



Citation: *MV v Minister of Employment and Social Development*, 2022 SST 983

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: M. V.
Representative: T. H.

Respondent: Minister of Employment and Social Development

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

Tribunal member: Brianne Shalland-Bennett

Type of hearing: Teleconference

Hearing date: September 2, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: September 8, 2022

File number: GP-21-1536

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. V. 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 50 years old. She got her high school diploma in 2016 at an adult learning centre. She also did business and accounting courses. Her last job was as a full-time assistant manager at a retail store.

[4] The Appellant says her biological father died in front of her when she was five. She says she never got over the incident. She didn't lose anyone else until her step-father passed away in February 2019.¹ That is when she stopped working. Since then, she has had post-traumatic stress disorder (PTSD), depression, and anxiety.

[5] The Appellant says different circumstances have added to her stress. Since she stopped working her sister, dog, and a few close friends passed away. She has had to care for her mom, who has progressive dementia. Because of her circumstances, she has had a lot of financial difficulties.

[6] The Appellant applied for a CPP disability pension on November 25, 2020.²

[7] 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.

[8] The Minister says the evidence doesn't show the Appellant has severe limitations that stop her from doing all types of work.³

¹ See GD2-28.

² See GD2-26 to 29.

³ See GD7, GD9, and GD12.

[9] The Appellant disagrees. She says she can't work because of her limitations.⁴

What the Appellant must prove

[10] For the Appellant to succeed, she must prove she has a disability that is severe and prolonged by the hearing date.⁵

[11] The *Canada Pension Plan* defines "severe" and "prolonged."

[12] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁶ 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.

[13] 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.

[14] If the Appellant can regularly do some kind of work that she could earn a living from, then she isn't entitled to a disability pension.

[15] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁷

[16] 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.

[17] 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.

⁴ See GD2-14, GD2-20 to 22, and GD3-5 to 13.

⁵ 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 GD7-10. In this case, the Appellant's coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

⁶ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁷ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[18] I find that the Appellant hasn't proven she had a severe and prolonged disability by the hearing date.

Is the Appellant's disability severe?

[19] The Appellant's disability is severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affect her ability to work

[20] The Appellant has:

- PTSD
- anxiety
- depression
- chronic bronchitis

[21] However, I can't focus on the Appellant's diagnoses.⁸ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁹

[22] 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 her ability to work.¹⁰

[23] I find that the Appellant has functional limitations that affect her ability to work.

– What the Appellant says about her functional limitations

[24] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. Here is what she says:

- Her depression and anxiety are constant.
- She has no motivation or ambition.

⁸ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁹ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

¹⁰ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- She has poor sleep and nightmares.
- She doesn't wake up feeling rested. She feels exhausted "inside and out."
- She is in a daze throughout the day and doesn't do much.
- She has poor concentration and comprehension.
- She has difficulty making decisions.
- Her financial situation makes her mental health worse.
- She doesn't socialize.
- She has low energy.
- She feels hopeless.

[25] The Appellant has panic attacks. They were worse before. Now, she has them once every couple of months. They mostly happen in social situations.

[26] The Appellant says she has limitations caused by bronchitis:

- She has a hard time breathing.
- She is short of breath when she exerts herself physically.
- She feels "drained" and fatigued.

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

[27] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by the hearing date.¹¹

[28] The medical evidence supports some of what the Appellant says.

[29] The Appellant says the main person who treats her is Ms. McEwan, a nurse practitioner.

[30] Dr. Esan is a psychiatrist. The Appellant says she met her in person once. After that, she only had five-minute phone calls with her every few months.

¹¹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

[31] Ms. Harrison is a counsellor. She works with Dr. Esan. The Appellant felt her conversations with Ms. Harrison were one-sided.

[32] I find Ms. McEwan, Dr. Esan, and Ms. Harrison all agree that the Appellant has had symptoms of depression, anxiety, and PTSD since her step-father's passing.

[33] Because the evidence about the Appellant's limitations is consistent, I find it reliable. Here is what they say about her limitations:¹²

- She has excessive tiredness and low energy.
- She has poor sleep and nightmares.
- She has a depressed mood and anxiety.
- She has issues with focus and decision-making.
- She is emotional and overwhelmed.
- She can't handle work-related stress.
- She has difficulties coping emotionally.
- She is isolated and avoidant.
- She has some social anxiety.
- She has financial stress.

[34] I also considered what the evidence says about the Appellant's bronchitis.

[35] I find the evidence supports the Appellant has limitations from bronchitis, but she has periods of improvement and regression.¹³

[36] Ms. McEwan says she has a recurrent cough and shortness of breath. However, by June 2022, she said her bronchitis had improved.¹⁴

[37] The medical evidence supports that the Appellant's functional limitations affected her ability to do her regular job as a manager by the hearing date.

¹² See GD2-18, GD2-65, GD2-67, GD2-71, GD2-80 to 82, GD2-211 to 213, GD2-243 to 245, GD5-3 to 5, and GD3-34 to 37.

¹³ See GD5-12 to 13.

¹⁴ See GD11-16.

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

– **The Appellant has followed medical advice**

[39] To receive a disability pension, an appellant must follow medical advice.¹⁵

[40] If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability.¹⁶

[41] The Appellant has followed medical advice.¹⁷

[42] The Appellant uses a puffer to help with her bronchitis. She says it gives her short-term relief for a few hours, but her symptoms come back.

[43] The Appellant has tried different medications, but they had bad side effects. Now, she takes Zopiclone for sleep and Venlafaxine for depression.

[44] The Appellant isn't sure about the effects of the sleeping medication. Even with medication, she hasn't slept a full night since February 2019.

[45] The Appellant doesn't think the anti-depressant helps. She hasn't noticed any changes in her depression and anxiety, even with a change of dose.

[46] The Appellant has done therapy and counselling with Ms. McEwan, Dr. Esan, and Ms. Hamilton. She says the counselling she got from Ms. McEwan helps. She didn't find therapy with Dr. Esan or counselling with Ms. Hamilton helpful. She doesn't think they paid any attention to what she had to say. She has been referred to another therapist and counsellor, but she doesn't know when treatment will start.

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

¹⁶ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[47] 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

– **The Appellant can't work in the real world by the date of the hearing**

[48] 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.

[49] I must also consider factors such as her:

- age
- level of education
- language abilities
- past work and life experience

[50] 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

[51] The Appellant has some positive factors that may help her retrain or find other types of work. Here is what I find:

- Her age (50 years old) is not a very limiting factor. She has many more years until the standard age of retirement.
- She speaks English fluently, has a high school education, and has done courses to upgrade her education.
- She has basic computer skills. She can fill out data in Excel and send emails.
- She may not be able to do very physically demanding work because of her bronchitis, but she has transferable skills from her work history that might help her do alternative work. She has done work as a cashier, customer service representative, and manager.

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

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

[52] The Appellant says she thought about going back to work in 2020. But, her financial situation became so bad that it made her mental health worse. She thinks that if her finances improved, she may get 100% better, but it would take time.

[53] I sympathize with the Appellant's statements about her financial situation. I believed her when she said that the impact of her finances adds to her symptoms.²⁰ But, I can't make my decision based on her financial situation. I have to consider whether she has functional limitations that affect her ability to work.

[54] I find the Appellant can't work in the real world by the hearing date. Here is why.

[55] The Appellant's energy levels and her fatigue would affect her ability to work regularly and predictably. She would have a hard time focusing on a task, making decisions, and interacting with a team. She isn't motivated enough to look for work or do work, even with the significant amount of financial stress she is experiencing.

[56] The Appellant's limitations affect her ability to care for herself (and her mother). I find these limitations further support that she would not be able to regularly or predictably work in the real world.

[57] The Appellant has a very close relationship with her mom. The evidence shows she was managing the household tasks and finances for herself and her mom in 2020.²¹

[58] However, by the date of the hearing, she didn't have what it took to care for her mom in the way she did before because of her limitations. Sometimes she will help out, but she can't manage what she was doing before.

[59] The Appellant has limitations with being able to do tasks for herself. She starts tasks but doesn't finish them. She relies on her roommate, who does most of the household tasks and chores. She doesn't have the energy or motivation to do more.

[60] I find the Appellant's disability was severe by the date of the hearing.

²⁰ The medical evidence supports what she says – see GD5-3 to 5.

²¹ See GD2-211.

Is the Appellant's disability prolonged?

[61] The Appellant must show that she had a disability that was severe **and** prolonged by the date of the hearing.

[62] I have already found the Appellant's disability is severe.

[63] I find that the Appellant's disability wasn't prolonged by the date of the hearing.

[64] To be prolonged, a disability must be likely to be long continued and of indefinite duration, or likely to result in death.²²

[65] There is no evidence that the Appellant's conditions will likely result in death. So, I will consider whether they are likely to be long continued and of indefinite duration.

[66] Here is why I don't think the Appellant's disability is prolonged.

[67] The Minister says the evidence shows the Appellant has shown improvement.²³

[68] The Appellant says she hasn't noticed much of an improvement. She thinks the times when Ms. McEwan said she was "doing alright" were just days she actually could attend the appointment, or made it through an appointment without crying.

[69] I agree with the Minister.

[70] I find it more likely than not that the Appellant has made some improvement since she stopped working.

[71] First, I considered what Ms. McEwan said:²⁴

- In September 2021, the Appellant told Ms. McEwan that she was doing alright, but felt "lost" on how to get back to normal.
- In November 2021, she reported that she was doing well.

²² 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.

²³ See GD7, GD9 and 12.

²⁴ See GD2-89, GD5- to 8, and GD11-18.

- In July 2022, she had no medications for financial reasons. She had some days when she felt down, but overall she was all right. She was using the techniques she had learned to help her cope.²⁵

[72] Second, I considered what Dr. Esan said. I find reports show the Appellant made some improvement. Here is what she says:²⁶

- In October 2021, her sleep was good, but she had nightmares sometimes. She was improving gradually.
- By May 2022, she was doing well. She had improved with treatment. Her prognosis was good based on her progress.

[73] Third, I considered what the Appellant said.

[74] The Appellant, herself, said she has had some improvement with her panic attacks with treatment. I acknowledge that she also has other symptoms, not just panic.

[75] The Appellant says she doesn't know why Dr. Esan said what she said in her latest report. She said she didn't talk to Dr. Esan much. She did, however, talk in more detail with Ms. Harrison during their phone calls.

[76] If I were **just** considering Dr. Esan's evidence, I would not find her reports reliable based on what the Appellant said about their interactions.

[77] However, I am not just considering Dr. Esan's evidence. I have also considered the evidence of Ms. McEwan, whom the Appellant has a good relationship with.²⁷

[78] As mentioned before, Ms. McEwan's evidence and Dr. Esan's evidence are compatible and consistent. So, I find their evidence reliable.

[79] I find that with continued improvements, the Appellant may be able to do work in the future, even if it is only part-time.

²⁵ See GD11-18.

²⁶ See GD3-30, GD2-28 to 29, GD8-1, and GD11-7.

²⁷ This is what the Appellant said at the hearing.

[80] In addition, the Appellant is still exploring different treatments.

[81] The Appellant didn't find treatment with Dr. Esan and Ms. Hamilton helpful. But, she is being referred to a new counsellor and therapist. The timeframe for this referral is unknown, but it may be helpful.²⁸

[82] The Appellant testified that also she has upcoming appointments with Ms. McEwan to talk about a possible change in medications to address her symptoms since her medication regime doesn't seem to help. She believes that based on this consultation, she might be trying different medication.²⁹

[83] I find the Appellant's disability isn't prolonged. This is because the evidence shows the Appellant has seen some improvement and because she is still exploring different treatment options. That means, more than likely, her disability isn't of indefinite duration.

Conclusion

[84] I find that the Appellant isn't eligible for a CPP disability pension because her disability isn't prolonged.

[85] This means the appeal is dismissed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section

²⁸ Ms. McEwan said cognitive behavioral therapy may be helpful (See GD2-80 to 82). The Appellant said she found the tools Ms. McEwan gave her helpful, so, she may see improvement in the future with a different treatment team as well (see GD5-3).

²⁹ This is what the Appellant said at the hearing at 1:34:56 to 1:35:48.