



Citation: *LG v Minister of Employment and Social Development*, 2021 SST 1000

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

Decision

Appellant: L. G.
Representative: J. H.

Respondent (Minister): Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 6, 2020 (issued by
Service Canada)

Tribunal member: Carol Wilton

Type of hearing: Videoconference

Hearing date: December 2, 2021

Hearing participants: Appellant
Appellant's wife (J. P.)
Appellant's representative

Decision date: December 28, 2021

File number: GP-20-1086

Decision

[1] The appeal is dismissed.

[2] The Appellant, L. G., is not eligible for a *Canada Pension Plan* (CPP) disability pension.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant was 54 years old in March 2019 when he applied for a CPP disability pension. His last job was as a taxi driver in 2020. In his application for CPP disability, he stated that he had been unable to work since August 1985 because of a pinched nerve in his back, diabetes, and vascular disease in both legs.¹

[5] The Minister refused the Appellant's application initially and on reconsideration. The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[6] The Minister stated that the Appellant is not entitled to a CPP disability pension. The medical evidence fails to show a severe and prolonged medical condition by the end of December 2002.

What the Appellant must prove

[7] For the Appellant to succeed, he must prove that it is more likely than not that he has a disability that was severe and prolonged by December 31, 2002.²

[8] The CPP defines "severe" and "prolonged."

¹ At the hearing, he testified that he was unable to earn a living by December 31, 2002. His major problem at that time was back pain.

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 CPP. The Appellant's CPP contributions are on page GD2-35

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³ If an appellant is able to do some kind of work that he could earn a living from, then he isn't entitled to a disability pension.

[10] A disability is **prolonged** if it is likely to be long continued and of indefinite duration.⁴ The disability must be expected to keep the Appellant out of the workforce for a long time.

Issues

[11] Did the Appellant's health conditions result in his having a severe disability, so that he was incapable regularly of pursuing any substantially gainful occupation by December 31, 2002?

[12] If so, was his disability long continued and of indefinite duration?

The Appellant's disability was not severe by December 31, 2002

The testimony of the Appellant and his wife

[13] The Appellant testified that in 2002, his major problem was back pain. It started 25-30 years ago. He had seen a back specialist before 2002. The doctor told him that he couldn't do back surgery on him because there was a 50% chance it would leave him paralysed. The Appellant was a labourer, but his back pain prevented him from doing much heavy physical work.

[14] In 2002, the Appellant worked on a dairy farm. He cleaned the stables, fed the cattle, and helped with the haying. He stopped work because of his back pain. J. P. testified that the owners of the farm were benevolent employers. The Appellant didn't have to work if he wasn't well enough. In addition, they let him do some less demanding work. He stopped doing this job because of back pain.

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] J. P. stated that she and the Appellant had been together since 2000 or so. He always had back trouble. When he was working, he was in “rough shape.” She stated that in the years 2001-2008, he did not see his family doctor often because there was nothing to be done for his back. His high blood pressure at the time did not interfere much with his life.

[16] J. P. stated that she had suffered from multiple sclerosis for 22 years. When she was out of remission, the Appellant did a lot of the cooking and shopping.⁵ He can’t now bring in wood, do the shopping, or even wait in the car while she does the shopping. He had used a walker at one time, but wore it out.⁶

The medical record does not show a severe disability by the MQP

[17] In February 2002, the Appellant visited his family doctor with a sore back. He received a prescription for aspirin.⁷ The family doctor next mentioned low back pain in July 2006, when the pain was described as acute. The doctor prescribed medication for pain and muscle spasms.⁸

[18] In January 2003, the Appellant went to the emergency department (ED) with a sore back and left leg. His back pain had started with shovelling snow on Boxing Day. At the time, his regular medications were pills for fluid and blood pressure. The ED doctor stated that the Appellant had a herniated lumbar disc. He had longstanding L4 and L5 disc disease with a recent exacerbation down his left leg.⁹ He received four dilaudid (opioid) pills. The ED doctor told him to see his family doctor for a referral for disc surgery.¹⁰

[19] When the Appellant visited the ED in October 2005 for stomach and lower back pain, his only regular medications were for blood pressure and fluid.¹¹ Although he was

⁵ See paragraph 20 below.

⁶ The medical evidence shows he got a walker in November 2015, many years after the MQP: GD12-47.

⁷ GD10-8. The doctor’s office notes are very hard to read.

⁸ GD10-10. Robaxacet and Flexeril.

⁹ There is no record of imaging reports done at that time to substantiate this account.

¹⁰ GD10-46

¹¹ GD10-16. He had an operation for these in 2008: GD10-44.

eventually put on hydromorphone for his pain, the medical evidence fails to show that he was on opioid medication – or any ongoing pain medication - by December 31, 2002.¹²

[20] As late as 2007, Dr. J. Madigane, family doctor, stated that the Appellant’s major health concerns were high blood pressure and stress. She did not mention back or leg pain. She said that the Appellant was doing heavy work. He was the full-time caregiver to his wife, who had multiple sclerosis. Dr. Madigane requested that the Department of Social Services help provide food coupons for the couple.¹³

The medical evidence does not show a severe disability by the end of December 2002

[21] In a case called *Dean*, the Federal Court stated that, in order to succeed, an appellant must provide objective medical evidence of their disability at the time of their MQP.¹⁴ Such evidence is lacking in this appeal file.

[22] The medical evidence fails to show that the Appellant suffered consistently from back and leg pain before the end of December 2002. The ED doctor who mentioned longstanding degenerative disc disease in January 2003 made no comment on any functional limitations this might have caused. Nor did he comment on any interference with the Appellant’s ability to work. In addition, there is only one reference in the appeal file to the Appellant visiting his family doctor for back pain before the MQP date.

[23] The medical evidence also fails to show that by his MQP the Appellant was on strong painkillers, or that he received a referral to a back specialist.

[24] The measure of whether a disability is “severe” is not whether an appellant suffers from severe impairments, but whether his disability “prevents him from earning a

¹² GD17-2

¹³ GD10-28-30

¹⁴ *Canada (A.G.) v. Dean*, 2020 FC 206, citing *Warren v. Canada (A.G.)*, 2008 FCA 377; *Gilroy v. Canada (A.G.)*, 2008 FCA 116; and *Canada (A.G.) v. Hoffman*, 2015 FC 1348; and *CPP Regulations*. See also *Canada (Attorney General) v. Angell*, 2020 FC 1093.

living.”¹⁵ It is the appellant’s capacity to work and not the diagnosis of his disease that determines the severity of the disability under the CPP.¹⁶

[25] None of the medical reports close in time to the MQP describe functional limitations from back or leg pain that consistently interfered with the Appellant’s ability to work. The Appellant’s major health problems by the end of December 2002 were high blood pressure and fluid retention. The medical record fails to show that these were severely disabling conditions.

Post-MQP health conditions

[26] The Appellant developed a number of health conditions after his MQP. In 2004, he saw a surgeon for hemorrhoids.¹⁷ In August 2005, he had angina.¹⁸ In 2006, he received nutrition counselling for high cholesterol. He had already made many appropriate changes to his diet.¹⁹ In 2008, he received a diagnosis of diabetes.²⁰ In April 2019, Dr. Sarah Cosh, family doctor, stated that the Appellant suffered from peripheral vascular disease, as well as chronic back and leg pain.²¹

[27] When an appellant fails to prove that they suffered from a severe disability before the MQP, medical evidence from after that date is irrelevant.²² The CPP is a government program based on contributions. Under the CPP, the Appellant was only covered for health conditions that were severe by his MQP. He was not covered under the CPP for health conditions arising after that.

[28] I am sympathetic to the Appellant. I recognize that he now suffers from several well-documented health problems. His family doctor believes that his current functional limitations prevent him from working.²³ However, the medical evidence fails to show that

¹⁵ *Granovsky v. Canada (Employment and Immigration)*, [2000] 1 S.C.R. 703

¹⁶ *Klabouch v. Canada (Social Development)*, 2008 FCA 33

¹⁷ GD10-16

¹⁸ GD10-8

¹⁹ GD10-31

²⁰ GD10-16

²¹ GD2-62

²² *Canada (A.G.) v. Dean*, 2020 FC 206

²³ In April 2019, she recorded that his ability to walk was very limited. In addition, he was unable to lift any weight, or to push, pull, and carry: GD2-62.

by December 31, 2002, his disability resulted in serious functional limitations that seriously interfered with his ability to work. I find it more likely than not that the Appellant's disability was not severe by that date.

[29] Since I am not persuaded that the Appellant suffered from a severe disability, it is not necessary for me to apply the "real world" approach.²⁴

Conclusion

[30] I find that the Appellant is not eligible for a CPP disability pension because his disability was not severe and prolonged by the end of December 2002.

[31] This means the appeal is dismissed.

Carol Wilton
Member, General Division – Income Security Section

²⁴ *Giannaros v. Canada (Social Development)*, 2005 FCA 187