to escalate. This was noted to occur several times around periods of worsening pain and lack of accommodation by her workplace.²⁷

[48] There was no medical evidence to support a diagnosis of **depression**.

²² See GS9 – 14.

²³ See GD9 – 16.

²⁴ See GD4-4.

²⁵ See GD15.

²⁶ See GD28.

²⁷ See GD29.

[49] In terms of the Appellant's **vision**, an October 2020 report notes the Appellant has significant nearsightedness. She was also noted to have problems with her macula (central vision) during low light levels and in times of increased glare.²⁸ In October 2021, the Appellant was diagnosed with glaucoma (mild), dysfunctional lens syndrome and wet macular degeneration.²⁹

[50] The medical evidence supports that the Appellant's functional limitations affected her ability to work by March 10, 2022.

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

– **The Appellant has followed most medical advice**

[52] The Appellant has followed most medical advice.³⁰ The Appellant has a reasonable explanation for not following all medical advice.

[53] The Appellant has complied with all medical assessments like x-rays and MRIs.

[54] For her **chronic pain**, the Appellant attended physiotherapy from 2015 to 2020 at four different clinics.³¹ She stopped due to Covid-19. The Appellant was given exercises to do at home which she did before her spinal fracture in 2017. However, after the fall, the Appellant said the exercises made her "knotted up" and she couldn't move. Overall, her condition after the fall is much worse, so she explained she is no longer able to do the home exercises. I find her explanation reasonable.

[55] She takes Tylenol for the pain. She was not prescribed any other pain medication although she requested something stronger.

[56] The Appellant uses a cane to walk, although it does not assist much.

²⁸ See GD1A – 13.

²⁹ See GD25.

³⁰ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

³¹ See GD2R – 51.

[57] The Appellant took cortisone injections for her pain for two to three years.³² She said they lasted for only four weeks. As a result, Dr. Moores was of the opinion that continuing the injections was not a significant benefit to the Appellant.³³

[58] The Appellant was offered a hip replacement in March 2019. The Appellant is agreeable to the surgery, but she delayed it initially because she could not afford to go on EI at the time. She wanted to wait to get the surgery when she retired. The Appellant explained that if she did the surgery earlier, her pension would have been very low and she would have needed to sell her home. If she sold her home, she did not know where she would live. The Appellant has no family to assist her and a mortgage to pay. This is a reasonable explanation for delaying the surgery. The Appellant testified that she now regrets her decision as her surgery has been delayed many times due to Covid-19. Although she has been told her surgery will be soon, no date has been set.³⁴

[59] In terms of her back pain, the Appellant said there is no specific treatment that was recommended to her. She was not referred to a specialist or prescribed medication.³⁵ Dr. Rideout confirmed this when he wrote “replacement for hip planned but no adequate treatment for chronic back pain.”³⁶ Two physiotherapists also said there was nothing they could do to help the Appellant’s back. The only recommendations were to use a TENS machine and heating pads, both of which the Appellant tried, but they resulted in little relief.³⁷

[60] The Appellant’s family doctor prescribed her bisphosphonate medication for **osteoporosis**. The Appellant tried the medication twice but had side effects including pain and diarrhea so her family doctor told her to stop. The Appellant was advised to take walks. This is essentially impossible due to her chronic pain, which is reasonable. The Appellant was also told to take calcium and vitamin D in 2018. She began taking the vitamins. She was diagnosed with skin cancer (which has since resolved), in the

³² See GD9 – 6.

³³ See GD1A – 12.

³⁴ See GD9 – 6, GD7 – 9.

³⁵ See GD1A

³⁶ See GD2R – 36.

³⁷ See GD1A.

same year. The Appellant explained that her anxiety became overwhelming. She needed to remove things from her routine to remain functional so she stopped taking her vitamins. She said discussing the vitamins at the hearing was a good reminder to begin taking them again. It is reasonable that the Appellant got preoccupied with another serious health issue and forgot to take her vitamins. However, her cancer diagnosis was in 2018 and has since resolved, yet the Appellant did not restart the vitamins which is unreasonable. But I find that even if the Appellant did take the vitamins it would not have made a significant difference to her osteoporosis. It certainly would not have made any difference to her overall condition which is chronic pain caused by arthritis.

[61] The Appellant has been seeing a counsellor since 2008 to cope with her **anxiety**. The Appellant said her counsellor taught her techniques to help her manage her anxiety, and stop excessive rumination like taking a break or doing something different. Her counsellor said the Appellant participated actively in counselling and had insight into her anxiety and its impact.³⁸ Although the Appellant does not take regular medication, she takes Lorazepam for panic attacks.³⁹ The Appellant said that since leaving her job, her anxiety has resolved.

[62] With respect to **obesity**, the Appellant said in her 40s she was able to lose quite a bit of weight through exercise, but as she has grown older, weight loss has become increasingly more difficult. She is unable to do much physical activity now due to her chronic pain. When it comes to nutrition, the Appellant said that because of her pain, she eats very quick meals, so she is unable to prepare healthier alternatives. It is reasonable that the Appellant's chronic pain has made weight loss very difficult.

[63] The Appellant avoids driving in low light conditions, and wears glasses to address her **vision** problems.

³⁸ See GD28.

³⁹ See GD21 – 3, GD29.

[64] 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.⁴⁰

– **The Appellant can't work in the real world**

[65] 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

[66] 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.⁴¹

[67] I find that the Appellant can't work in the real world. The Appellant is 62 years old. She has a high school education. In 1977 she did a training program through the College of Trades Technology. She worked as a typist from 2008 to present with Occupational Health and Safety in Newfoundland. In this role she transcribes audio statements, updates listings and takes complaints over the phone. She is fluent in English. The Appellant's language skills and transferrable office skills would assist her in re-entering the work force. However, her age and her lack of education are a barrier to her finding work again.

[68] The Appellant's medical conditions are so severe, they make doing any kind of work essentially impossible. The Appellant describes constant pain in her groin, back, left hip, legs, neck, abdomen, buttocks, shoulders, lungs and ribs. The Appellant is awoken every night due to pain and often can't fall back asleep so she is very fatigued the next day. When the Appellant gets home from work, she eats easy to prepare food

⁴⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁴¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

and goes straight to bed around 6:30 p.m., as lying on her back is the only thing that relieves the pain. Weekends are spent in bed as well, except to use the bathroom, eat and sometimes shower.

[69] The Appellant has used a lot of leave, including vacation time and sick time to cope with the pain while working.

[70] The Appellant visited the emergency department multiple times in 2021 due to extreme pain. She relayed paying a taxi to drive her from the main entrance of the hospital to the parking area due to pain. She has a reacher to pick things off of the floor, a bidet to assist with toileting, and a sponge on a stick to assist her with showering.

[71] The Appellant is breathless going from room to room in her home. She gets all of her groceries, medication, clothes and all other necessities delivered, as she cannot go out and purchase them herself due to her mobility restrictions.

[72] The Minister says the Appellant is waiting for a hip replacement which will likely improve her situation. However, the Appellant notes that she still has no date for the surgery. Further, she says the hip replacement will not solve her back pain which is her primary issue. I agree with the Appellant that a hip replacement will not treat the chronic back pain which causes many of her functional limitations.

[73] Prior to the onset of her medical conditions, the Appellant describes a full life, seeing friends, participating in social activities, exercising and fulfilling all areas of her job description.

[74] The Appellant requested accommodation to work from home many times beginning in July 2020. Her request was finally granted in August 2021. She worked from home from the beginning of September 2021 to mid December 2021, but the pain was still too much, so she retired in mid December 2021.

[75] The Minister says that the Appellant has work capacity as she was working when she applied and continued working up until December 2021. The Appellant's response is that she has no family or friends to rely on, so she has to work to keep food on the

table and a roof over her head. Leaving her job on the off chance she might be successful in receiving a disability pension would aggravate her situation, the Appellant notes. The Appellant also pointed out that the rules don't prevent people from applying while they are employed.

[76] I agree with the Appellant. An Appellant who is working at the time of applying for a disability pension should not be denied on this basis alone. Each case turns on its particular facts. The Appellant has worked consistently since 1978. In 2020,⁴² the Appellant earned \$43,933, which is considered substantially gainful.⁴³ However, the Appellant was struggling to continue working to avoid potential homelessness. The Appellant had to take a lot of time off of work to cope with the pain. She was also late for work. The Appellant requested accommodation to work from home numerous times, and was finally granted it. Despite the accommodation, the Appellant had to retire prior the date of the hearing, because of her functional limitations. Therefore, although the Appellant was employed for many years, by the date of the hearing, the Appellant was incapable regularly of pursuing a substantially gainful occupation.

[77] The Appellant can't do a sedentary job because sitting is very difficult, and the Appellant is very fatigued during the day.

[78] I find that the Appellant's disability was severe by March 10, 2022.

Is the Appellant's disability prolonged?

[79] The Appellant's disability is prolonged.

[80] The Appellant's main disabling conditions are arthritis which began in 2016, degenerative disc disease and severe chronic pain in 2017 and osteoporosis in 2018. These conditions have continued since then, and they will more than likely continue indefinitely.⁴⁴

⁴² The Appellant's 2021 earnings were not submitted by the Minister.

⁴³ As per s. 68.1 of the *Canada Pension Plan Regulations*.

⁴⁴ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an 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.

[81] The Appellant's conditions have only gotten worse as time passed. As a result she retired early.

[82] Dr. Rideout said that the Appellant's osteoarthritis and chronic back pain was likely to deteriorate and he did not expect her to return to work.⁴⁵

[83] I find that the Appellant's disability was prolonged by March 10, 2022.

When payments start

[84] The Appellant's disability became severe and prolonged in July 2020, at the time of her application for disability benefits. This is based on the Appellant's description of her functional limitations at the time outlined above.

[85] There is a four-month waiting period before payments start.⁴⁶ This means that payments start as of November 2020.

Conclusion

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

[87] This means the appeal is allowed.

Anita Nathan
Member, General Division – Income Security Section

⁴⁵ See GD2R – 91.

⁴⁶ Section 69 of the *Canada Pension Plan* sets out this rule.