



Citation: *VC v Minister of Employment and Social Development*, 2023 SST 449

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: V. C.
Representative: S. C.

Respondent: Minister of Employment and Social Development
Representative: Viola Herbert

Decision under appeal: General Division decision dated February 23, 2023
(GP-21-1894)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **April 14, 2023**

File number: AD-23-287

Decision

[1] I'm allowing the appeal. The Claimant is entitled to a *Canada Pension Plan* (CPP) disability pension. Payments start March 2020. These are the reasons for my decision.

Background

[2] V. C. (Claimant) worked as a short order cook. She stopped working completely in June 2017 because of back pain caused by the following:

- severe nerve root pressure
- bilateral knee replacement
- end stage arthritis
- a tear in her right shoulder
- severe obesity
- urine incontinence
- bilateral carpal tunnel syndrome
- depression
- anxiety

[3] The Claimant applied for a CPP disability pension in February 2021. The Minister refused her application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed her appeal, finding that the Claimant didn't prove that her disability was severe and prolonged on or before the last day of her coverage period, which was December 31, 2015.

[4] I gave the Claimant permission to appeal because it was arguable that the General Division made an error of law in the way it applied the test for a severe disability.

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 14, 2023.

[6] The parties agree as follows:

- The Claimant proved that her disability was both severe and prolonged within the meaning of the *Canada Pension Plan* during her coverage period, which ended on December 31, 2015. Considering the Claimant's conditions in their totality, she had functional limitations that meant she was incapable regularly of pursuing any substantially gainful occupation.
- The Claimant applied for the disability pension in February 2021, so the earliest she can be considered disabled for the purpose of the CPP is November 2019. Payments start four months later in March 2020.
- The Appeal Division should allow the Claimant's appeal.

I accept the parties' agreement

[7] I accept the parties' agreement. The Claimant proved that she had a severe and prolonged disability within the meaning of the CPP by December 31, 2015.¹

[8] I am satisfied that the Claimant's functional limitations are such that she did not have any capacity to work before the end of her coverage period. Her attempt to work in a modified position in 2017 failed because of her disability. She did not refuse treatment unreasonably. Some of her personal circumstances also represent additional barriers to her employability. The Claimant's disability is severe within the meaning of the CPP.

[9] The Claimant's condition has been long-continued and is of indefinite duration. This means that it is prolonged within the meaning of the CPP.

¹ For the definition of a severe and prolonged disability, see section 42(2) of the *Canada Pension Plan* (CPP).

[10] The earliest a person can be eligible for the disability pension is 15 months before they applied.² The Claimant applied in February 2021, so the earliest she can be eligible is November 2019. Payments start four months later in March 2020.³

Conclusion

[11] I allow the appeal. The Claimant is entitled to a *Canada Pension Plan* disability pension. Payments start March 2020.

Kate Sellar
Member, Appeal Division

² See section 42(2)(b) of the CPP for that 15-month rule.

³ See section 69 of the CPP for the four-month waiting period.