



Citation: *AD v Minister of Employment and Social Development*, 2023 SST 448

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. D.
Representative: T. D.

Respondent: Minister of Employment and Social Development
Representative: Jessica Grant

Decision under appeal: General Division decision dated November 15, 2022
(GP-21-1659)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **April 14, 2023**

File number: AD-23-116

Decision

[1] I'm allowing the appeal. The Claimant is entitled to a *Canada Pension Plan* (CPP) disability pension. Payments start April 2019. These are the reasons for my decision.

Background

[2] A. D. (Claimant) applied for a CPP disability pension on March 25, 2020. The Minister refused his application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal, finding that he didn't prove that his disability was severe within the meaning of the CPP.

[3] More specifically, the General Division decided as follows:

- The Claimant did not follow medical advice and did not have a reasonable explanation.
- The Claimant could have continued to do light duties on a predictable basis, at least part time, and for a different employer.
- The Claimant could have worked in the real world given his personal circumstances like his age, education, ability to communicate in English, and life and work history.

[4] I gave the Claimant permission to appeal the General Division decision. I found that it was arguable that the General Division got some facts wrong about the things the Claimant said he couldn't do (functional limitations).

The parties agree on the outcome of the appeal

[5] The parties have asked for a decision based on an agreement they reached during a settlement conference on April 13, 2023.

[6] The parties agree as follows:

- The Claimant had a severe and prolonged disability within the meaning of the CPP by October 2018 when he started receiving long-term disability benefits. This means that the Claimant became disabled within his coverage period, which ended on December 31, 2019.
- The Claimant applied for the CPP disability pension in March 2020. The earliest a claimant can be considered disabled for the purpose of the CPP is 15 months before they applied.¹ The earliest the Claimant can be considered disabled is December 2018. Payments start four months later in April 2019.²
- The Appeal Division should allow the Claimant's appeal.

I accept the parties' agreement

[7] I accept the parties' agreement.

[8] Given the impact of all his conditions together, taking a "real-world" approach to the issue, the Claimant is incapable regularly of pursuing any substantially gainful occupation. I am satisfied based on the record that he did not refuse treatment unreasonably. His disability is severe within the meaning of the CPP.³ I am mindful especially of the Claimant's shoulder pain, headaches, sternum pain, and fatigue. Collectively, they mean that he isn't capable regularly of working in any substantially gainful role.

[9] I am satisfied that the Claimant's disability is long-continued and of indefinite duration, so that means the disability is prolonged within the meaning of the CPP.

[10] In accordance with the agreement and the CPP, payments start April 2019.

¹ See section 42(2)(b) of the *Canada Pension Plan* (CPP).

² See section 69 of the CPP.

³ See section 42(2)(a) of the CPP for the definitions of "severe" and "prolonged" disability.

Conclusion

[11] I allow the appeal. The Claimant is entitled to a *Canada Pension Plan* disability pension. Payments start April 2019.

Kate Sellar
Member, Appeal Division