



Citation: *MP v Minister of Employment and Social Development*, 2022 SST 1755

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

Decision

Appellant: M. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 24, 2021 (issued
by Service Canada)

Tribunal member: Anita Nathan

Type of hearing: Videoconference

Hearing date: November 24, 2022

Hearing participants: Appellant

Decision date: December 1, 2022

File number: GP-21-1170

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. P., 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 47 years old. She has worked as a legal assistant since 1998, taking time off only for maternity leave. She fell while she was pregnant in June 2017. This resulted in chronic pain in her back, pelvis and neck. She tried to work modified duties but stopped working in July 2017 due to her medical conditions.

[4] The Appellant applied for a CPP disability pension on June 11, 2021. 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 is in severe pain, which limits her ability to sit, stand and walk. She has to change positions or take breaks every 10 minutes. This prevents her from doing any kind of work.

[6] The Minister says that the Appellant has several treatment options available to her that she hasn't pursued. She is young, educated, has work experience and is proficient in English. All of these characteristics would help her find work again.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by the hearing date.¹

¹ 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 - 14. In this

[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.² 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.

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

[11] 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.

[12] 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.

Reasons for my decision

[13] I find that the Appellant hasn’t proven she had a severe and prolonged disability by November 24, 2022. The Appellant didn’t have a reasonable explanation for not following medical advice.

Is the Appellant’s disability severe?

[14] The Appellant has fibromyalgia, tendinitis in her wrists, arthritis in her spine, degenerative disc disease, chronic headaches and generalized anxiety disorder. However, I can’t focus on the Appellant’s medical conditions.⁴ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁵ When I

case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

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

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

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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.⁶

[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. She says she has severe pain in her neck, lower back, pelvis, legs, feet, arms and hands. The most significant pain she experiences is in her neck, back and groin. The pain in her neck can cause migraines. She also has both social and general anxiety. This causes low mood as well as extreme anxious feelings when talking to new people. She also experiences poor sleep, which makes her feel exhausted during the day.

[17] Due to the pain and anxiety, the Appellant says she has the following functional limitations:

- can't sit, stand, or walk for more than 10 minutes, so constantly needs to change positions which disrupts her focus
- trouble standing from a seated position
- difficulty bending, turning and lifting
- trouble reaching overhead
- difficulty with repetitive hand movements
- trouble typing
- difficulty concentrating

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- poor memory (for example, forgets appointments or what she was going to say in a conversation)
- takes longer to complete simple tasks (for example, paying bills online)
- difficulty setting and keeping goals
- trouble making decisions

[18] The Appellant tried to go back to work after the fall, but her pain was too severe. The Appellant fell on June 7, 2017. She took the day off, but went back to work the next day. When she returned to work, she felt pain when sitting, standing, walking, and typing. Her family doctor put her on medical leave from Thursday June 22 to Thursday July 6, 2017. Despite this, the Appellant tried working on Thursday June 22 and Friday June 23, 2017. She couldn't continue working due to her pain so she went on medical leave on Monday June 26 to Monday July 3, 2017.

[19] The Appellant tried modified work, but it was too strenuous on her. She again tried to go back to work from Tuesday July 4 to Thursday July 6, 2017, but this time working 3.5 hours a day. Since the Appellant was working at a much slower pace than normal, her work was piling up so she would often stay at work longer. She felt working was taking a toll on her health. Her family doctor put her on medical leave effective Friday July 28, 2017. This was the Appellant's last day at work before she started her maternity leave on Friday August 18, 2017. The Appellant never returned to work as she says her condition deteriorated.

[20] The Appellant says she can't work as a legal assistant due to her medical conditions. The job was 90% computer based, but she can't sit at a computer for a prolonged period due to chronic back and pelvic pain. She can't type due to constant pain in her hands. She also can't do other tasks like walking around the office, lifting files, and standing to photocopy and scan. This is because of her chronic pain, which limits her ability to stand, walk and lift. The Appellant uses public transportation. She says she can't travel far from her home because she can't walk, sit or stand for long. At times when her pain is so severe, she has to lie down in a dark, quiet room.

[21] The Appellant was generally credible. She testified in a direct manner. She testified based on her own memory and acknowledged when she didn't recall things. Her evidence wasn't exaggerated. There were no major inconsistencies in her testimony.

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

[22] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by November 24, 2022.⁷

[23] The medical evidence supports what the Appellant says. The evidence will be reviewed in chronological order.

[24] The Appellant saw rheumatologist, Dr. Bacher, in April 2018. They diagnosed the Appellant with fibromyalgia based on her description of her pain, swelling and stiffness. With respect to the pain in the Appellant's hands, Dr. Bacher suspected tendinitis in both wrists.⁸

[25] In April 2019, the Appellant attended a chronic pain clinic. She complained of lumbar back pain. Dr. Sim diagnosed her with lumbar mechanical back pain secondary to degeneration.⁹

[26] An MRI done in May 2019 confirmed multilevel degenerative changes in the spine specifically:¹⁰

- severe neuroforaminal stenosis at C5-6 and C6-7 on the right, possibly impinging the existing C6 and C7 nerve roots
- mild spinal stenosis at C5-6
- mild spinal stenosis at L4-5.

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

⁸ See GD2 – 226-228.

⁹ See GD2 – 17-20.

¹⁰ GD2 – 116-119.

- mild right lateral recess stenosis at L5-S1, possibly impinging the traversing right S1 nerve root.
- mild bilateral SI joint degenerative changes
- Situs inversus (a rare condition in which the organs in your chest and abdomen are a mirror image of their normal position)

[27] In June 2019, the Appellant saw Dr. Koo, an orthopaedic surgeon, due to daily pain in the back, hips and groin. Based on the above MRI report and a physical examination, Dr. Koo determined the Appellant has pain secondary to arthritic changes in the lumbar spine and neck.¹¹

[28] The Appellant attended another pain clinic in October 2019. She complained of pain in the neck, back and lower extremities. She described the pain as constant, achy, throbbing, sharp, shooting and tightening. The Appellant said her pain was aggravated by lifting, bending, standing, sitting, climbing stairs, sneezing, turning her head, looking up/down, reading and walking. Dr. Gofeld diagnosed her with secondary fibromyalgia, chronic headaches, negative mindset, kinesiophobia (an excessive, irrational, and debilitating fear of physical movement and activity resulting from a feeling of vulnerability due to painful injury or re-injury) and low self-efficacy (an individual's belief in their capacity to act in ways necessary to reach specific goals).¹²

[29] In May 2020, the Appellant saw another orthopaedic surgeon, Dr. Seligman. She complained of chronic lower back pain radiating to her legs since her fall. Dr. Seligman diagnosed the Appellant with degenerative disc disease.¹³

[30] The Appellant's family doctor, Dr. Odu, filled out a medical report dated June 2020. She diagnosed the Appellant with degenerative disc disease of the cervical spine. She limited the Appellant's impairments as reduced range of movement, radicular pain

¹¹ See GD2 – 127-130.

¹² See GD2 – 142-144.

¹³ See GD2 – 188.

down both legs and generalized body pain. Functional limitations were listed as worsening back pain with prolonged standing and sitting, and chronic lumbar pain.¹⁴

[31] Finally, with respect to her physical pain, the Appellant underwent an independent assessment by Dr. Gupta in December 2020. The Appellant self-reported pain in her lower back, pelvis, neck, knee, wrist, and foot. She reported aggravation of the pain with prolonged sitting, standing and walking, as well as bending, reaching, turning her neck, climbing stairs, weight bearing, gripping, carrying and repetitive wrist movements. She also complained of migraines triggered by neck pain and lack of sleep, and worsened with activity, light and sound. Finally, she reported difficulty sleeping caused by pain and anxiety. She said she slept four hours a night and woke multiple times. Dr. Gupta diagnosed her with chronic pain syndrome, chronic migraines and mood disturbance with symptoms of depression, anxiety and post-traumatic stress disorder.¹⁵

[32] Psychiatrist, Dr. Valoo, diagnosed the Appellant with generalized anxiety disorder in July 2020. The Appellant described daily anxiety about her children, her inability to work, her pain and meeting new people. She also complained of poor sleep secondary to anxiety, muscle tension, irritability, fatigue, and migraines.¹⁶

[33] In March 2021, the Appellant saw a psychologist who diagnosed her with stress related disorder (adjustment-like disorder with prolonged duration of more than six months), somatic symptoms disorder with predominate pain (persistent, moderate), as well as generalized anxiety disorder.¹⁷ The Appellant self-reported depressed mood, feelings of guilt, disappointment, anxiety, stress, worthlessness, frustration, uselessness, shame, irritability, poor concentration, poor memory, poor diet, poor sleep, and low energy.

¹⁴ See GD2 – 210-218.

¹⁵ See GD2 – 40-68.

¹⁶ See GD2 – 40-43.

¹⁷ GD2 – 69-89.

[34] The medical evidence supports that the Appellant's functional limitations affected her ability to work as a legal assistant.

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

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

[36] To receive a disability pension, an appellant must follow medical advice.¹⁸ 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.¹⁹

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

[38] First, I will discuss what treatment recommendations the Appellant has followed.

[39] Dr. Bacher recommended **voltaren gel and a heating pad**, both of which the Appellant uses.²⁰ Dr. Sim also recommended a **compound cream** which the Appellant also tried.

[40] The Appellant tried **nerve block injections** three times. The injections were given in her back and neck. She didn't continue because they didn't improve her pain, and they triggered her migraines. This is reasonable.

[41] The Appellant did **physiotherapy, massage therapy, acupuncture** and saw a **chiropractor**. She continued receiving these treatments until her insurance coverage stopped. She couldn't afford to continue due to the cost. She also didn't find benefit from any of the treatment. This is a reasonable explanation for not continuing recommended treatment.

¹⁸ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

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

²⁰ See GD2 – 226-228.

[42] The Appellant takes **vitamins** as recommended by Dr. Sim. She also took various **webinars on self-management and negative mindset**.

[43] Dr. Gupta recommended a **multi-disciplinary rehabilitation program**. The Appellant is on the waitlist for the Toronto Academic Pain Medical Institute.

[44] Dr. Gupta also recommended a **psychiatry consult**. The Appellant received psychiatric treatment beginning in July 2020. She did a cognitive behavioural therapy course recommended by her psychiatrist. The Appellant is also taking Wellbutrin.

[45] Next, I will discuss the treatment recommendations the Appellant hasn't followed.

[46] The Appellant hasn't taken all **medication** as recommended. Dr. Sim recommended the Appellant try Lyrica. If it wasn't effective, he suggested Cymbalta, Amitriptyline or Nabilone.²¹ Initially, the Appellant couldn't take the medications because she was breastfeeding. When she stopped breastfeeding in February 2020, the Appellant tried Cymbalta for a year. Dr. Gofeld and Dr. Valoo also recommended Cymbalta. The Appellant said she experienced a number of side effects including brain fog, "zaps" of pain in her head, vertigo and hair loss. She also didn't notice that the medication was helping her pain or anxiety. So the Appellant stopped taking Cymbalta. This is reasonable.

[47] The Appellant didn't want to try the other medication suggested by Dr. Sim because of the side effects. The Appellant testified that medication causes her side effects. The Appellant was taking a medication called Naproxen, which caused a very bad aching pain in her stomach. This also happens when she takes vitamins and over the counter pain medication like Ibuprofen. The Appellant said that the medications Dr. Sim prescribed also cause weight gain. She said all of her doctors have recommended she lose weight, so she didn't want to take the medication.

[48] The Appellant is worried about developing an addiction to prescription medication. The Appellant said that about five members of her family have struggled

²¹ See GD2 – 17-20.

with addiction issues, some passing away because of their addictions. She feels that she could be more susceptible to an addiction because of its prevalence in her family. For this reason, the Appellant testified that she didn't want to take multiple medications at the same time.

[49] The Appellant gave reasonable explanations for not taking all of the medications she was recommended.

[50] The Appellant didn't do the **ketamine infusion trials** recommended by Dr. Gofeld. The Appellant said the trial isn't covered by OHIP and she can't afford it. As well, the trials require that someone accompany you to the appointments. The Appellant said the only person who could do that was her husband, but he couldn't take so much time off work as he is the only family member that works. This is reasonable.

[51] The Appellant didn't continue wearing **wrist splints** because they were uncomfortable. Wrist splints were recommended at night for tendinitis. The Appellant said she did try to wear the splints for five nights but she found them hard to sleep with because they were restrictive. She also felt they made her pain worse because they put pressure on her wrists.

[52] It's unreasonable the Appellant didn't try to wear the wrist splints for a longer period. Five days isn't enough time to see if the splints were helping her pain. Next, I must consider whether following the advice would have affected the Appellant's disability. I find wearing wrist splints wouldn't have made a difference to the Appellant's ability to work. The Appellant's main complaints are about her back, groin and neck, not her hands.

[53] The Appellant didn't get **steroid injections** because she was scared. Dr. Koo recommended steroid injections.²² Since the nerve blocks the Appellant already received didn't improve her pain, Dr. Koo recommended the steroid injection be done with an epidural injection. The Appellant testified that she was scared that if the needle

²² See GD2 – 127-130.

touched her spine, it could cause more pain. For this reason, the Appellant didn't get an epidural for any of her five births.

[54] The Appellant didn't provide a reasonable explanation for not trying the steroid injections. Dr. Koo recommended the steroid be administered with an epidural injection. But, an epidural injection wasn't necessary. If the Appellant's fear was the epidural needle, she could have opted to have the injection done without it.

[55] 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 steroid injections may have improved the Appellant's pain.

[56] The Appellant hasn't maintained a **cardiovascular fitness regime**. Dr. Bacher recommended she start a regular exercise regimen focusing on core abdominal exercises and extension exercises for pain in her lower back. They also suggested cardiovascular fitness training for fibromyalgia, including low impact aerobic activities like fast walking, biking, swimming or water aerobics. This was in addition to home exercises Dr. Bacher recommended to the Appellant. Dr. Gofeld also recommended that the Appellant do pool exercises, restorative yoga or pilates.²³ Finally, Dr. Gupta recommended exercises for core strength, maintaining normal range of motion and normal posture exercises.²⁴

[57] The Appellant said that Dr. Bacher gave her a list of home exercises for her back which she still does three times a day for 20-25 minutes each session. That is the only activity she is doing. She described the exercises as yoga poses. When the weather is good, the Appellant says she walks in the park for about 20 minutes. The problem is she gets groin pain so she can't walk fast. In terms of other cardiovascular exercises, she said she can't ride a bike, also due to groin pain. She tried aquafit and swimming for about a year, but stopped due to the pandemic. She said that now she is afraid to go

²³ See GD2 – 142-144.

²⁴ See GD2 – 40-68.

swimming because of the risk of contracting Covid and passing it on to her daughter who has asthma.

[58] She testified that she has thought about getting a fitness membership but transportation is the issue as she has difficulty walking and taking public transportation. She also said she couldn't afford the cost of the membership, which was about \$30-\$40/month. I asked the Appellant about using free resources like YouTube and doing low impact aerobics at home. She said she hadn't thought about that, but was willing to do it.

[59] It is unreasonable that the Appellant hasn't maintained a fitness regime. Several doctors recommended regular exercise. It is understandable that the Appellant can't walk fast, bike, or go to the pool. However, there are many free resources to do exercises at home without any equipment.

[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. Dr. Bacher noted that exercise can be of significant benefit for pain and function.

[61] The Appellant didn't follow medical advice that might have affected her disability. Namely, she didn't try steroid injections or maintain a fitness regime. This means that her disability isn't severe.

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

[63] This allows me to realistically assess an appellant's ability to work.²⁵

²⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[64] 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 24, 2022.²⁶

Conclusion

[65] 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.

[66] This means the appeal is dismissed.

Anita Nathan
Member, General Division – Income Security Section

²⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.