



Citation: *DH v Minister of Employment and Social Development*, 2023 SST 581

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

## Decision

**Appellant:** D. H.  
**Representative:** J. L.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated January 12, 2021 (issued  
by Service Canada)

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**Tribunal member:** Selena Bateman  
**Type of hearing:** Teleconference  
**Hearing date:** January 4, 2023  
**Hearing participants:** Appellant  
Appellant's representative  
**Decision date:** January 9, 2023  
**File number:** GP-21-415

## Decision

[1] The appeal is dismissed.

[2] The Appellant, D. H., 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 51 years old. He worked as a station attendant in an airport until 2016. He has mental health issues, morbid obesity, and pain in his knees and low back. He felt like he couldn't work as of September 2016 because of his medical conditions.

[4] The Appellant applied for a CPP disability pension on August 29, 2019. The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says his physical and mental abilities are poor. He has shortness of breath after activity and has issues with his knees and lower back. He has low motivation and has a hard time managing his anxiety and emotions. He struggles with personal hygiene and housekeeping tasks.<sup>1</sup>

[6] The Minister says that the medical evidence doesn't show that the Appellant can't work because of his medical conditions by the end of 2019. He hasn't needed ongoing psychiatric care. He didn't list any hospitalizations, medications, or current treatment.<sup>2</sup>

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<sup>1</sup> See GD2-40 to 43.

<sup>2</sup> See GD3 and GD11.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2019. This date is based on his contributions to the CPP.<sup>3</sup>

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

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>4</sup>

[10] This means I have to look at all of the Appellant’s medical conditions together to see what effect they have on his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Appellant is able to regularly do some kind of work that he could earn a living from, then he isn’t entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>5</sup>

[12] 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.

[13] The Appellant has to prove he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he is disabled.

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<sup>3</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 GD2-56.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>5</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

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

### **The Appellant asked me to adjourn the hearing**

[14] The Appellant asked me to adjourn the hearing (that is, change the hearing date) because he had a new Representative. I granted the adjournment to allow him time to prepare his appeal.<sup>6</sup>

### **Reasons for my decision**

[15] The Appellant's limitations are severe. He has a number of limitations and couldn't work in the real world by 2019. But I can't find that that his disability is also prolonged. Treatment remains available to him. I find that the Appellant hasn't proven he had both a severe and prolonged disability by December 31, 2019.

### **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 do affect his ability to work**

[17] The Appellant has:

- Obesity
- Diabetes type II
- Depression and anxiety

[18] However, I can't focus on the Appellant's diagnoses.<sup>7</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>8</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 affected his ability to work.<sup>9</sup>

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<sup>6</sup> See GD7 and GD9.

<sup>7</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>8</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>9</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[19] I find that the Appellant has functional limitations that affected his ability to work.

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

[20] The Appellant says that his medical conditions resulted in functional limitations that affect his ability to work. He says:

- He has depression and anxiety. He has mood swings and his emotions are hard to control. He can't get motivated. Sometimes he doesn't shower for weeks. He can't fall asleep until he is exhausted.
- He has obesity, which causes shortness of breath after strenuous activities. He can't walk far. He has a restriction to bending.
- He has knee and low back pain and arthritis in his joints.
- He has neuropathy in his feet because of diabetes.

[21] The Appellant says that he saw a counsellor through his employee assistance program, prior to the end of his employment in 2016. Since then, he began receiving counselling in August 2022 through a provincial income assistance program.

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

[22] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2019.<sup>10</sup>

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

[24] The Appellant has **diabetes**. He didn't have any complications from this condition.<sup>11</sup> I find that diabetes didn't impact his ability to work by the end of 2019.

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<sup>10</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>11</sup> See GD10-83 and 85. The Appellant didn't have diabetic neuropathy by the end of 2019.

[25] The Appellant has morbid **obesity**. This causes physical limitations with walking, bending, and climbing stairs. He fatigues after standing within 30 minutes. He has difficulty with self care needs. He told his doctor he was interested in bariatric surgery.<sup>12</sup>

[26] The Appellant has intermittent **knee and low back pain**. He has restrictions to walking more than a few blocks and frequent bending and lifting. His episodic back pain limited him to standing for no more than 20 minutes and sitting for 30 minutes. However, the medical evidence doesn't support he had arthritis in his knees before the end of 2019.<sup>13</sup>

[27] The Appellant has **depression and anxiety**. He had low motivation, fatigue and insomnia. His attention, concentration and memory were impaired. He coped with his mental health conditions by overeating.<sup>14</sup> The medical evidence doesn't suggest that he had sleep apnea by the end of 2019.

[28] In August 2019, he saw Dr. Birdi, where he was diagnosed with depression. Dr. Birdi advised him to attend a day hospital program. He started, but the program stopped because of the COVID pandemic.<sup>15</sup> The evidence doesn't support that he enrolled in any other mental health treatment programs.

[29] The medical evidence supports that the Appellant's physical and mental health limitations prevented him from working his usual job by December 31, 2019.

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

– **The Appellant has generally followed medical advice**

[31] To receive a disability pension, an appellant must follow medical advice.<sup>16</sup> If an appellant doesn't follow medical advice, then they must have a reasonable explanation

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<sup>12</sup> See GD-10-25, 82, 99 to 109 and the medical report in GD2-105 to 113.

<sup>13</sup> See GD10-30 and GD10-82 to 83.

<sup>14</sup> See GD2-82 and 109.

<sup>15</sup> See GD2-93, 114 to 115 and 116 to 118. I also note that in 2016 the Appellant saw a psychiatrist, Dr. Kitab. He was diagnosed with an adjustment and anxiety disorder.

<sup>16</sup> 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.<sup>17</sup>

[32] The Appellant voiced concerns with taking psychiatric medication because of a previous side effect and concerns related to genetic conditions. Additionally, Dr. Cait noted that the Appellant has been unable to afford psychiatric medication. Dr. Birdi recommended a day treatment program for depression and anxiety.<sup>18</sup> He started taking this program until the COVID pandemic caused it to end early.<sup>19</sup>

[33] I am satisfied that the Appellant attempted a treatment for his mental health conditions, under the care of Dr. Birdi. I find his decision to not take psychiatric medication reasonable for the reasons he listed.

[34] 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 him from earning a living at any type of work, not just his usual job.<sup>20</sup>

– **The Appellant could not work in the real world**

[35] When I am deciding whether the Appellant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his:

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

[36] These factors help me decide whether the Appellant could work in the real world—in other words, whether it is realistic to say that he could work.<sup>21</sup>

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<sup>17</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>18</sup> See GD2-114 to 115.

<sup>19</sup> See GD10-92.

<sup>20</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>21</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[37] I find that the Appellant could not work in the real world by December 31, 2019.

[38] The Appellant was 51 years old. The Appellant doesn't have barriers to communicating in English. He says he had a reading disability. He has grade 10 education and says he stopped school because he was expelled. He has no further education or certification.

[39] The Appellant's characteristics present barriers for some jobs because of his limited education and reported learning difficulties. He also doesn't have strong odds for retraining because of this.

[40] The Appellant worked after leaving high school. He held jobs at a post office, as a dispatcher, trucker, and airport station attendant. In the last role, he loaded aircrafts and baggage containers. He has a variety of experience in entry-level roles.

[41] The Appellant has significant physical limitations from obesity that regularly impact his ability to perform physical work. His mental health conditions negatively impact his ability to concentrate and appropriately interact with others. He doesn't have good odds for finding sedentary work because of his mental health conditions and issues with fatigue and poor sleep.

[42] I find that the Appellant was unable to earn a living at any occupation by December 31, 2019. He is therefore excused from the requirement to show that he tried to find alternate work and was unable to hold onto a different job because of his disability.

[43] I find that the Appellant's disability was severe as of December 31, 2019.

### **Was the Appellant's disability prolonged?**

[44] The Appellant's disability isn't prolonged. Treatment options remain for his physical and mental health conditions. Because of this, I can't find that his limitations are long continued.



### **Gastric bypass surgery**

[45] The Appellant was a candidate for bariatric surgery in 2021. He wanted to pursue bariatric surgery to increase mobility, improve his health and prevent future health problems.<sup>22</sup> The Appellant said that there is an 80% success rate that the bariatric surgery will help.

[46] The Appellant was approved, and then put the surgery on hold. He had stress in his life. He was told to call by November 2022 to “reactivate” the process. He didn’t follow up on the surgery. At the hearing, he said that eventually he is going to plan on reapplying.

[47] The Appellant also said that he can’t afford the expenses related to the bariatric surgery. He would need to take “vitamins and pills” for the rest of his life. He doesn’t know how much they would cost. He says his sister would have paid, but he feels it would be unfair.

[48] The evidence tells me that treatment remains to address the limitations from obesity. He was a candidate for a surgery that had good odds of success. His doctors were in support of weight loss. Dr. Cait thought that weight loss would be helpful for the Appellant to find work. Dr. Khan, endocrinologist, also thought that he needed weight loss therapy, although he didn’t specifically suggest gastric bypass.<sup>23</sup>

[49] The evidence suggests that the Appellant plans to address any financial barriers related to the surgery. Dr. Cait noted that he was scheduled to have the surgery. This suggests that known financial matters were already addressed. It is not clear how the Appellant made the decision that the pills were too expensive without first knowing the cost. Further, after putting the surgery on hold, he plans on reapplying.

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<sup>22</sup> See GD10-29 to 30 and GD10-10 to 14.

<sup>23</sup> See GD2-112 and GD10-81.

### **Mental health treatment**

[50] The Appellant decided not to take psychiatric medication. I respect his decision. He decided to take a day hospital program for depression and anxiety. I understand that the program ended because of the consequences of the COVID pandemic.

[51] In November 2019 Dr. Cait noted that he was “doing better with mental health. Day program is good.” Dr. Cait later noted that his symptoms were improving with the program. Since the program was cancelled, his symptoms reverted to his baseline.<sup>24</sup> No report was available from the program. At the hearing, the Appellant said that he learned some skills, such as how to recognize triggers.

[52] It is too soon to rule out improvements to the Appellant’s mental health with treatment. Dr. Cait’s evidence suggests that the Appellant received benefit from the mental health treatment. But the evidence doesn’t support that he took steps to follow up on further mental health assessment or treatment until he began counselling in August 2022.

[53] I also considered psychiatrist Dr. Sockalingman’s report of March 2022. He did an assessment as part of the bariatric surgery process. Dr. Sockalingman didn’t think that the Appellant met the criteria for depression or anxiety at that time.<sup>25</sup> This evidence suggests that his mental health limitations weren’t long continued. Whether he didn’t seek treatment or his mental health conditions weren’t both serious and continuous, he can’t meet the prolonged portion of the test for his mental health limitations.

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<sup>24</sup> See GD2-93 and GD10-84.

<sup>25</sup> See GD10-10 to 14.

## **Conclusion**

[54] I find that the Appellant isn't eligible for a CPP disability pension because his disability was severe, but it wasn't prolonged.

[55] This means the appeal is dismissed.

Selena Bateman  
Member, General Division – Income Security Section