



Citation: *CC v Minister of Employment and Social Development*, 2022 SST 714

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

Decision

Appellant: C. C.
Representative: Nicole Jule-Thimm

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 9, 2020 (issued
by Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Teleconference

Hearing date: June 16, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: July 11, 2022

File number: GP-21-531

Decision

[1] The appeal is dismissed.

[2] The Appellant, C. C., 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 39 years old. He worked as a construction labourer and equipment operator. In September 2018 he experienced a fracture of his right scaphoid, a bone in his wrist, that hasn't healed properly. He has bilateral carpal tunnel syndrome, and has developed psychiatric illness.

[4] The Appellant applied for a CPP disability pension on December 18, 2108. The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says the combination of his conditions make his disability severe and prolonged. He argues he has explanations for not following medical advice and he is unable to work in the real world.

[6] The Minister says the Appellant's conditions aren't serious, because he hasn't pursued recommended medical treatments. It argues his refusal to engage in treatment for his conditions means they aren't severe.

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2020. This date is based on his contributions to the CPP.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 his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Appellant is able to regularly do some kind of work that he could earn a living from, then he 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.

[13] The Appellant has to prove he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he is disabled.

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 Appellant’s CPP contributions are on GD2-6.

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.

Reasons for my decision

[14] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2020. While he does have right wrist pain and psychiatric conditions, he hasn't pursued treatments for them.

Was the Appellant's disability severe?

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

– The Appellant's functional limitations do affect his ability to work

[16] The Appellant has right wrist and hand pain and psychological illness that is likely schizophrenia. However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether he had functional limitations that got in the way of him 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 his ability to work.⁶

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

– What the Appellant says about his functional limitations

[18] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says the following:

- Limited movement and pain in his right wrist affects his ability to write with a pen.
- He has difficulty with fine motor movements in his right hand.
- He isn't able to do heavy lifting with his right hand.
- His psychiatric conditions can cause anger, outbursts, and mistrust of people.

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.

[19] The Appellant thinks his physical condition has improved. He currently lives alone and performs all of his activities of daily living without assistance, including indoor and outdoor home maintenance. He continues to have right wrist pain and limitation.

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

[20] The Appellant must provide medical evidence that shows that his functional limitations affected his ability to work by December 31, 2020.⁷

[21] The medical evidence supports what the Appellant says about his right hand limitations.

[22] A CT scan dated September 13, 2018 showed a non-united fracture of the right scaphoid with sclerosis and cystic changes. It was described as chronic in appearance, and arthritis was present at the distal radius.⁸

[23] In a report dated January 31, 2019, Dr. Sacevich, orthopaedic surgeon, said the Appellant has a permanent disability for the use of his right hand and wrist, in relation to pushing, pulling, and lifting. He said the Appellant needs sedentary work.⁹

[24] In a report for CPP dated January 3, 2019, Dr. Mikhail, the family doctor, diagnosed bilateral carpal tunnel with tingling and numbness in the right wrist. He said the Appellant can’t do physical work with his right hand, repetitive movements, or heavy lifting.¹⁰

[25] In a report dated March 6, 2020, Dr. Lohnes, psychologist, said the Appellant has an adjustment disorder and post traumatic stress disorder. She noted angry outbursts in public, and thought he was a risk to harm himself or others.¹¹

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

⁸ See GD2-43.

⁹ See GD2-39.

¹⁰ See GD2-102.

¹¹ See GD2-37.

[26] A functional capacity evaluation was completed on October 27, 2021. It says the Appellant could perform work at the light level on a full time basis. It said the only limitations were related to right wrist movements.¹²

[27] The Appellant saw Dr. Sharma at the request of his insurance company on November 22, 2021. Dr. Sharma said the Appellant likely has schizophrenia and is markedly ill. He said the Appellant needs psychiatric treatment.

[28] The medical evidence supports that the Appellant's right wrist pain prevented him from heavy lifting, pushing, pulling and performing the tasks of a construction labourer by December 31, 2020. It also shows that the Appellant has psychiatric conditions, but functional limitations weren't given.

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

– **The Appellant hasn't followed medical advice**

[30] The Appellant hasn't followed medical advice for his physical and psychiatric conditions.

[31] To receive a disability pension, an appellant must follow medical advice.¹³ If an appellant doesn't follow medical advice, then he must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on his disability.¹⁴

[32] The Appellant hasn't followed medical advice. He didn't give a reasonable explanation for not following the advice.

[33] In a medical report dated September 13, 2018, Dr. Ostrowski, orthopaedic surgeon, said the right wrist fracture was beyond repair and that the Appellant needed arthrodesis surgery.¹⁵

¹² See GD3-3-3.

¹³ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁴ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁵ See GD2-42.

[34] The Appellant wanted a second opinion about his wrist.

[35] In the report dated January 31, 2019, Dr. Sacevich said the only realistic treatment would be a total wrist arthrodesis surgery.

[36] Dr. Sacevich said the Appellant refused the surgery because he was concerned he wouldn't be able to play his banjo anymore, and was worried about future work restrictions.¹⁶

[37] The Appellant told me he knew someone whose arm had rotted from the inside because of a metal rod, and this was a reason he didn't want the surgery.

[38] He said the doctor told him he may possibly need the surgery on his other wrist as well. This was also a reason he refused surgery.

[39] The Appellant told me he has refused all medications related to pain and inflammation of his wrists. He doesn't want to take medications. He suggested there is a conspiracy between his past employers, family, and doctors to keep him drugged.

[40] I don't find that these were reasonable explanations for refusing the treatment.

[41] I don't accept that people are conspiring to keep the Appellant on drugs. This isn't supported by any evidence.

[42] Taking medication to reduce pain and inflammation is a conservative type of treatment.

[43] The two specialists the Appellant saw didn't tell him there was a risk that his arm would rot if he had surgery. This belief wasn't based on a medical opinion.

[44] I also find that as a result of the Appellant's refusal, he didn't end up doing any treatment at all to address his condition. He confirmed he hasn't done any treatment in relation to his right wrist or carpal tunnel condition.

¹⁶ See GD2-39.

[45] In March 2020, the Appellant saw Dr. Lohnes. In her report dated March 6, 2020, Dr. Lohnes said the Appellant would only agree to see her once per month, even though he required treatment more often.¹⁷

[46] In May 2020, the Appellant was hospitalized for psychosis.¹⁸ He was given psychiatric medications and after several days he was released to the care of his family doctor.

[47] In July 2020, Dr. Mikhail confirmed that one month after his hospitalization the Appellant was declining all medications, and any further recommended psychiatric treatment.¹⁹

[48] In a report dated December 4, 2020, Dr. Lohnes reported that the Appellant was still only seeing her once per month, and needed more intensive weekly therapy. She confirmed he was refusing all medications due to suspicion and mistrust.²⁰

[49] The Appellant stopped seeing Dr. Lohnes for psychological counseling shortly after this report and has refused all psychiatric treatment and medication since that time. He told me treatment with Dr. Lohnes was expensive, and didn't help him.

[50] Even if psychological treatment was too expensive to continue, the recommended psychiatric treatment was covered by OHIP, at no cost to the Appellant.

[51] The Appellant had an assessment with Dr. Sharma on November 22, 2021. Dr. Sharma confirmed he should be under the care of a psychiatrist and on anti-psychotic medications.²¹

[52] In a medical report dated March 9, 2022, Dr. Mikhail confirmed the Appellant was still refusing all recommended psychiatric treatment and medications.²²

¹⁷ See GD2-37.

¹⁸ See GD2-26.

¹⁹ See GD2-34.

²⁰ See GD1-15.

²¹ See GD3-32.

²² See GD5-3.

[53] The Appellant told me he doesn't need any treatment. He says all he needs is to get his girlfriend and family out of his life, and to get his life back on track. I don't find this is a reasonable explanation for refusing repeated medical advice.

[54] There are several medical opinions that say the Appellant needs intensive psychiatric treatment and medication. He hasn't had any improvement of his condition while refusing treatment. There is no medical opinion that suggests he could improve without any treatment.

[55] The Appellant also told me that Dr. Mikhail held himself out to be a psychiatrist, and that he thought that seeing him was psychiatric treatment. I don't find this is a reasonable explanation for refusing treatment.

[56] The Appellant made a serious allegation against Dr. Mikhail, and there was no additional evidence to support the allegation. All of the evidence available confirms that Dr. Mikhail is the family doctor.

[57] I must now consider whether following the medical advice for his physical and psychiatric conditions might have affected the Appellant's disability. I find that following the medical advice might have made a difference to the Appellant's disability.

[58] The Appellant saw two orthopaedic surgeons that said his only recourse was surgery. I find that following this advice may have made a difference to the Appellant's wrist and hand pain.

[59] I also find that taking medications for his wrist pain and carpal tunnel syndrome would have likely decreased his complaints of chronic pain, and possibly improved his ability to function.

[60] The Appellant has failed to pursue treatment for his physical and psychiatric conditions. Failing to pursue treatment for either one of these conditions is sufficient for me to make a finding that his disability isn't severe.

[61] Four doctors have confirmed the Appellant needs intensive psychiatric treatment and medications.

[62] The Appellant's psychiatric condition doesn't appear to have improved at all since 2019. I find the reason for this is because he hasn't followed the medical recommendations made concerning the condition and treatment.

[63] The Appellant hasn't made meaningful or reasonable efforts to treat his psychiatric conditions.

[64] Attending counselling with Dr. Lohnes for a limited period of time at 25 percent of the recommended frequency isn't a reasonable effort.

[65] While the Appellant has decided that he doesn't need or want treatment or medication, and this refusal may result from his psychiatric condition, the medical evidence doesn't support his conclusions. All of the medical evidence on this issue is contrary to the Appellant's opinion on the need for treatment. This makes his refusal unreasonable.²³

[66] The consistent medical opinions suggest the Appellant requires ongoing intensive psychiatric treatment.

[67] The Appellant didn't follow various medical advice that might have affected his physical and psychiatric disability. This means that his disability wasn't severe.

[68] When I am deciding whether a disability is severe, I usually have to consider an appellant's personal characteristics.

[69] This allows me to realistically assess an appellant's ability to work.²⁴

[70] I don't have to do that here because the Appellant didn't follow medical advice and didn't give a reasonable explanation for not following the advice. This means he didn't prove that his disability was severe by December 31, 2020.²⁵

²³ See *Cvetkovski v. Canada (Attorney General)*, 2017 FC 193.

²⁴ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁵ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

Conclusion

[71] I find that the Appellant isn't eligible for a CPP disability pension because his disability isn't severe. Because I have found that his disability isn't severe, I didn't have to consider whether it is prolonged.

[72] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section