



Citation: *MV v Minister of Employment and Social Development*, 2022 SST 1566

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:

M. V.

Respondent:

Minister of Employment and Social Development

Representative:

Ian McRobbie

Decision under appeal:

General Division decision dated September 8, 2022
(GP-21-1536)

Tribunal member:

Kate Sellar

Type of hearing:

In Writing

Decision date:

December 29, 2022

File number:

AD-22-853

Decision

[1] I'm allowing the appeal. The General Division made an error. I'm giving the decision that the General Division should have given: the Claimant is eligible for a Canada Pension Plan (CPP) disability pension. These reasons explain why.

Overview

[2] M. V. (Claimant) was a full-time assistant manager at a retail store. She stopped working in February 2019. She has post-traumatic stress disorder (PTSD), depression, anxiety, and chronic bronchitis.

[3] The Claimant applied for a *Canada Pension Plan* (CPP) disability pension in November 2020.

[4] The Minister refused her application initially and on reconsideration. The Claimant appealed to this Tribunal. To be eligible for the disability pension, the Claimant needed to show that she had a severe and prolonged disability on or before September 2, 2022. The General Division found that her disability was severe, but it wasn't prolonged.

[5] I granted the Claimant permission to appeal, finding that the General Division may have made an error of law under the *Department of Employment and Social Development Act* (Act) by failing to apply the legal definition of a prolonged disability in the CPP.¹

[6] Now I must decide whether the General Division made an error, and if so, what I will do to fix it.

¹ Before December 5, 2022, the Appeal Division addressed errors of law as set out in the *Department of Employment and Social Development Act* (Act) at section 58(1)(b). Section 242(2) of the *Budget Implementation Act* 2021, No.1, says that sections 58(1) and 59(1) of the Act as it read before December 5, 2022 continue to apply to appeals like this one.

The parties agree on the outcome of the appeal

[7] The parties have asked for a decision based on an agreement they reached during a settlement conference on December 29, 2022.

[8] More specifically, the parties agreed that:

- I should allow the Claimant's appeal because the General Division made an error of law under the Act by failing to consider the full breadth of the meaning of "prolonged" in the *Canada Pension Plan* (CPP).²
- To correct the error, I should give the decision that the General Division should have given, by finding that:

(1) The Claimant is entitled to a disability pension under the CPP. The Claimant showed that she had a severe and prolonged disability within the meaning of the CPP by February 2019 when she stopped working.

(2) The Claimant applied for the disability pension on November 25, 2020. The earliest the Claimant can be considered disabled under the CPP is fifteen months before she applied.³ She applied on November 25, 2020. Fifteen months before the Claimant's application is August 2019. Payments start four months later in December 2019.⁴

I accept the proposed outcome

[9] In my view, the General Division made an error of law. I accept the parties' agreement in its entirety.

[10] A disability is prolonged when it is likely to be long-continued and of indefinite duration, or likely to result in death.⁵

² Section 42(2)(a)(ii) of the *Canada Pension Plan* defines the word prolonged.

³ Section 42(2)(b) of the *Canada Pension Plan* contains that fifteen month rule.

⁴ Section 69(1) of the *Canada Pension Plan* contains that four month rule for payment.

⁵ See section 42(2)(a)(ii) in the *Canada Pension Plan*.

[11] The General Division decided that the Claimant's disability wasn't long-continued or of indefinite duration because:

- The Claimant showed some improvement since she stopped working and therefore with continued improvements, the Claimant "may be able to do work in the future, even if it is only part time."⁶
- The Claimant is still exploring different treatments, as she is waiting on a referral to a new counsellor or therapist (timeline unknown) and is consulting with her treatment team about changing her medications.⁷

[12] In my view, the General Division made an error of law. The General Division strayed too far from the required legal approach to the question of whether a disability is prolonged. The focus must be on how long the severe disability is expected to last.⁸ When the General Division found more generally that the Claimant **may** improve more **in the future**, in this case the General Division did not really turn its mind to the question of whether the disability was still expected to be long-continued or of indefinite duration. There is no requirement to exhaust all treatments in order for a disability to be severe and prolonged.

[13] To fix the error, I will give the decision that the General Division should have given, consistent with the agreement the parties reached.⁹ The Claimant is entitled to a disability pension effective December 2019. Her disability is severe and prolonged.

⁶ See paragraphs 67-79 in the General Division decision.

⁷ See paragraphs 80-82 in the General Division decision.

⁸ In my leave decision, I referred the parties to questions about: (1) the role that the CPP Medical Report Form plays in the application of the prolonged criteria (where duration is set out in categories, the final of which is "one year or more"), and (2) the role that the CPP Disability Adjudication Framework may have in understanding prolonged disability.

⁹ See section 59(1) of the Act, which applies to this appeal (see footnote 1 for detail).

Conclusion

[14] I allowed the appeal. The General Division made an error of law. I gave the decision that the General Division should have given, consistent with the agreement of the parties. The Claimant is entitled to a disability pension. Payments begin December 2019.

Kate Sellar
Member, Appeal Division