



Citation: *JT v Minister of Employment and Social Development*, 2022 SST 726

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

Decision

Appellant: J. T.
Representative: K. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 27, 2021 (issued
by Service Canada)

Tribunal member: Jackie Laidlaw

Type of hearing: Teleconference

Hearing date: July 19, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: July 26, 2022

File number: GP-21-856

Decision

[1] The appeal is allowed.

[2] The Appellant, J. T., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of August 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is a 50-year old woman who has had ongoing emotional dysregulation since childhood. She has also had bilateral knee pain since childhood and has been taking Celebrex for over 20 years. She last worked in the fast food industry and stopped working in May 2019.

[4] The Appellant applied for a CPP disability pension on September 16, 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 she is unable to work due to overall pain now identified as fibromyalgia, along with pain in her back. She has been under the care of counsellors for the past few years. Due to isolation caused by COVID, she has been unable to put the taught techniques into practice.

[6] The Minister says there is no evidence to support a severe condition. The Minister acknowledges that the Appellant has longstanding depression and anxiety for years, and managed to work with medications. As well, she is young and educated and would be capable of working in the real world.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2021. This date is based on her 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 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.

[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.

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 GD 2-5

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 had a severe and prolonged disability as of April 2021. 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?

[15] The Appellant's disability was 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

[16] The Appellant has:

- Cluster B traits; Post Traumatic Stress Disorder (PTSD); Major Depressive Disorder (MDD); anxiety, asthma, fibromyalgia and chronic pain of the back, neck and knees.

[17] However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she had functional limitations that got 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 affected her ability to work.⁶

[18] I find that the Appellant has functional limitations that affected her ability to work.

– What the Appellant says about her functional limitations

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says her pain has worsened over the years despite having taken Celebrex for 20 years. She cannot lift anything due to shooting back pain. She cannot get home if she is walking due to knee and back pain. She is

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.

unable to clean and care for her home, which is 250 square feet. She has been using a cane for the past six or seven years. To ease the pain she takes Percocet (remaining supply from a dental procedure) and smokes “a lot of pot”.

[20] Mentally, she feels stress at work. She cannot concentrate. At her last job she cried constantly. She feels her anxiety and depression are out of control. She wants to work but the pain is overwhelming and she cannot remember anything.

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

[21] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2021.⁷

[22] The medical evidence supports what the Appellant says about her mental health. There is very little medical evidence to support a severe physical condition, though I do not dispute the Appellant feels pain. The medical evidence regarding her physical condition at the time of the MQP is from Dr. Kochanski’s medical report of September 24, 2021 indicating her pain is exacerbated likely by fibromyalgia and that physiotherapy is required. She received physiotherapy without improvement. However, the Appellant testified she gets chiropractic treatment monthly for the last two years and finds it improves her mobility.

[23] I agree with the Minister that the evidence does not support a severe physical disability. She has not been referred to any back specialist or chronic pain specialist. She does not require any surgery. For the most part, besides the few Percocet she still has from a dental procedure, she is still taking the Celebrex and Advil and Tylenol. The pain has been present for years, and with the same medication for 20 years she managed to work. It is also noted, she did not stop working in a very physical job due to any physical condition.

[24] The medical evidence supports that the Appellant’s depressive and anxious symptoms impair her ability to participate in activities of daily living and maintain steady

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

employment.⁸ Dr. Takhar, her treating psychiatrist noted in 2021 that her Cluster B personality traits cause her to be unable to deal with people, or maintain employment.⁹

[25] Dr. Takhar reported in November 2019.¹⁰ He said `she does suffer from quite a bit of emotional dysregulation especially with previous childhood trauma`. He felt dialectical behavioural therapy (DBT) would be the mainstay of the Appellants treatment. . He noted again, in 2021, that her prognosis was difficult to ascertain as it will depend upon her response to the DBT therapy.¹¹

[26] A clinical note by registered nurse Glenda Turner in April 2021 indicated that the Appellant had graduated from a 25 week DBT program on April 21, 2021. She had setbacks during the program and she felt the program did not have much to offer the Appellant.¹²

[27] The Appellant has followed medical advice.¹³ She eventually received the DBT 25 week program, which I find is an extensive treatment plan. It is noted she had setbacks during the program and it did not offer her much relief.

[28] The DBT program was noted as her mainstay treatment. It did not work well. Dr. Takhar indicated her prognosis would depend upon her response to this therapy. The response was minimal and therefore her prognosis would not be positive.

[29] 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.¹⁴

⁸ GD 2 91 August 30, 2019 medical report of family physician Dr. Lauren Kopechanski, and, GD 4 91 an ODSP application dated September 23, 2019 Dr. Kopechanski.

⁹ GD 4 41 May 25, 2021

¹⁰ GD 4 53 November 4, 2019

¹¹ GD 4 41 Dr. Takhar May 25, 2021

¹² GD 4 56 clinical note April 22, 2021.

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

¹⁴ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[30] 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

[31] 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.¹⁵

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

[33] The Minister has argued that she is young and well educated, and therefore able to work in the real world. The Appellant is 50 and middle-aged. She is well-educated, having a college degree in Veterinary Medical Office Administration. However, she has never worked in that field outside her co-op term. She has worked in fast foods, housecleaning and on a farm. It is unlikely she would be capable of returning to school to retrain for any other position given her age and lack of experience in jobs which require any in-depth training or skills. As well, she stopped working because she could not handle the stress of the fast food industry or the interactions with her boss. The job before her last one, again in fast food, ended the same way, with difficult personal interactions with her boss and anxiety about her job duties.

[34] She is not capable of working at a very base-level job and does not have any other transferable skills. Whatever she learned in college would be outdated today as that was a few decades ago. She would not be capable of retraining or finding other employment by reason of her age, and her past work and life experiences.

¹⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[35] I find that the Appellant's disability was severe as of April 2021 when she completed the DBT program without much benefit.

Was the Appellant's disability prolonged?

[36] The Appellant's disability was prolonged.

[37] The Appellant's conditions began in childhood. These conditions have continued since then, and they will more than likely continue indefinitely.¹⁶

[38] Dr. Takhar noted in 2019 that her 20-year history of intermittent anxiety with yearly low mood has not responded to multiple medications.¹⁷ Dr. Kopachanski indicated her bilateral knee pain along with her depression and anxiety have been present since childhood. .¹⁸

[39] Dr. Kopechanski has noted her concentration, memory and emotions improved minimally with counselling. Her significant depressive and anxious symptoms have not responded to medication trials or counselling.¹⁹ She has continued to receive counselling and trial medications since then. She has been on Celebrex for 20 years. It is unlikely she will see any further benefit physically or mentally to treatments.

[40] I find that the Appellant's disability was prolonged as of April 2021 when she completed the mainstay DBT treatment program without much benefit.

When payments start

[41] The Appellant's disability became severe and prolonged in April 2021 when she completed the DBT program without much effect.

¹⁶ 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.

¹⁷ GD 2 97 April 15, 2019

¹⁸ GD 2 91 August 30, 2019

¹⁹ GD 2 91 August 30, 2019

[42] There is a four-month waiting period before payments start.²⁰ This means that payments start as of August 2021.

Conclusion

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

[44] This means the appeal is allowed.

Jackie Laidlaw
Member, General Division – Income Security Section

²⁰ Section 69 of the *Canada Pension Plan* sets out this rule.