



Citation: *NS v Minister of Employment and Social Development*, 2022 SST 1763

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

Decision

Appellant: N. S.
Representative: G. G.

Respondent: Minister of Employment and Social Development

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

Tribunal member: Sarah Sheaves

Type of hearing: Teleconference

Hearing date: July 21, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: August 19, 2022

File number: GP-21-684

Decision

[1] The appeal is dismissed.

[2] The Appellant, N. S., 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 56 years old. She has worked as a receptionist, in retail sales and customer service. She was diagnosed with anxiety and depression over twenty years ago. In 2016 she lost the hearing in her right ear, which worsened her existing anxiety and depression symptoms.

[4] The Appellant applied for a CPP disability pension on October 2, 2019. 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 her work history isn't consistent due to her long standing anxiety and depression. She says she isn't capable of maintaining gainful employment, and her conditions are severe. She has attempted to return to different jobs to accommodate her conditions, without success.

[6] The Minister says the Appellant was able to work at gainful employment in 2018, which shows her conditions aren't severe. The Minister argues that most of the medical evidence relates to conditions that arose or worsened after December 31, 2015, which means they aren't relevant to determining if the Appellant's condition was severe and prolonged.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2015. This date is based on her contributions to the CPP.¹

[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

[10] 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. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether her disability is severe. If the Appellant is able to regularly do some kind of work that she could earn a living from, then she 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.³

[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 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.

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 GD3-17.

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.

Reasons for my decision

[14] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2015. While she did have a diagnosed medical condition prior to December 31, 2015, there is no medical evidence of functional limitations at that time, and she didn't require regular treatment to address it.

Was the Appellant's disability severe?

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

– The Appellant's functional limitations don't affect her ability to work

[16] The Appellant has anxiety and depression.

[17] The Appellant has developed other medical conditions including hearing loss in her right ear, and worsening of her depression and anxiety. However, these circumstances arose after December 31, 2015 and aren't relevant to my decision.

[18] I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁵ 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 her ability to work.⁶

[19] I find that the Appellant didn't have functional limitations that affected her ability to work by December 31, 2015.

– What the Appellant says about her functional limitations

[20] The Appellant says that his/her medical conditions have resulted in functional limitations that affect her ability to work. She says the following:

- She only gets about three hours of sleep per night, due to anxiety.

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

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

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

- She has low energy and she needs to sleep during the day.
- She has no motivation to cook and clean. She gets help from her mother.
- She doesn't like being around people and feels overwhelmed.
- When she has an anxiety attack it feels like a heart attack. She feels like she is dying.
- She has moved from job to job because of her anxiety condition.

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

[21] I acknowledge that the Appellant genuinely believes that she is incapable of work.

[22] I also acknowledge that the Appellant developed medical conditions after December 31, 2015, that cause her functional limitations and likely affect her ability to work.

[23] However, the Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2015.⁷

[24] The medical evidence isn't consistent with what the Appellant says.

[25] The Appellant submitted a prior application for CPP disability benefits in August 2016. In this application she said she was no longer able to work as of March 1, 2016. This was when she suddenly lost hearing in her right ear.

[26] The Appellant wrote in her 2016 application that she had stopped working due to "late shifts, not enough hours, kids home alone, and health issues."⁸

[27] When speaking of the effects of her hearing loss in the 2016 application, she said that she had suffered from anxiety and depression for 20 years, and since this onset [of hearing loss] her depression was severe and she was back on medication.⁹

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

⁸ See GD2-157.

⁹ See GD2-159.

[28] The Minister denied the 2016 application and the Appellant didn't appeal the decision.

[29] In her current application for CPP disability, the Appellant stated she wasn't able to work due to her disability as of November 2019.¹⁰

[30] I asked the Appellant about her statements in her two applications, as she has twice confirmed she was able to work after December 31, 2015. She said she couldn't remember what she had written and why.

[31] Dr. Kryshtalskyj was the Appellant's family doctor from 1992 until 2021. Her records provide substantially all of the medical evidence before December 31, 2015.

[32] Dr. Kryshtalskyj completed a medical report for the 2016 CPP application on July 13, 2016. She said the Appellant has a history of anxiety and depression since 2001, and was treated with Paxil until 2011. She noted the Appellant's hearing loss began in March 2016, and this caused her depression to relapse.¹¹

[33] Dr. Kryshtalskyj said the Appellant had become depressed because of her decreased hearing, and had recently started Paxil again to treat the depression.

[34] In the 2016 CPP application, both the Appellant and Dr. Kryshtalskyj confirmed that her depression worsened after her hearing loss. They also both confirmed she needed to go back on her medications as a result of her worsening depression after her hearing loss.

[35] I find this evidence helpful and reliable because it was written by the Appellant and her doctor much closer to December 31, 2015, and this is the relevant time period for my decision.

[36] The Appellant provided copies of prescriptions to show that she needed medication before December 31, 2015.

¹⁰ See GD2-69.

¹¹ See GD2-130.

[37] The prescriptions show that the Appellant filled a 30 day supply for Paxil on October 14, 2015. She had last filled her prescription on April 27, 2015.¹²

[38] This tells me that it took 170 days for the Appellant to use up 30 days of pills. She wasn't taking her medication as prescribed.

[39] The Appellant said she would stop taking her medication for months at a time and would re-start them as her symptoms increased.

[40] In a prescription refill on August 3, 2016 for 60 pills, the pharmacist noted that the Appellant had last filled her prescription on February 20, 2016, and that she had some pills remaining that she intended to flush down the toilet.¹³

[41] This tells me that after at least five months in 2016, the Appellant hadn't completed a prescription for 60 days of Paxil, and that she still wasn't taking her medications as prescribed.

[42] The Appellant urged me to accept that she had a severe disability due to anxiety and depression as of December 31, 2015.

[43] The Appellant didn't see a psychiatrist or a psychologist before December 2015, nor is there any evidence of a referral for same. Her only treatment was to see her family doctor, and to take Paxil as needed. However, she wasn't taking her Paxil consistently, as prescribed by her doctor in 2015 or 2016. This suggests that her symptoms weren't severe.

[44] The Appellant saw her family doctor seven times in 2015. Two of the visits mention the word depression, but were also for other physical concerns related to reproductive health and common cold.¹⁴

¹² See GD7-8.

¹³ See GD7-10.

¹⁴ See GD4-28 and GD4-29.

[45] The medical records don't detail any limitations related to anxiety and depression, or any type of mental health assessment. No referrals were made for treatment, and no medications were discussed.

[46] The medical records don't mention symptoms, difficulty with work or any other activities.

[47] The Appellant also had a mild heart attack in 2011. In a report dated January 12, 2021, Dr. Kryshalskyj said the heart attack in 2011 made the Appellant's psychological conditions worse.¹⁵

[48] However, given that the Appellant didn't have any therapy or mental health examinations, and wasn't regularly taking medications, I don't find the condition was severe as of December 31, 2015.

[49] The Appellant told me she doesn't have functional limitations from her heart attack.

[50] In her January 12, 2021 report, Dr. Kryshalskyj, confirmed the Appellant's anxiety and depression has been present since 2001 and she has had to be off work "at times" due to the condition.

[51] However, the report doesn't indicate any functional limitations beyond a diagnosis, doesn't indicate times the condition prevented her from working, and is unhelpful in assisting me to decide if the Appellant's condition was severe by December 31, 2015.

[52] None of the medical evidence before me indicates any functional limitations before December 31, 2015. The evidence confirms a diagnosis of depression and anxiety, and that the Appellant controlled this with medication that she had been using for years. There was no other treatment required, and the use of medication wasn't consistent.

¹⁵ See GD1-33.

[53] When deciding if a disability is severe, I can't just rely on a diagnosis. I must consider whether the diagnosis results in functional limitations that prevented the Appellant from working at a job where she could earn a living.

[54] The medical evidence doesn't show that the Appellant had functional limitations that affected her ability to work by December 31, 2015. As a result, she hasn't proven she had a severe disability.

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

[56] This allows me to realistically assess an appellant's ability to work.¹⁶

[57] I don't have to do that here because the Appellant's functional limitations didn't affect her ability to work by December 31, 2015. This means she hasn't proven her disability was severe by then.¹⁷

Conclusion

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

[59] This means the appeal is dismissed.

Sarah Sheaves

Member, General Division – Income Security Section

¹⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁷ See *Giannaros v Minister of Social Development*, 2005 FCA 187.