



Citation: *TR v Minister of Employment and Social Development*, 2022 SST 711

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

Decision

Appellant: T. R.
Representative: Andree Harley

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 29, 2020 (issued
by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Teleconference

Hearing date: June 24, 2022

Hearing participants: Appellant
Appellant's representative
Appellant's witness

Decision date: July 3, 2022

File number: GP-21-460

Decision

[1] The appeal is allowed.

[2] The Appellant, T. R., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of June 2019. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant most recently worked as a cashier at a grocery store in Merritt from 2016-2017. She assisted customers in store, helped to carry out groceries, cleaned and managed the cash register.¹ She stopped working because of panic attacks and associated fibromyalgia pain and headaches.

[4] The Appellant applied for a CPP disability pension on January 17, 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 that she experiences constant muscle and nerve pain in her neck, shoulders, and arms. This limits her ability to function on a daily basis. She also suffers from hip pain that limits her ability to stand and walk. She wrote in her application that she is always in pain.

[6] The Minister says that the Appellant was 26 years old with a high school education and several types of work experience. Her personal characteristics would not significantly affect her ability to find suitable work.

[7] The Minister further noted that the Appellant had reported a decrease in her anxiety by engaging in a healthier lifestyle and had been referred to a psychologist to

¹ GD2-57

help treat her depression and anxiety. These facts would not support a finding of a severe disability.

[8] Finally, the Minister wrote that the Appellant's migraines had decreased.

What the Appellant must prove

[9] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2020. This date is based on her contributions to the CPP.²

[10] The *Canada Pension Plan* defines "severe" and "prolonged."

[11] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[12] 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.

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

[14] 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.

² 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 Appellant's CPP contributions are on GD2-64.

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

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

[15] 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.

Reasons for my decision

[16] I find that the Appellant had a severe and prolonged disability as of February 2019. 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?

[17] 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

[18] The Appellant has:

- Fibromyalgia;
- Anxiety and depression; and
- Migraine headaches.

[19] However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁶ 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 affected her ability to work.⁷

[20] I find that the Appellant had functional limitations that affected her ability to work.

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[21] 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 functional impairments:

- **Walking a block** – The Appellant told me that she is unable to take a step without feeling pain. She gets shooting pain and loses all control of her hip. Her feet and body hurt.
- **Kneeling** – The Appellant told me that because of her trigger points from her fibromyalgia it feels like she is kneeling on a rock. As a result she has difficulty kneeling.
- **Changing a light bulb** – Anything where she needs to put her hand above her head causes her to immediately have painful muscles. It leads to pain in her neck and head.
- **Driving** – The Appellant gets severe anxiety and she finds it difficult to look behind for shoulder checks. Often she needs to pull over because she gets panic attacks while driving.
- **Opening a door** – If the door is heavy it is very difficult for her to open doors.
- **Picking up groceries**– She`s unable to pick groceries up because they are too heavy. She gets stiff hands and pain.
- **Managing stress** – The Appellant told me this is not very good. She avoids stressful situations.
- **Managing anxiety** – The Appellant told me that she becomes very shaky and rubs her hands together when involved in any type of stressful situation. She chews her fingers so they bleed. If she does not get out of the situation she will have a panic attack. Her head and the room will start spinning to the point where she cannot see.

- **Handling public places** – She avoids public places at all costs. When she has attempted to be in public places she has had to remove herself from those situations because of anxiety.
- **Remembering words** – The Appellant told me that she used to love to read. As a kid it was her escape. Now when she reads a page she forgets the information she has reviewed. She gets blanks when she is in social settings. She will forget important things to say to her physician.
- **Keeping track of what she is doing** – Her mind will go onto the next thing and she'll forget what she's doing. She will vividly remember going to her pills and remember taking them but it turns out that she has forgotten.
- **Prioritizing** – she has a challenging time because she cannot distinguish between what is more and less important because she is worried about everything all the time.

[22] The Appellant's husband also provided evidence about her functional impairments. He noted the following:

- **Housework** – The Appellant struggles with any housework. All vacuuming, mopping and general cleaning is left to him. The Appellant will try to help but she ends up in too much pain.
- **Panic attacks** – The Appellant cannot be left alone otherwise she will experience panic attacks. The Appellant's husband gave up a lucrative trucking job on account of her extreme panic attacks.
- **Pain** – The Appellant's fibromyalgia typically flares up for one day to four days at a time. During this time she becomes anxious and depressed.

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

[23] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2020.⁸

[24] The medical evidence supports what the Appellant says.

[25] On February 26, 2020, Dr. Navratil, rheumatologist, provided a consultation report. He set out that the Appellant’s primary complaint was chronic pain syndrome affecting multiple body areas.⁹ She had also suffered from poor sleep, migraine headaches, depression, and anxiety for many years.¹⁰

[26] Dr. Ross completed a medical report in January 2020. He wrote that he had been the Appellant’s physician for the previous 4 years. He noted that he first started to treat the Appellant for her primary medical condition in October 2016.¹¹

[27] He wrote that her primary medical conditions were anxiety, depression, fibromyalgia, and migraine headaches.

[28] The Appellant’s anxiety and depression left her short of breath, prone to panic attacks, unable to focus and concentrate on tasks and activities at hand.

[29] The Appellant was being treated for this condition with Cipralext. Her response was modest and limited. However, she continued to suffer from frequent panic attacks.¹²

[30] The Appellant’s fibromyalgia caused severe pain and stiffness in her neck and shoulders. This radiated down her right arm. Dr. Ross noted that any improvement was easily set back by activities, especially lifting. As a result, the Appellant was left with a decreased range of motion in her neck, and reduced arm strength.

⁸ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁹ GD2-36

¹⁰ GS2-36

¹¹ GD2-79

¹² GD2-80

[31] Dr. Ross noted that the Appellant had severe pain and stiffness that impaired her ability to work and perform daily activities such as grooming, planning, and preparing meals and housework. The Appellant's constant pain had resulted in anxiety and a lack of motivation.¹³

[32] Dr. Ross further noted that the Appellant's migraines caused her to have throbbing pain, nausea, and photophobia. They were so severe that at least once or twice per month they impaired her ability to work or do any activity. She only got relief by lying down.¹⁴

[33] In a consultation report dated May 24, 2019, Dr. Collier wrote that the Appellant's migraine headaches typically last for half a day and that they occur once or twice a month.¹⁵

[34] I asked the Appellant about Dr. Collier's report in respect of her migraine headaches. She told me that she does not realize things are happening more often than not. She told me that it was not accurate that she gets headaches once or twice a month. They happen multiple times a week.

[35] Her husband confirmed this. He also noted that the Appellant's headaches occur frequently and certainly multiple times a week rather than monthly. I found the Appellant credible on this point and accept her evidence. She suffers from migraine headaches multiple times a week rather than monthly.

[36] The medical evidence supports that the Appellant's fibromyalgia, migraine headaches, anxiety, and depression prevented her from doing all forms of employment by February 2019.

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

¹³ GD2-81

¹⁴ GD2-82

¹⁵ GD2-85

– **The Appellant has followed medical advice**

[38] To receive a disability pension, an appellant must follow medical advice.¹⁶ If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the Appellant's disability.¹⁷

[39] The Appellant has followed medical advice.¹⁸

[40] Dr. Navratil noted that the Appellant tried different medications including cyclobenzaprine (which made her feel drowsy) and amitriptyline (which did not make her feel proper and made her dizzy.) Duloxetine caused too much anxiety. Gabapentin has been well tolerated but at a smaller dose. A higher dose made her feel ill.¹⁹

[41] Dr. Ross was consistent with Dr. Navratil's opinion. I find both opinions support a finding that the Appellant has followed medical advice.

[42] 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.²⁰

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

[43] 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

¹⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁷ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁸ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁹ GD2-36

²⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

- past work and life experience

[44] 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.²¹

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

[46] The Appellant is young. She also has good work experience and when she was employed put forth a strong effort. Were these the only factors I had to consider, I would find that she was employable. However, I have to consider the Appellant's functional impairments.

[47] The Appellant has extensive functional impairments. She is unable to deal with much in life. She is unable to do basic household chores such as cleaning and cooking. Her ability to drive a vehicle is impaired by both her pain symptoms and her anxiety. Her anxiety and depression are both poorly-controlled through medication. She cannot do basic prioritizing and keeping track of tasks.

[48] When I think about the medical evidence and the Appellant's testimony, I am left with the conclusion that this Appellant suffers from extensive impairments. They interfere not only with her ability to remain employed but to engage in basic activities of daily functioning. Her migraines are completely debilitating. Her fibromyalgia, which can last for four to five days at a time reduces her ability to do any basic activity. Finally, her anxiety and depression leave the Appellant unable to focus or concentrate.

[49] It is clear from this evidence that the Appellant has no ability to engage in daily activities of living, let alone employment activity. For these reasons I find that the Appellant can't work in the real world.

[50] I find that the Appellant's disability was severe as of February 2019. By this date she was diagnosed with anxiety, depression, and fibromyalgia.²² These disabilities

²¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²² GD2-80-81

combined to leave her incapable regularly of pursuing any substantially gainful occupation.

Was the Appellant's disability prolonged?

[51] The Appellant's disability was prolonged.

[52] The Appellant's conditions began in October 2016. Dr. Ross completed a medical report in January 2020. He wrote that he had been the Appellant's physician for the previous 4 years. He noted that he first started to treat the Appellant for her primary medical condition in October 2016.²³

[53] Dr. Ross indicated that the Appellant's anxiety, depression, fibromyalgia, and migraines were all anticipated to remain the same and last greater than one year.²⁴

[54] Given the duration of disability coupled with Dr. Ross's opinion respecting the length of disability, I find that her disabilities are more than likely to continue indefinitely.²⁵

[55] I find that the Appellant's disability was prolonged as of February 2019. By this date, the Appellant was diagnosed with anxiety, depression, and fibromyalgia.

When payments start

[56] The Appellant's disability became severe and prolonged in February 2019.

[57] There is a four-month waiting period before payments start.²⁶ This means that payments start as of June 2019.

²³ GD2-79

²⁴ GD2-82

²⁵ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that you have to show a severe and prolonged disability by the end of your minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

²⁶ Section 69 of the *Canada Pension Plan* sets out this rule.

Conclusion

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

[59] This means the appeal is allowed.

Adam Picotte
Member, General Division – Income Security Section