



Citation: *BA v Minister of Employment and Social Development*, 2023 SST 707

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

## Decision

**Appellant:** B. A.  
**Representative:** M. S.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated October 26, 2021 (issued  
by Service Canada)

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**Tribunal member:** George Tsakalis

**Type of hearing:** Teleconference

**Hearing date:** January 19, 2023

**Hearing participants:** Appellant  
Dr. M. S. (witness)

**Decision date:** February 6, 2023

**File number:** GP-22-195

## Decision

[1] The appeal is dismissed.

[2] The Appellant, B. A., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant was born in 1962. She finished high school and studied social work at university for one year. She stopped going to school so that she could enter the workforce and earn an income. She has worked with the same employer since 1981. She is a unit clerk at a hospital. She continues to work. But she does so with great difficulty because of her medical conditions.

[4] The Appellant applied for a CPP disability pension on January 5, 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 eligible for a CPP disability pension because she can't work full-time. She uses sick days, vacation days or unpaid leave for days that she cannot work. She feels exhausted, has difficulty concentrating and finding words. She also has difficulty with her balance and experiences vertigo.

[6] The Minister says the Appellant isn't eligible for a CPP disability pension because she is still working.<sup>1</sup>

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<sup>1</sup> See GD9-9

## What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by the hearing date.<sup>2</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>3</sup>

[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.<sup>4</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 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.

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<sup>2</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 GD6-2-4. 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.

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

<sup>4</sup> 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 the hearing date.

### 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 at any job

[16] The Appellant has multiple sclerosis, depression, anxiety, and heart problems.

[17] However, I can't focus on the Appellant's diagnosis.<sup>5</sup> Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.<sup>6</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 at any job.<sup>7</sup>

[18] I find that the Appellant doesn't have functional limitations that affect her ability to work at any job.

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

[19] The Appellant says that her medical condition has resulted in functional limitations that affect her ability to work.

[20] The Appellant said that she felt she could no longer work in March 2018 in her disability application. The Appellant says she is still working. But with great difficulty. Her job as a unit clerk is fast paced. She answers telephones. She files documents. She arranges appointments. She takes charts to different places in the hospital. She works with computers. She puts away supplies. But she can no longer do any physical work.

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

Her colleagues do the physical aspect of her job. The Appellant has difficulty walking. She is in constant pain. She has anxiety. She has depression and suffers from MS.

[21] The Appellant says her MS symptoms began in 2007. MS has not had a great impact on her vision. But it has affected her balance. She has fallen down. One of her falls led to a broken knee and torn bicep. Her strength has been affected. She experiences dizziness. She says sleep is non-existent for her. She wakes up all the time at night. She feels hopeless. She has difficulty controlling her bowels. She has soiled herself at work.

[22] The Appellant struggles with her mental health. She was in an abusive relationship. Her former spouse has threatened her. She had counselling in the past. She went to the hospital in November 2022 with chest and back pain. She was seen a cardiologist. She has high blood pressure and cholesterol. She has two small blockages in her arteries. She was diagnosed with endometrial cancer in 2021 and had surgery. Her cancer is in remission.

[23] The Appellant says she has difficulty sitting and standing. She can only walk short distances with a cane. She has difficulty lifting. She has difficulty bending. She has difficulty concentrating. She has difficulty with her memory. She has difficulty getting in and out of a car. She relies on her children to help her with housekeeping. She does very little around the house. She uses a chair with wheels to help her cook. She does not do any outside yard work. She has to hold onto a bar to shower. She says her medical condition is getting worse with time. She saw a neurologist in November 2022. The neurologist told her that her left side is weaker than before.

[24] The Appellant says she takes medications for her depression and MS. She has tried physiotherapy and massage therapy. She has tried home exercises. The severity of her condition is unpredictable. She suffers from headaches. She says she would have retired by now. She only works because she cannot afford to be off work. She uses all of her vacation days to compensate for all the time she has been absent from work.

[25] Dr. M. S. is a psychiatrist. She has not treated the Appellant. But she knows her well. They had worked together for 13 years.

[26] Dr. M. S. disagreed with the Minister's submissions that the Appellant does not have a severe medical condition. She said the Appellant is not doing well. The Appellant has used a chair to get around at work, as well as a wheelchair. She thinks the Appellant has chronic post-traumatic stress disorder based on her observations. The Appellant freezes and gets quiet when dealing with traumatic events at the hospital. Dr. M. S. believes the Appellant's difficulty sleeping could be related to PTSD caused by her former spouse's abuse. The Appellant experiences nightmares and flashbacks.

[27] Dr. M. S. said the Appellant is a quiet individual who does not seek treatment. She described the Appellant as being a disorganized individual. She does not believe the Appellant should be working with her medical condition.

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

[28] The Appellant must provide some medical evidence that shows she had a severe disability by the hearing date.<sup>8</sup>

[29] The medical evidence certainly showed that the Appellant suffers from severe medical issues. But it did not show she had a severe disability under the CPP that made her incapable regularly or pursuing any substantially gainful occupation.

[30] The medical evidence shows that the Appellant completed a medical report for the Minister in December 2020. She said the Appellant's MS symptoms started in April 2007. She said the Appellant suffered from weakness and fatigue. She said the Appellant had experienced depression since 2008. She said the Appellant was unable to complete tasks because of decreased focus and concentration. She could not predict when the Appellant would be able to return to work because of her symptoms.

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<sup>8</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

[31] However, I do not take the family doctor's comments to mean the Appellant has a severe disability under the CPP. She also said the Appellant could not perform her work duties based on her workload and duties.<sup>9</sup> This comment suggests that the Appellant is working with difficulty. But the CPP disability test is not based on working with difficulty. It is based on not having the capacity to regularly pursue any substantially gainful occupation. The Appellant's evidence, the evidence of Dr. M. S. and the medical evidence shows that the Appellant continues to work.

[32] A clinical note from the Appellant's family doctor in June 2021 said the Appellant wanted to stop working because of her medical condition. She suspected the Appellant had relapsing MS. This clinical note showed that the Appellant continues to work.

[33] A clinical note from the Appellant's family doctor taken in July 2021 confirmed the Appellant was working with difficulty because of work stress and MS. The Appellant felt she was being bullied ever since she had been looking at early retirement. However, the Appellant couldn't afford to stop working. The Appellant's family doctor said that a CPP disability pension was not enough to meet her monthly needs. The Appellant could not go on modified duties because she needed a full income.<sup>10</sup>

[34] The medical evidence confirmed the Appellant was diagnosed with endometrial cancer in October 2021.<sup>11</sup> She had surgery in December 2021.<sup>12</sup> An oncologist said in February 2022 that the Appellant had done well since her surgery and there was not a great chance of the Appellant having a remission of endometrial cancer.<sup>13</sup>

[35] The Appellant's family doctor said in August 2022 that she had not seen the Appellant since September 2021 and she could not comment on the Appellant's ability

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<sup>9</sup> See GD2-67-76

<sup>10</sup> See GD7-7

<sup>11</sup> See GD7-21

<sup>12</sup> See GD7-24

<sup>13</sup> See GD7-29

to work.<sup>14</sup> She also mentioned that the Appellant had work stress. She said the Appellant was burnt out. She discussed counselling options with the Appellant.<sup>15</sup>

[36] Dr. M. S. provided a letter of support in addition to providing evidence at the hearing. She wrote in her letter that the Appellant worked in a toxic environment. She said the Appellant suffered from multiple medical conditions, including chronic pain, mobility issues, and cognitive and emotional difficulties caused by chronic MS. Dr. M. S. was sure that work stress contributed to the Appellant's medical problems. She said the Appellant only worked for financial reasons.<sup>16</sup>

[37] A psychologist who knew the Appellant also wrote a letter of support. The psychologist said she had not treated the Appellant. But she had known her for 30 years and was familiar with her medical condition. She said the Appellant had deteriorated physically because of MS. She said the Appellant had also experienced a deterioration in her mental health. She said MS impacted the Appellant in a negative way and led to depression and anxiety. However, she confirmed that the Appellant continued to work. She said the Appellant was often unable to function at work. But the Appellant had to work for financial reasons.

[38] I found the Appellant to be a credible witness. She has a strong work ethic. I agree that she has serious medical problems and continues to work while in physical and mental distress. I also appreciate Dr. M. S.'s hearing evidence and her letter of support, as well as that of the psychologist. However, I can't award the Appellant a disability pension because she continues to work at her job.

– **The Appellant can work in the real world**

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

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<sup>14</sup> See GD7-1

<sup>15</sup> See GD7-13

<sup>16</sup> See GD4-2



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

[40] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.<sup>17</sup>

[41] I find that the Appellant can work in the real world. The Appellant is now 60 years old. She has some post-secondary education. She understands English and she has worked since 1981. She confirmed that she continues to work at a hospital as a unit clerk. Dr. M. S. confirmed that she continues to work. The psychologist confirmed that she is working.

[42] The Appellant Record of Earnings (ROE) shows that she has been working regularly in a substantially gainful occupation. The CPP Regulations were amended in 2014 and contain a definition of the term substantially occupation that describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount that a person could receive as a disability pension.<sup>18</sup> The Appellant's ROE shows that she has made more than \$52,500 a year since 2014. These amounts are far higher than the maximum amount she could have received as a disability pension.<sup>19</sup>

[43] The Minister also provided the Tribunal with a questionnaire that had been completed by the Appellant's employer in July 2022.<sup>20</sup> The questionnaire said the Appellant found it hard to work five days a week and used vacation time and sick time. Her attendance was described as only being fair. She required help from co-workers to move charts and to take supplies to the storeroom. The Appellant needed a cane. The employer said the Appellant did the best she could when working. However, the

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<sup>17</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>18</sup> See section 68.1 of the *Canada Pension Plan Regulations*.

<sup>19</sup> The maximum amounts appellants could have received in a CPP disability pension from 2014 to the present range from \$14,836 in 2014 to \$17,578 in 2022.

<sup>20</sup> See GD8

employer confirmed that the Appellant was able to handle the demands of her job. The employer described her work performance as being satisfactory. The employer confirmed the Appellant was working full-time and making \$30.68 per hour.

[44] I find that the Appellant is currently engaged in substantially gainful employment at the hospital. She is having difficulty at work and is receiving accommodation. But she continues to work full-time.

[45] I feel tremendous sympathy for the Appellant. I know that she has major health issues. I also reviewed her daughter's letter that described the difficulties she is experiencing in her daily life.<sup>21</sup> However, I can't award her a disability pension on compassionate grounds. She does not have a severe disability under the CPP because she continues to work regularly at a substantially gainful job.

[46] Dr. M. S. said she does not believe the Appellant should work. If the Appellant decides to stop working because of her medical condition, she can apply for a disability pension in the future.

## **Conclusion**

[47] 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.

[48] This means the appeal is dismissed.

George Tsakalis  
Member, General Division – Income Security Section

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<sup>21</sup> See GD3-4