



Citation: *CR v Minister of Employment and Social Development*, 2022 SST 842

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

Decision

Appellant: C. R.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 10, 2020
(issued by Service Canada)

Tribunal member: James Beaton
Type of hearing: Teleconference
Hearing date: August 11, 2022
Hearing participant: Appellant
Decision date: August 17, 2022
File number: GP-20-2063

Decision

[1] The appeal is allowed.

[2] The Appellant, C. R., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of March 2018. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 49 years old. In 2012, she started experiencing depression and anxiety. Since then, she has taken a number of leaves from work, and made a number of attempts to return to work. She hasn't worked since February 2018. Her last job was as a pension expert.

[4] The Appellant applied for a CPP disability pension on February 19, 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 Minister says the Appellant has successfully returned to work before, so she can do it again. Her age, language abilities, education, and work experience support her ability to find another job that she can do. The Minister doesn't believe she has a prolonged disability, because she is waiting to see a psychiatrist.

[6] The Appellant says her condition got worse even when she worked part-time hours. So she can't return to work. She doesn't think she can work at all. She says she is seeing a psychiatrist now. Although she doesn't have a recent report from him, she says an earlier report from him shows she is disabled. She added that she is seeing a psychologist monthly.¹

¹ See GD1 and GD2-26.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2020. This date is based on her contributions to the CPP.²

[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.³

[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, language abilities, 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.⁴

[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 must prove she has a severe and prolonged disability. She must prove this on a balance of probabilities. This means she must show that it is more likely than not she is disabled.

² 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 at GD2-40 and 41.

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

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Matters I have to consider first

The Appellant asked me to adjourn the hearing

[14] The Appellant asked me to adjourn the hearing (that is, change the hearing date), which was scheduled for March 24, 2022. She wanted time to get an updated report from her psychiatrist. I granted the Appellant's request on March 17 and gave her until July 8 to provide the report.⁵

[15] By August 11, 2022 (the rescheduled hearing date), she still had not gotten an updated report. She didn't ask for another adjournment. But if she had, she would have had to show that it was justified by exceptional circumstances.⁶ I wasn't convinced that her inability to get a report for nearly six months was an exceptional circumstance.

Reasons for my decision

[16] I find that the Appellant had a severe and prolonged disability as of June 2017. 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?

[17] The Appellant's disability was severe by December 31, 2020. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affected her ability to work

[18] The Appellant has anxiety and depression. However, I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living by December 31, 2020.⁸ When I do this, I must

⁵ See GD5.

⁶ Section 11(2) of the *Social Security Tribunal Regulations* says this.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.⁹

[19] I find that the Appellant had functional limitations by December 31, 2020.

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

[20] The Appellant says her medical conditions have resulted in functional limitations that affected her ability to work by December 31, 2020.¹⁰ Because of anxiety and depression, she says:

- She is **fatigued**. She sleeps 12 hours at night and naps for three hours during the day, about three times per week.
- She is **unmotivated**. Sometimes, she stays in her pajamas all day. Often, she needs to convince herself to take a shower or to do a little bit of housework. Her husband does most of it. She only leaves the house for two reasons: to get groceries with her husband, and to see friends. She tries to see her friends every couple months, but she cancels if she isn't feeling well.
- She has **trouble concentrating and remembering things**. She has to read things multiple times to absorb the information. When she last worked, she could not remember the pension rules and regulations, even though she had dealt with them for years and was considered an "expert" in them.
- She is **emotional**. She starts crying for no reason and becomes irritable.
- She gets **panic attacks**. When this happens, she gets heart palpitations and has to be alone. She doesn't know what causes them, although sometimes they are associated with being around groups of people.

[21] She says all of these problems started in 2012 (long before December 31, 2020) and have generally stayed the same since then. The exception is her ability to read, which started before December 31, 2020, but has gotten worse since then. She stopped reading for fun a year or so ago because it was too frustrating.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

¹⁰ See GD2-54 to 61 and the hearing recording.

[22] The Appellant has other medical conditions that no longer cause functional limitations that impact her ability to work on a regular basis:

- She has menorrhagia, premenstrual dysphoric disorder, and a hormone imbalance. At the hearing, she described these conditions as well-managed.
- She has migraines. I understand that they were at least partly related to menorrhagia. Now, she only has two or three migraines a year.
- She has infrequent “episodes” of blurry vision. She compared them to having dust in her eye.
- She had two foot surgeries because two of her toes were crossed over each other. Both surgeries failed. However, she didn’t give evidence that this results in functional limitations. She just gets blisters where the two toes rub against each other.

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

[23] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2020.¹¹

[24] The medical evidence supports what the Appellant says. All of the medical evidence is from before December 31, 2020.

[25] The medical evidence supports that she has trouble regulating how much she sleeps. She is **fatigued** during the day, and takes naps. In 2014, she told a psychiatrist, Dr. Doucet, that she was having trouble keeping her eyes open at work. She was diagnosed with sleep apnea.¹²

[26] The medical evidence supports that she is **unmotivated**. What she told her healthcare providers is consistent with her testimony at the hearing. She tends to leave the house only to see friends and go grocery shopping with her husband.¹³

¹¹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹² See GD2-63 to 78, 111 to 117, and 141 to 144.

¹³ See GD2-67 to 78 and 111 to 117.

[27] The medical evidence supports that she has trouble **remembering** things. In 2014, Dr. Doucet wrote that she didn't struggle with **concentration**. But in 2018 and 2019, her family doctor, Dr. Wybouw, reported that she did. I don't consider their notes to be contradictory. Rather, I believe they show that the Appellant's condition has gotten worse over time.¹⁴

[28] The medical evidence supports that she can be **irritable and emotional**. She experiences crying episodes that can last up to an hour.¹⁵

[29] The medical evidence supports that she has **panic attacks**.¹⁶

[30] The medical evidence supports that the Appellant's functional limitations prevented her from doing her job as a pension expert by December 31, 2020. She was too tired to work full-time hours. She could not remember the rules and regulations she had to apply in order to advise clients. She testified that she was always asking her colleagues for help. Occasionally, she would have panic attacks that would keep her from working. She would sit in her cubicle and wait for them to pass. I accept that her fluctuating moods would make dealing with colleagues and clients difficult.

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

– **The Appellant has followed medical advice**

[32] To receive a disability pension, an appellant must follow medical advice.¹⁷ 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.¹⁸

[33] The Appellant has followed medical advice.¹⁹ She has seen a psychologist many times, and was on a waiting list for years to see a psychiatrist. She started seeing

¹⁴ See GD2-63 to 78 and 111 to 117.

¹⁵ See GD2-67 to 78 and 111 to 117.

¹⁶ See GD2-63 to 66 and 111 to 117.

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁸ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

Dr. Doucet again a year or so ago. (In 2014, he only saw her once to prepare an insurance report.)²⁰ She has tried numerous medications, which at best have had a partial or temporary effect on her depression and anxiety.²¹

[34] She has also tried medications for sleep. She uses a CPAP machine. She went to a sleep clinic, which advised positional therapy. She testified that this involved trying to sleep on one side instead of the other. I asked her if she had tried this. She said yes, but it was understandably difficult to ensure she slept on the same side all night, since she can't control her movements while she sleeps.²²

[35] 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 her from earning a living at any type of work, not just her usual job.²³

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

[36] 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:

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

[37] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say she can work.²⁴

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

²⁰ See GD2-54 to 61, 82 to 83, and the hearing recording.

²¹ See GD2-67 to 78 and 111 to 117.

²² See GD2-67 to 78, 141 to 144, and the hearing recording.

²³ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²⁴ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[39] Her age, education, language abilities, and experience are favourable. She was only 47 years old as of December 31, 2020. She earned a GED certificate (the equivalent of a high school diploma) and a two-year college diploma. She is fluent in English and French. She has several years of skilled work experience, including 4 years as an administrative assistant and 10 years (off and on) as a pension expert.²⁵

[40] However, her functional limitations outweigh these positive factors.

– **How the Appellant’s functional limitations impact her ability to work**

[41] The Appellant’s functional limitations keep her from being regularly able to do any type of work she could earn a living from.

[42] She can’t work full-time because she is fatigued.

[43] She is unsuited to working among a lot of people, since that type of environment can trigger her panic attacks—or at least make it hard to handle them when they happen. Her “mood swings,” as she described them, would make working with colleagues and customers difficult as well.

[44] She can’t do work that requires memory or concentration. She testified that she used to work in a grocery store and a fast food restaurant. She believes she would be unable to do that work now because she can’t reliably follow instructions or learn new tasks. She can’t remember things she used to know, either. For example, when she last worked, she could not remember the pension rules that she used to be an expert in.

[45] Even if she could work part-time hours at a suitable job, she could not do so regularly, because she has an irregular sleep schedule and struggles with motivation. An appellant who can’t work predictably can’t work regularly.²⁶

[46] The Appellant’s past work attempts prove that she can’t regularly work.

²⁵ See GD2-54 to 61 and the hearing recording.

²⁶ See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

– **The Appellant’s work attempts**

[47] The Appellant began experiencing depression and anxiety in 2012.²⁷ Since then, she has been on and off work multiple times due to her medical conditions.

[48] She took six months off in 2012. At some point, she returned to work before stopping again in April 2013. She made two unsuccessful attempts to return to work in the summer of 2014 and in October 2014.²⁸ She returned to work sometime after that, but stopped in June 2017 on the recommendation of Dr. Wybouw.²⁹ She made one last attempt to return to work in November 2017. That attempt lasted until February 2018. However, she was missing at least one day of work per week.³⁰

[49] Her work attempts all started with part-time hours. She could not remember if she ever made it back to full-time hours. She didn’t do modified duties, but she relied heavily on her colleagues for help with things she used to do on her own.³¹

[50] Although the Appellant only attempted to return to her usual job, I have found that her functional limitations make her regularly unable to do other work as well. This includes work that would not be as mentally demanding.

[51] I find that the Appellant’s disability was severe as of June 2017. She hasn’t been able to regularly work since then. Her attempt to return to work in November 2017 failed. Her earnings after 2017 are from benefits, not from actual work.³²

Was the Appellant’s disability prolonged?

[52] The Appellant’s disability was prolonged by December 31, 2020. The Appellant’s conditions began in 2012. They have continued since then, and they will more than

²⁷ See GD2-111 to 117.

²⁸ See GD2-67 to 78.

²⁹ See GD2-111 to 117.

³⁰ See GD2-118 to 123.

³¹ See the hearing recording.

³² The Appellant’s record of earnings is at GD2-40 and 41. At GD2-56, the Appellant says she was receiving benefits in 2018.

likely continue indefinitely.³³ While I don't have any medical evidence after December 31, 2020, the medical evidence I do have shows that her disability is prolonged.

[53] In 2014, Dr. Doucet said that the Appellant's long-term prognosis (her chances of recovering) was "guarded."³⁴ Although Dr. Wybouw predicted in April 2018 that the Appellant would return to work in six months, his 2019 medical report says she still could not work.³⁵

[54] I don't have an updated report from Dr. Doucet, but I did ask the Appellant what he had told her based on their recent appointments together. According to her, Dr. Doucet says her condition is something she will have to "live with." I understand from this that Dr. Doucet continues to believe her prognosis is poor. I believe the Appellant's testimony. She was honest and forthright with her answers. She admitted when she could not remember something. Her testimony was consistent with what she has told her doctors.

[55] I also note that the Appellant has already tried many of the medications that Dr. Doucet recommended in 2014, but without significant improvement.³⁶ It is unclear what else Dr. Doucet will be able to offer the Appellant in terms of treatment. Despite trying numerous medications and attending therapy, her anxiety and depression have not significantly improved over many years.

[56] I disagree with the Minister that the Appellant's work history shows she will likely return to work despite her medical conditions. The evidence shows that she has struggled to work for years. Most of her attempts to return to work have been short-lived. She hasn't worked regularly since June 2017 at the latest. In any case, her work history doesn't guarantee that she will be able to return to work.

³³ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant must show a severe and prolonged disability by the end of their MQP and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

³⁴ See GD2-67 to 78.

³⁵ See GD2-63 to 66 and 111 to 117.

³⁶ The Appellant has tried duloxetine, sertraline (Zoloft), Wellbutrin, and zopiclone (GD2-63 to 78).

[57] I find that the Appellant's disability was prolonged as of June 2017. By then, her conditions were longstanding and she could not work. She hasn't improved since then.

When payments start

[58] The Appellant had a severe and prolonged disability in June 2017.

[59] 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.³⁷ After that, there is a four-month waiting period before payments start.³⁸

[60] The Minister received the Appellant's application in February 2019. That means she is considered to have become disabled in November 2017.

[61] Payment of her pension starts as of March 2018.

Conclusion

[62] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged by December 31, 2020.

[63] This means the appeal is allowed.

James Beaton
Member, General Division – Income Security Section

³⁷ Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

³⁸ Section 69 of the *Canada Pension Plan* sets out this rule. This means payments can't start more than 11 months before the application date.