



Citation: *PT v Minister of Employment and Social Development*, 2022 SST 1321

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

# Decision

**Appellant:** P. T.  
**Representative:** Rajiv Haté

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated May 18, 2021 (issued by  
Service Canada)

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**Tribunal member:** Anita Nathan

**Type of hearing:** Teleconference

**Hearing date:** November 4, 2022 and November 14, 2022

**Hearing participants:** Appellant  
Appellant's representative  
Appellant's witness

**Decision date:** November 18, 2022

**File number:** GP-21-1658

## Decision

[1] The appeal is dismissed.

[2] The Appellant, P. T., 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 59 years old. She worked as a customer service representative for six years. She stopped working because she began experiencing chronic migraines, dizziness and swelling and pain in her body.

[4] The Appellant applied for a CPP disability pension on March 30, 2020. 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.

[5] The Appellant says she can't work because she has constant headaches, dizziness and whole body pain and swelling. The Appellant says she can't focus due to her medical conditions. She is able to do very little in a day and is often bedridden.

## What the Appellant must prove

[6] For the Appellant to succeed, she must prove she has a disability that is severe and prolonged by the hearing date.<sup>1</sup>

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

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<sup>1</sup> 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 GD2-7. 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.

[8] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup> 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.

[9] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>3</sup>

[10] 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.

[11] 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.

## **Matters I have to consider first**

### **I accepted late documents**

[12] Both the Appellant and the Minister filed documents after the readiness date. All documents were accepted, as they were all relevant to the proceedings, so it is in the interests of justice to admit them. There was no prejudice to either party as both sides had time to respond to each other. Since the documents were filed before the hearing, there was no delay caused.

## **Reasons for my decision**

[13] I find that the Appellant hasn't proven she has a severe disability by November 14, 2022. The Appellant didn't follow recommended treatment.

### **Is the Appellant's disability severe?**

[14] The Appellant has chronic migraines, dizziness, as well as, undiagnosed body pain and swelling. However, I can't focus on the Appellant's diagnoses.<sup>4</sup> Instead, I must

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<sup>2</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

<sup>4</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

focus on whether she has functional limitations that get in the way of her earning a living.<sup>5</sup> 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.<sup>6</sup>

[15] The Appellant's disability isn't severe. I reached this finding by considering several factors. I explain these factors below.

– **What the Appellant says about her functional limitations**

[16] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[17] The Appellant says she has **chronic migraines**, which cause pain in the left side of her head and neck. If she does not rest, the pain spreads to her whole head, including her eyes and ears. Normal activities like talking, walking, and moving her head make the pain worse.

[18] When her migraine is aggravated, the pain causes dizziness. When the Appellant's head is in pain, and she is dizzy she can't move her head up, down or sideways, because it makes her symptoms worse. It also leads to further pain in her neck and shoulders.

[19] The Appellant says the **dizziness** is the most problematic condition, and it is almost constant. It's not only caused by migraines, but also normal head movements. For example, keeping her head bent down for five minutes or more and then raising it, walking with her head looking down, looking down and turning her head to one side, and quick head movements, all cause dizziness. The up, down and side-to-side head movements when using a computer screen also cause dizziness.

[20] The dizziness causes a feeling of weakness. The Appellant says that sometimes turning her head will make her feel like passing out, and she will drop whatever she is holding because of weakness in her hands.

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<sup>5</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>6</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[21] Dizziness has disrupted many of the Appellant's everyday activities. The Appellant said her husband has to go grocery shopping with her because, sometimes when she moves her head to look at the products on the shelf she gets dizzy. In the summer of 2019, she blacked out when she was taking a shower. She doesn't cook, do housework or use her laptop as often. She also doesn't read as often because it is natural to look down at the reading material. Instead, she has to elevate what she is reading to eye level and try to move her eyes only. She stopped gardening because it requires her to look down for long periods of time. She doesn't drive because she worries she will get in a car accident, so her husband drives her everywhere.

[22] The medication she takes for headaches causes **dry mouth**. This causes her tongue to stick to the roof and sides of her mouth making it very difficult to talk.

[23] A more worrisome side effect of the medication is difficulty **putting thoughts together and expressing them**. The Appellant said she would start to speak and then have to stop because she forgot what she was going to say. She feels as though her brain has slowed down. She noticed that she stammers when she first starts to speak, as if she is "tripping over [her] tongue."

[24] The Appellant also says her **memory** has worsened. She also feels fatigued daily and everything takes longer to do.

[25] The Appellant also complained of **swelling and pain in her entire body** including her feet, toes, ankles, hands, wrists, knees, hips, arms, shoulders, neck, head and face. She also gets a burning sensation in her fingertips and feet when she tries to sleep. The pain makes it difficult to move her body and sit. When her body is in pain, the Appellant said she can't focus on anything but the pain, so she has difficulty thinking. She can't talk because her jaw, head and ears hurt. Her eyes also hurt when she moves them and her vision becomes blurry.

[26] The Appellant says she can't work because of a combination of her conditions. Her job involved taking orders over the phone for medical supplies. She used four computer screens. She had to move her head up, down, and side-to-side to navigate

the different screens. Head movements were also necessary to move around her workspace from her desk to view catalogues. These head movements made her head pain and dizziness worse. The pain in her body also made it difficult for her to sit at a desk. Memory loss, difficulty concentrating and confusion were additional challenges.

[27] The Appellant tried to return to work, but she was unsuccessful. The Appellant first stopped working in January 2018. She returned to work from July 2018 to July 2019. She couldn't manage the job, so she permanently stopped working. The Appellant had to take extended breaks, leave early or miss days at work. The Appellant used all her sick days and vacation days to cope with her symptoms. She was also given smaller accounts, but her symptoms prevented her from being an effective employee.

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

[28] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by November 14, 2022.<sup>7</sup>

[29] The medical evidence mostly supports what the Appellant says.

[30] The Appellant visited the Brampton Civic Hospital emergency department where Dr. Angel diagnosed her with positional vertigo.<sup>8</sup>

[31] The Appellant was also diagnosed with chronic migraines by neurologist Dr. Bryer. He noted that the Appellant complained of daily headaches for the last six years.<sup>9</sup>

[32] Ear, nose and throat specialist, Dr. Banglawala, disagreed that the Appellant had vertigo. After testing, they concluded that the Appellant's inner ear function and balance were functioning normally.<sup>10</sup>

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<sup>7</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>8</sup> See GD2 – 132.

<sup>9</sup> See GD2 – 126-127.

<sup>10</sup> See GD2 – 122-123.

[33] The Appellant's family doctor, Dr. Turner, wrote three reports identifying the Appellant's medical conditions as vertigo and migraines. He listed her symptoms as:<sup>11</sup>

- severe headaches at which time she is confined to her bed
- nausea
- dizziness
- vomiting
- poor balance
- motion sensitivity
- feeling sick when moving her head, eyes and body
- feeling disoriented, confused
- unsteady gait
- sensitivity to sound
- dry mouth as a side effect of the medication

[34] Dr. Turner said that the Appellant's conditions limit all her activities of daily living like cooking and cleaning, and she isn't able to drive.<sup>12</sup>

[35] The Appellant saw a rheumatologist, Dr. Shamis, for swelling, pain and tightness of her entire body.<sup>13</sup> X-rays showed that the Appellant had mild bilateral osteoarthritis and moderate degenerative changes in her foot. They also showed very early

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<sup>11</sup> See GD2 – 147-155, GD6 Vol. 2 – 235-236 and GD20.

<sup>12</sup> See GD2 – 147-155.

<sup>13</sup> See GD2 – 118-119.

osteoarthritis in her second and third fingers. But Dr. Shamis described these diagnoses as unremarkable.<sup>14</sup>

[36] Dr. Shamis determined that there was no rheumatological reason to explain the Appellant's symptoms, and the swelling she is experiencing was subjective. He viewed photos she took of her body, but said he didn't see any evidence of swelling. He also didn't see any swelling when visually inspecting her. When he examined her hands and feet, there was no joint swelling, tenderness or deformities. There was also no swelling in her elbows and knees. Dr. Shamis didn't think the Appellant has fibromyalgia because he said pain wasn't a predominant aspect of her symptoms (aside from her migraines).<sup>15</sup>

[37] The Appellant's chiropractor diagnosed her with facet irritation (which causes back pain), mild cervical instability, mild degenerative disc disease, and carpal tunnel syndrome.<sup>16</sup>

[38] The Appellant was also diagnosed with symptomatic moderate sleep apnea after a sleep study.<sup>17</sup>

[39] There is objective medical evidence to support that the Appellant has vertigo, migraines, mild osteoarthritis in her hands and feet, mild degenerative disc disease, carpal tunnel syndrome and sleep apnea. But, there is no objective medical evidence to support the Appellant's evidence of whole body pain and swelling.

[40] The Appellant's representative wrote submissions stating she has anxiety and depression. There are no medical records to support this; therefore, these conditions won't be mentioned further.

[41] The medical evidence supports that the Appellant's functional limitations affected her ability to work as a customer service representative.

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<sup>14</sup> See GD2 – 118-119.

<sup>15</sup> See GD5 – 17-18.

<sup>16</sup> See GD3 – 28.

<sup>17</sup> See GD11 – 129-130.



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

– **The Appellant hasn't followed medical advice**

[43] To receive a disability pension, an appellant must follow medical advice.<sup>18</sup> If an appellant doesn't follow medical advice, then she must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on her disability.<sup>19</sup>

[44] The Appellant hasn't followed important medical advice. She didn't give a reasonable explanation for not following the advice.

[45] First, I will review what medical advice the Appellant has followed.

[46] The Appellant has tried some medication. She took serc for vertigo. She also took Amitriptyline and Topamax for headaches. She had to stop taking Topamax because it worsened her dizziness. This is reasonable.

[47] She has done vestibular exercises, as well as the Epley maneuver and Brandt-Daroff exercises for vertigo.

[48] Although not specifically recommended, the Appellant has also done acupuncture, seen a chiropractor, applied cold packs for her pain and swelling, and tried walking, occasional massages, and a hand and wrist brace. She also got new glasses in case her old ones were causing the headaches. She spoke to a dentist to rule out teeth grinding, which she thought could be causing migraines. Finally, she got a new pillow and mattress to help her sleep better.

[49] Some medications including CGRP inhibitors and Botox were too expensive for the Appellant. They weren't covered by insurance. It is reasonable that she didn't take these medications.

[50] The Appellant didn't follow a number of treatment recommendations.

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<sup>18</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>19</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

[51] Two different specialists told the Appellant to consult with a neurologist regarding her headaches and dizziness. Dr. Banglawala told the Appellant that migraines should be managed with a neurologist, and she should follow the regime that was prescribed by her neurologist.<sup>20</sup> Dr. Shamis also told the Appellant, at two different appointments, to follow up with her neurologist.<sup>21</sup>

[52] Although the Appellant consulted a neurologist, she didn't attend all follow-up appointments, or follow all the recommended treatment. The Appellant saw neurologist, Dr. Bryer, twice. She stopped seeing him in 2019. Dr. Bryer suggested adding Fluoxetine to the Appellant's medication regime.<sup>22</sup> The Appellant saw Dr. Angel in 2021. He suggested she take Verapamil. Dr. Angel suggested a follow-up appointment in six months. The Appellant didn't take either medication, nor did she follow-up with Dr. Angel.

[53] The Appellant doesn't have a reasonable explanation for not taking Fluoxetine. When asked why she didn't try the medication the Appellant said that she must have discussed it with her family doctor, Dr. Turner, and he must not have seen the need for her to try the medication. A letter from Dr. Turner says that of the two medications that Dr. Bryer recommended, Topamax and Fluoxetine, they settled on Topamax.<sup>23</sup> The difficulty I have is that the Appellant stopped taking Topamax after four to six weeks due to lack of benefit and increased dizziness.<sup>24</sup> Yet she didn't try Fluoxetine. A neurologist prescribed two medications. One didn't work. It is logical to try the other to see if it has any benefit.

[54] The Appellant doesn't have a reasonable explanation for not taking Verapamil. On November 4, 2022, the Appellant said she thinks she didn't take Verapamil because Dr. Turner told her it conflicted with medication she was taking for cataracts. The

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<sup>20</sup> See GD2 – 122-123.

<sup>21</sup> See GD2 – 118-119.

<sup>22</sup> See GD6 Vol 2 – 443.

<sup>23</sup> See GD20 – 8. Note Dr. Turner refers to the medication by its alternate name, Mint-Topiramate.

<sup>24</sup> See GD6 Vol 2 – 443.

Appellant said she stopped taking the cataract medication about a year ago but she didn't revisit Dr. Angel's recommendation.

[55] The Appellant gave conflicting testimony about whether Dr. Turner told her not to take Verapamil. When the Appellant testified on November 14, 2022, she said she doesn't think she discussed Verapamil with Dr. Turner. Assuming Dr. Turner did tell the Appellant not to take the medication, it was reasonable not to take Verapamil at the same time as the cataract medication. However, once there wasn't a conflict, the Appellant should have tried the medication recommended by her neurologist.

[56] The Appellant doesn't have a reasonable explanation for not following up with Dr. Angel. The Appellant said that Dr. Turner didn't tell her to follow-up with Dr. Angel. She said that she didn't know Dr. Angel suggested a follow-up because his report went to Dr. Turner. The Appellant also said Dr. Angel's office didn't call her to set up a follow-up appointment. The Appellant emphasized that she does what Dr. Turner tells her to do.

[57] The Appellant's approach is too passive. Dr. Turner referred the Appellant to two neurologists because her medical issues were outside of his expertise. Two other specialists told the Appellant they couldn't help her with headaches and dizziness, and she should see a neurologist. The Appellant should have taken a more proactive approach to her treatment. The Appellant could have asked either Dr. Turner's office or Dr. Angel's office about next steps. This is especially so considering that the Appellant wasn't taking the medication Dr. Angel prescribed. It would have made sense to tell Dr. Angel she couldn't take Verapamil and see what else he suggested. It isn't reasonable that the Appellant relied on Dr. Turner and Dr. Angel's office to tell her to book a follow-up appointment.

[58] The Appellant didn't follow-up with physiotherapy. Before engaging in chiropractic sessions for pain, the Appellant consulted her chiropractor, Ms. Blainey, in January 2018 for vertigo. Ms. Blainey informed the Appellant she was not trained to care for vertigo. Ms. Blainey wanted to refer the Appellant to a physiotherapist specializing in benign paroxysmal positional vertigo. Ms. Blainey's notes say that the,

“pt did not indicate she wanted to be referred ‘not sure.’” When I asked the Appellant about this, she said Ms. Blainey referred her to a physiotherapist in her clinic who showed her some exercises. Ms. Blainey’s notes do say the Appellant was shown some exercises. Ms. Blainey also wrote that she wanted to refund the Appellant’s initial assessment fee and refer her elsewhere.<sup>25</sup> If Ms. Blainey wanted to refer the Appellant to someone in her clinic, it is unlikely she would need to refund the assessment fee.

[59] I prefer Ms. Blainey’s notes over the Appellant’s testimony. There are two notations a few days apart, about referring the Appellant to a physiotherapy specialist. The notes were written at the time of the appointments in 2018. The Appellant testified about the events almost five years later. Memory naturally fades. Based on the notes, the Appellant was recommended a referral to a physiotherapist specializing in vertigo, but she didn’t want the referral. The Appellant did; however, attend a few physiotherapy appointments at an outpatient clinic at the hospital.

[60] I must now consider whether following this medical advice might have affected the Appellant’s disability. I find that following the medical advice might have made a difference to the Appellant’s disability. The Appellant’s main limitations stem from her headaches and dizziness. Regular care from a physiotherapist specializing in vertigo might have improved the Appellant’s condition.

[61] Similarly, the two medications prescribed by two different neurologists may have improved the Appellant’s symptoms. Dr. Turner noted that, Amitriptyline, which the Appellant is taking, has had a number of benefits including reducing pain in her head, and relaxing her muscles.<sup>26</sup> Follow-up care with a neurologist might have affected the Appellant’s disability as well. If the Appellant didn’t want to take Verapamil, she could have explained this to Dr. Angel, and he might have prescribed other treatment.

[62] The Appellant didn’t take reasonable steps to mitigate her condition. The Appellant clearly has functional limitations that affect her ability to work. However, she is responsible for trying to treat her condition. This doesn’t mean her appeal should fail if

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<sup>25</sup> See GD6 Vol 1 – 84-85.

<sup>26</sup> See GD20 – 7.

she didn't try every single treatment recommended. The suggested treatment she didn't follow in this case is significant. Medication has helped the Appellant. Different medication might have helped the Appellant more. Follow-up with a neurologist was also essential so that the Appellant knew all of the treatment options available to her. The Appellant didn't follow important medical advice that might have affected her disability. This means that her disability isn't severe.

[63] When I am deciding whether a disability is severe, I usually have to consider an appellant's personal characteristics.

[64] This allows me to realistically assess an appellant's ability to work.<sup>27</sup>

[65] I don't have to do that here because the Appellant didn't follow medical advice and didn't give a reasonable explanation for not following the advice. This means she didn't prove that her disability was severe by November 14, 2022.<sup>28</sup>

## **Conclusion**

[66] I find that the Appellant isn't eligible for a CPP disability pension because her disability isn't severe. Because I have found that her disability isn't severe, I didn't have to consider whether it is prolonged.

[67] This means the appeal is dismissed.

Anita Nathan

Member, General Division – Income Security Section

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<sup>27</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>28</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.