



Citation: *NP v Minister of Employment and Social Development*, 2022 SST 839

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

## Decision

**Appellant:** N. P.  
**Representative:** A. P.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated February 16, 2021 (issued  
by Service Canada)

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**Tribunal member:** Sarah Sheaves

**Type of hearing:** Videoconference

**Hearing date:** July 18, 2022

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** August 15, 2022

**File number:** GP-21-858

## Decision

[1] The appeal is allowed.

[2] The Appellant, N. P., is eligible for a *Canada Pension Plan* (CPP) disability pension. Payments start as of September 2019. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant is 61 years old. In 1982 he was in a bus accident and his right leg was amputated above the knee. He also suffered complete hearing loss in both ears, as a result of toxicity caused by side effects of medications used to treat his leg in 1982.

[4] The Appellant immigrated to Canada and participated in a government funded computer training program for the deaf. He was given a work placement with X in 1988 and they hired him on to keep working until he was laid off in 1998.

[5] At the time of his lay-off, the Appellant says he was preparing to take a long leave of absence from working due to severe chronic pain. He was planning to be re-fitted for a new prosthetic leg. He was told he would need intensive treatment to learn to walk again and would need to be off work for this. He never returned to any type of work.

[6] The Appellant applied for a CPP disability pension on August 11, 2020. 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.

[7] The Appellant says that his long standing medical conditions prevent him from working in any capacity. He says he forced himself to work for as long as he could. This caused him severe pain. He says that his conditions are severe and prolonged and he can't work at any job.

[8] The Minister says that despite his functional limitations, the Appellant was able to perform some time of work prior to December 31, 2000. It argues he had some work capacity, and that his conditions aren't severe and prolonged.

## What the Appellant must prove

[9] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2000. This date is based on his contributions to the CPP.<sup>1</sup>

[10] The *Canada Pension Plan* defines "severe" and "prolonged."

[11] A disability is **severe** if it makes an Appellant incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup>

[12] 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.

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

[14] 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.

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<sup>1</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 GD2-79.

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

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

[15] 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.

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

### **I accepted submissions sent in after the hearing**

[16] At the time of the hearing, the Appellant didn't have a copy of the Minister's submissions dated May 18, 2022 (GD13). The Appellant wasn't able to respond to those submissions at the hearing.

[17] Following the hearing the tribunal sent the Appellant the Minister's submissions and he was provided with an opportunity to respond. I accepted his response to the Minister's submissions.

### **I didn't accept documents sent in after the hearing**

[18] Following the hearing, the Appellant sent additional evidence to the tribunal, prior to sending his response to the Minister's submissions.

[19] The evidence wasn't a response to the Minister's submissions, and wasn't relevant to my decision.

[20] It was a submission on who currently prepares the Appellant's meals. This information doesn't assist me in deciding if the Appellant had a severe and prolonged disability on December 31, 2000. As a result, I didn't accept this evidence.

## **Reasons for my decision**

[21] I find that the Appellant had a severe and prolonged disability as of June 1998. This was the time when the Appellant started treatment for his new prosthetic leg. I reached this decision by considering the following issues:

- Was the Appellant's disability severe?
- Was the Appellant's disability prolonged?

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

[22] 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**

[23] The Appellant has:

- Right leg amputation with chronic pain
- Total loss of hearing in both ears

[24] However, I can't focus on the Appellant's diagnoses.<sup>4</sup> Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.<sup>5</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>6</sup>

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

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

[26] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says the following about his conditions before December 31, 2000 to the present:

- He has limited mobility due to the loss of his right leg. He has limited ability to walk and stand. The combined maximum for these activities was two hours per day total, by 1999 when he had a new prosthetic leg.
- The Appellant says his work required significant walking and standing and this resulted in constant chronic pain, especially in his stump.
- Walking and standing at work caused a large painful blister to form on his right buttock and upper thigh, where his prosthetic leg rubbed against his skin. This made standing and every step painful.

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<sup>4</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>5</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>6</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- He needs to use a cane to support his balance. He can fall or stumble at times.
- He has difficulty using stairs, because of his prosthesis.
- He can't drive, because his right leg lacks function.
- The Appellant has communication limitations. He can't hear. He can read lips, but not in English or French.
- The Appellant can use sign language in English. He can speak in English, but it isn't his first language.
- At work he could only communicate by writing messages to his co-workers, as none of them knew sign language.
- He communicates with his children in writing as well.
- He required assistance from co-workers to communicate to clients on his behalf. This included making calls for him, and meeting with clients for him.
- Due to his communication issues, he worked alone for almost all of the time he was working.
- Due to his physical condition he wasn't supposed to do heavy lifting because it put pressure on his stump causing him pain and irritating his blister.

[27] I found that the evidence the Appellant gave was credible. He was consistent in his testimony, and he answered all of my questions candidly.

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

[28] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2000.<sup>7</sup>

[29] The medical evidence supports what the Appellant says.

[30] A medical report of Dr. Ocampo dated March 30, 2021, confirms the Appellant was in a motor vehicle accident on January 27, 1982. He sustained fractured legs

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

requiring multiple surgeries, and finally amputation of the right leg at eight inches above the knee.<sup>8</sup>

[31] Dr. Ocampo also confirmed hearing loss in 1982, with associated headaches, and tinnitus. He confirms ongoing pain in the right leg, which he describes as “severe migratory pain”.

[32] Dr. Ocampo notes the Appellant needs to walk with a cane for balance and that he walks three times slower than a normal pace.

[33] The Minister points out that Dr. Ocampo is located in the Philippines and treated the Appellant off and on from June 2000 to December 2021. The Minister suggests Dr. Ocampo’s report doesn’t confirm disability because it has no associated supporting medical charts attached to it.

[34] I don’t find the lack of medical charts detracts from Dr. Ocampo’s opinion. The Appellant is required to provide some medical evidence, but there is no requirement for the medical evidence to meet the standard suggested by the Minister.

[35] I further find that the Appellant’s medical conditions were clearly long standing when he started seeking treatment with Dr. Ocampo and that they were present prior to December 31, 2000.

[36] Dr. Talento has treated the Appellant in Canada since March 2000. In a medical report dated September 16, 2020, Dr. Talento confirms the Appellant has chronic osteomyelitis (infection, pain, and inflammation of the bone) relating to the loss of his right leg, since 1983.<sup>9</sup>

[37] Dr. Tolento says the Appellant can’t ambulate. He also confirms complete hearing loss.

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<sup>8</sup> See GD1A-2.

<sup>9</sup> See GD2-40.

[38] There are medical records from Dr. Tolento. In an entry dated March 15, 2000, he says the Appellant needed treatment for chronic and active hepatitis B.<sup>10</sup> The Appellant was also reporting anxiety.

[39] The Appellant says his hepatitis diagnosis made him anxious and depressed. He was told there was a possibility he would die within 10 years because of the virus.

[40] There is a letter from Neil Russell of Russell Prosthetics dated April 26, 1999. The letter confirms that the Appellant started treatment for a new prosthetic in June 1998. He says the Appellant spent five months learning to walk again.<sup>11</sup>

[41] The Minister relied on Mr. Russell's April 26, 1999 letter, where he also said that the prosthesis was working very well, and the Appellant functioned well enough to return to work.

[42] There was a subsequent letter from Mr. Russell dated July 10, 2000.<sup>12</sup> It confirmed that the Appellant was complaining to his family of pain in his stump and had left Canada feeling depressed about other medical problems he was having.

[43] Mr. Russell goes on to offer the Appellant help to apply for social assistance, noting "your health issues are a lot worse than my other patients".

[44] The medical evidence supports that the Appellant's hearing loss and right leg amputation resulted in numerous functional limitations for standing, walking, using stairs, and communicating.

[45] The Appellant says that by 1998, these limitations prevented him from being able to walk or stand for most of the day. He was experiencing severe and chronic pain in his right leg, and that was why he was trying to address it by getting a new prosthetic.

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<sup>10</sup> See GD2-91.

<sup>11</sup> See GD2-18.

<sup>12</sup> See GD4-2.



[46] The Appellant's limitations also inhibited his ability to communicate with co-workers and customers and kept him substantially isolated within his workplace.

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

– **The Appellant has followed medical advice**

[48] To receive a disability pension, an appellant must follow medical advice.<sup>13</sup> If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability.<sup>14</sup>

[49] The Appellant has followed medical advice.<sup>15</sup>

[50] The Appellant had numerous surgeries for his leg fractures, before his leg was amputated.

[51] He takes prescribed medications for his conditions, when necessary.

[52] When his leg pain became severe, he obtained a new prosthetic and spent about a year rehabilitating and learning to walk again.

[53] There is no suggestion that the Appellant has failed to follow any medical advice.

[54] 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>16</sup>

– **The Appellant can't work in the real world**

[55] 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:

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<sup>13</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>14</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>15</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>16</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

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

[57] I find that the Appellant can't work in the real world.

[58] The Appellant was 39 years old on December 31, 2000. His age wasn't a barrier to being able to work in the real world.

[59] Neither English nor French are the Appellant's first language. He can read and write in English. He can communicate in English sign language. He can't read lips in English.

[60] The Appellant has barriers for communicating with anyone who doesn't speak sign language. He has to rely on written communication.

[61] The Appellant was a university student in civil engineering when he had his accident in 1982. He was unable to complete the program and his functional limitations precluded him from any work in engineering. He isn't able to use any transferable skills from the program, due to his medical conditions.

[62] Once the Appellant immigrated to Canada, he got funding through an institute for the deaf, and the United Way to take basic computer training. All participants in the program had hearing impairments. He was the only one with physical mobility restrictions.

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

[63] The training had a work placement program. The Appellant told me it took six placements before he found an employer that gave him a job. This was the Appellant's only job he ever had.

[64] He was trained to do things like software installation but kept getting assigned heavier work, like fixing computers, and printers.

[65] He had limited means to communicate with people and for most of the time he worked alone in isolation.

[66] He regularly needed to ask co-workers for help due to his communication limitations. He said the fact that he had to interrupt others and ask for help was always a source of dissatisfaction with his managers and co-workers.

[67] He told me his managers changed often and his restrictions against heavy lifting were either ignored or forgotten, and he was always told to do heavy work. The heavy work worsened his pain in his leg and irritated his large blister. The increased pain caused by working and walking to work, was why he needed a new leg.

[68] While the Appellant had some capacity to work within his limitations prior to 1998, the work he did exacerbated his condition, causing increased pain and decreased function. This is supported by the fact that he agreed to try a new prosthetic, requiring nearly a year of intense rehab, in an attempt to address his condition.

[69] The Appellant told me the new prosthetic wasn't successful in reducing his severe leg pain. It did allow his body to recover from the large and painful blister on his leg and buttock, he had been living with for years.

[70] The Appellant did a training program for basic computers in Canada in 1988. He needed job placement assistance and faced considerable challenges obtaining the only job he ever had. He was able to get a job through a government program for the disabled, not through competitive labour market competition.<sup>18</sup>

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<sup>18</sup> See GD12-3.

[71] While the Appellant had a work capacity before 1998, working worsened his medical condition, resulting in the need for a new prosthetic leg.

[72] The new leg didn't improve his function. He experiences severe pain in his leg every day and even with the new leg he is still only able to stand and walk for about two hours per day.

[73] I find that the Appellant's disability was severe as of June 1998. This was when he started the process of getting a new prosthetic leg and had to learn to walk again.

[74] The initial assimilation process took about 5 months of intensive treatment of learning to walk again. The Appellant told me it actually took him about one year to be fully assimilated to the leg, but still left with significant restrictions for walking and standing.

[75] This one year period is supported by the fact that Mr. Russell's letter was written 10 months after the rehab started.

[76] The Appellant told me he had hoped he would work again after 1998. It gave him feelings of self worth to be working. He had pushed himself hard to work, against the odds, and what doctors had told him.

[77] He also told his doctors that he planned to return to work. He said this allowed him to keep a sense of pride and worth when talking to people.

[78] I believe the Appellant when he says he worked as long as he could, until the severity of the pain in his leg made him unable to continue.

[79] I further believe based on his limited education, difficulties in communicating in a workplace, limited job experience, and the severity of his medical conditions and functional limitations, he wasn't able to work in the real world as of December 31, 2000.

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

[80] The Appellant's disability was prolonged.

[81] The Appellant's conditions began in 1982. These conditions have continued since then, and they will more than likely continue indefinitely.<sup>19</sup>

[82] There has been no improvement in the Appellant's physical mobility. Leg amputation is permanent. A new prosthetic leg didn't increase his function or decrease his pain.

[83] There has been no improvement in the Appellant's hearing loss. It is a complete hearing loss and is permanent.

[84] I find that the Appellant's disability was prolonged as of June 1998 when he needed a new leg, and to learn to walk again. This was when his medical condition and functional limitations had deteriorated so that he could no longer work.

### **When payments start**

[85] The Appellant had a severe and prolonged disability in June 1998.

[86] However, the *Canada Pension Plan* says an appellant can't be considered disabled more than 15 months before the Minister receives their disability pension application.<sup>20</sup> After that, there is a 4-month waiting period before payments start.<sup>21</sup>

[87] The Minister received the Appellant's application in August 2020. That means he is considered to have become disabled in May 2019.

[88] Payments of his pension start as of September 2019.

### **Conclusion**

[89] I find that the Appellant is eligible for a CPP disability pension because his disability was severe and prolonged.

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<sup>19</sup> In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that you have to show a severe and prolonged disability by the end of your minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

<sup>20</sup> Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

<sup>21</sup> Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.

[90] This means the appeal is allowed.

Sarah Sheaves  
Member, General Division – Income Security Section