



Citation: *NF v Minister of Employment and Social Development*, 2022 SST 1295

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: N. F.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 26, 2021 (issued
by Service Canada)

Tribunal member: Tanille Turner

Type of hearing: In person

Hearing date: November 23, 2022

Hearing participants: Appellant
Appellant's witness

Decision date: December 14, 2022

File number: GP-21-835

Decision

[1] The appeal is allowed.

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

Overview

[3] The Appellant is 54 years old. She has a one-year college diploma in business. Her work experience includes working in a mail room processing cheques and working as an administrator for her husband's auto glass company.

[4] The Appellant was diagnosed with Multiple Sclerosis in 2016. Her symptoms got increasingly worse, making her stop working in June 2019. Those symptoms include loss of strength in her legs and arms. She has trouble walking without a walker. She has developed bladder incontinence since her diagnosis. She gets headaches and pain in her lower back and legs.

[5] The Appellant applied for a CPP disability pension on November 4, 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.

[6] The Appellant says she can't work because she doesn't have the mental capability to focus on learning a new job. She has no computer skills. She can't meet expectations of working to a reliable schedule. She needs frequent breaks from any one position. She can't sit, stand or walk for longer than 5 to 15 minutes.

[7] The Minister says the Appellant tolerates her medication well. There is no evidence of formal testing to support any cognitive impairments. There is no evidence to show the Appellant has tried all available treatment options.¹

What the Appellant must prove

[8] 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.²

[9] The *Canada Pension Plan* defines “severe” and “prolonged.”

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

[11] 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 regularly able to do some kind of work that she could earn a living from, then she isn’t entitled to a disability pension.

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

[13] 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 See GD7-9 and 10.

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 GD6-11 and 12.

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.

[14] 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

[15] I find that the Appellant had a severe and prolonged disability as of December 31, 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?

[16] 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

[17] The Appellant has:

- Multiple Sclerosis (MS)
- Generalized Anxiety Disorder (GAD)
- Hypertension

[18] 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

[19] I find that the Appellant has 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**

[20] The Appellant said in her testimony that by 2021, her medical conditions have resulted in functional limitations that affect her ability to work in the following ways:

- She can't use steps without a lot of difficulty. She has trouble lifting her legs high enough. She sometimes has to use her hands to lift her legs. This also makes her frustrated, which makes her legs stiffen more.
- She can't bend down without having something to grab onto. She has to use the strength in her arms to push herself up.
- She can't look at computer screen for longer than 20 minutes. It hurts her eyes to focus. She gets headaches.
- She can't reach above her head because of the stiffness in her upper arms. For example, her daughter has to blow dry her hair.
- She can't do up buttons or tie shoe laces. She doesn't have the manual dexterity to make these fine motor movements.
- She can't walk for more than five minutes. This is with her walker. She has to sit on the seat of her walker for two minutes before she can get up again for another five. She can walk for 15 minutes at the most, including breaks. Her legs get stiff. She gets tired.
- She can't sit for longer than 10 minutes. Her lower back, hips, and legs get stiff. She has to stand up and stretch for two minutes before she can sit down again.
- She can't concentrate on one task for more than one hour.

[21] The Appellant's daughter, E. F., also gave testimony at the hearing. She said the Appellant started using her walker in March 2021. She needs this for even short distances like walking around the house. When going for longer walks, the Appellant will use a motorized scooter. This started in the summer of 2020.

[22] Ms. F. says she, her sister and father help the Appellant around the house. This includes things like laundry, cooking, and lifting things out of the oven. This is because the Appellant's strength and balance have steadily declined since 2019. There are

concerns that the Appellant will fall in the shower or when taking dishes out of the cupboard.

[23] The Appellant's family helps her manage appointments and helps her prepare for them. Getting this help also decreases her stress.

[24] I found both the Appellant and her daughter to be credible. They gave context to the medical evidence that was sincere and consistent both with the medical evidence and each other's testimony.

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

[25] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2021.⁸

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

[27] Dr. Steckley is the Appellant's neurologist. On July 18, 2016, he wrote that an exam confirmed the Appellant's arm and leg spasticity and hyperreflexia with upgoing toes.⁹

[28] For context, the Appellant says the stiffness in her upper arms makes it hard for her to do things like reach above her head to take things out of a cupboard or blow dry her hair.

[29] He also wrote a supporting letter dated September 16, 2020. He said the Appellant's gait has gotten worse over the previous year. At the time, she was walking with a cane, sometimes needing two. She found it hard to walk up to 100 meters. By then, she was already occasionally using a walker. She had weakness in both legs and her balance had gotten worse. She also had poor concentration and memory.¹⁰

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

⁹ See GD2-110.

¹⁰ See GD4-6.

[30] This letter confirmed a report that Dr. Bodkin provided from April 2020. He said the Appellant had progressive gait disturbance since 2015. She could not walk with her family. It got worse with weak, stiff legs—even more so with stress and tension. This was caused by her Primary Progressive Multiple Sclerosis.¹¹

[31] The Appellant says she started using a walker in March 2021. She says her issues with balance had gotten worse since 2019. This meant she needed both hands on the walker to get around.

[32] A second letter from Dr. Steckley dated July 19, 2022, says the Appellant has had a progressive decline in her mobility. This impacted weakness in both legs (being worse on the left), stiffness, and dependency on her walker.

[33] Her anxiety also makes her memory worse.

[34] In that letter, he also says the Appellant does **not** have prominent leg pain. But, it's not the Appellant's pain that matters. Her functional limitations do. Dr. Steckley's letter supports the fact that the Appellant has functional limitations.¹²

[35] The medical evidence supports that the Appellant's weakness and stiffness in her legs prevented her from taking short walks without assistive devices. Stiffness in her arms gets in the way of her being able to reach above her head or carry heavy loads. These issues combined prevented her from being able to do her usual job.

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

– **The Appellant has followed medical advice**

[37] To receive a disability pension, an appellant must follow medical advice.¹³ If an appellant doesn't follow medical advice, then they must have a reasonable explanation

¹¹ See GD1-12.

¹² See GD10-1.

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

for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability.¹⁴

[38] The Appellant has followed medical advice.¹⁵ She gets her Ocrevus injection every six months as prescribed. Dr. Steckley says this is the only treatment available for progressive MS.¹⁶

[39] The Minister says there isn't information to suggest the Appellant has tried all treatment options for her MS. These would include physical activity and counselling to cope with her emotional struggles.¹⁷

[40] The Appellant says she does mobility exercises three to five times a week. The exercises are specific to MS patients and focus on brain-body connections. She also does some strength training.

[41] There is no record of this because she follows these exercise videos on the internet. She has done them since 2020. I accept her testimony on this point.

[42] She follows an anti-inflammatory diet.

[43] The Appellant said in her testimony that she gets counselling through her church. She speaks to her priest once a month. Other members of her church call her weekly. She says this counselling reinforces her faith and calms her down. But, not enough to make her GAD go away completely.

[44] She doesn't have insurance coverage for psychotherapy.

[45] 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.¹⁸

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

¹⁵ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁶ See GD4-6.

¹⁷ See GD7-10.

¹⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[46] 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

[47] 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.¹⁹

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

[49] She is 54 years old. She has a one-year business diploma. She speaks English fluently.

[50] A significant amount of her work experience is limited to checking the details on cheques before they got mailed out by an insurance company and performing administrative tasks for her husband's company.

[51] The Appellant says that while working for her husband, she answered phones, organized invoices for a bookkeeper, and brought packages from her house to her husband's shop in the backyard. She stopped delivering packages when she had to go from using a cane to a walker. She could not carry packages weighing up to 20 pounds anymore. This was in June 2019.

¹⁹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[52] She worked from home on a casual basis for three to four hours a day. The level of accommodations given while working for her husband could not be expected from another employer where she would earn a substantially gainful income.²⁰

[53] The Appellant's transferable skills are few, given she that isn't comfortable using computers and hasn't had a job where she needed to.

[54] She can't retrain because her mental and physical conditions get in the way.

[55] I find that the Appellant's disability was severe as of June 2019. This was the last time she was able to work because her conditions got in the way.

Was the Appellant's disability prolonged?

[56] The Appellant's disability was prolonged.

[57] The Appellant's conditions began in June 2019. These conditions have continued since then, and they will more than likely continue indefinitely.²¹

[58] It has been seven years since the Appellant's symptoms of MS started in 2015.²² Dr. Steckley's July 2022 letter shows how the Appellant's symptoms have gotten worse. He also notes the Appellant now has issues with concentration and memory.²³

[59] The Appellant is taking the only medication available for Primary Progressive MS, Ocrevus.²⁴

[60] Her prognosis is that her condition is likely to deteriorate. Her Generalized Anxiety Disorder is expected to remain the same.²⁵

²⁰ Section 68.1 of the *Canada Pension Plan Regulations* gives a formula for calculating what would be considered a substantially gainful income.

²¹ 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.

²² See GD1-12.

²³ See GD10-1.

²⁴ See GD4-6.

²⁵ See GD2-97 and 98.

[61] I find that the Appellant's disability was prolonged as of June 2019.

When payments start

[62] The Appellant's disability became severe and prolonged in June 2019.

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

Conclusion

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

[65] This means the appeal is allowed.

Tanille Turner

Member, General Division – Income Security Section

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