



Citation: *GC v Minister of Employment and Social Development*, 2023 SST 350

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

# Decision

**Appellant:** G. C.  
**Representative:** R. S.

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

---

**Decision under appeal:** Minister of Employment and Social Development reconsideration decisions dated December 23, 2020, and August 31, 2021 (issued by Service Canada)

---

**Tribunal member:** Anne S. Clark

**Type of hearing:** Videoconference

**Hearing date:** March 3, 2023

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

**Decision date:** March 28, 2023

**File number:** GP-21-2521

## Decision

[1] The appeal is dismissed.

[2] The Appellant, G. C., cannot cancel her *Canada Pension Plan* (CPP) retirement pension for a CPP disability pension. Also, the Appellant isn't eligible for a post-retirement disability benefit (PRDB). This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant applied for a CPP retirement pension. The Minister of Employment and Social Development (Minister) approved her application. Her retirement pension began in September 2019. On May 13, 2020, the Appellant applied for a CPP disability pension. The Minister refused the Appellant's application.<sup>1</sup> The Appellant appealed to the Social Security Tribunal's General Division (Tribunal).

[4] The Appellant says she applied for a disability pension because she has not been able to work since 1994. She said she had limitations from seizure disorder, depression, and body pain. She feels she is entitled to a CPP disability pension.

[5] The Minister says the Appellant is not eligible for a CPP disability pension because she did not prove she had a severe disability by December 31, 2008. The Minister also says the Appellant does not meet the eligibility requirements for a PRDB.

## What I have to decide

[6] I have to decide if the Appellant is eligible for a CPP disability pension.

[7] I also have to decide if the Appellant meets the criteria for a PRDB.

---

<sup>1</sup> The Minister denied the Appellant's requests in two decisions – December 23, 2020 (CPP disability) and August 31, 2021 (PRDB). Both decisions are in folder GD11.

## Reasons for my decision

### The Appellant is not eligible for a CPP disability pension

[8] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2008. This date is based on her contributions to the CPP.<sup>2</sup>

[9] The *Canada Pension Plan* defines “severe” and “prolonged.”

[10] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>3</sup>

[11] This means I have to look at all of the Appellant’s medical conditions together to see what effect they had 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 to earn a living, then she isn’t entitled to a disability pension.

[12] 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>

[13] 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.

[14] 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 was disabled by December 31, 2008.

---

<sup>2</sup> A person’s years of contributions to the CPP are used to calculate the “minimum qualifying period”. It is usually called the MQP and is often described using the date the period ended. In this case it is December 31, 2008. See subsection 44(2) of the *Canada Pension Plan*. The Appellant’s contributions are on page GD2J-62.

<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.

[15] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2008.

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

[16] The evidence does not show the Appellant had a severe disability by December 31, 2008. I reached this finding by considering several factors. I explain these factors below.

– **The Appellant didn't prove she had functional limitations that affected her ability to work by December 31, 2008**

[17] The Appellant's health conditions include the following:<sup>5</sup>

- Seizure disorder
- Uterine cancer
- Diabetes
- Back and hip pain
- High blood pressure
- Depression

[18] However, I can't focus on the Appellant's diagnoses.<sup>6</sup> Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.<sup>7</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 her ability to work.<sup>8</sup>

[19] I find that the Appellant did not submit medical evidence of functional limitations that affected her ability to work by December 31, 2008.

---

<sup>5</sup> See the Appellant's family doctor's report beginning at page GDJ02-67

<sup>6</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>7</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>8</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[20] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says she could have a seizure at any time. She had a seizure after her first son was born in 1986. She hasn't worked since then. She said the risk that she may have a seizure at any time makes her unable to work at all. She has taken medication for a long time. She said she has had other more recent health problems. They include diabetes (2013), uterine cancer (2016 or later), shoulder injury (2018), stroke (2019), and hip pain (2019). She said she needs help with cooking and cleaning.

[21] The Appellant's son (Witness) testified about his mother's health. He said he saw her have a seizure when he was younger. He doesn't remember the year or date. He remembers he was a teenager so it could have been around 2008. The Witness said the Appellant is forgetful and talks about having muscle pain. He said he and his siblings have to help her with cleaning and cooking.

– **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 December 31, 2008.<sup>9</sup>

[23] There is no medical evidence about the Appellant's health before December 31, 2008. The Appellant's family doctor, Dr. Toor said they first treated the Appellant for her main condition in June 2016.<sup>10</sup> She has had diabetes since 2013. The report notes "seizure disorder from 1986" that will remain the same. She had uterine cancer that is in remission.

[24] Dr. Toor did not treat the Appellant before 2016 and did not refer to any evidence or medical record from her medical history before 2016. The Appellant's representative

---

<sup>9</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>10</sup> Dr. Toor's report begins at GDJ02-67.

said the Appellant does not have any evidence about her health conditions by December 31, 2008.

[25] Even though Dr. Toor listed seizure disorder in 1986 there is no evidence to confirm the Appellant's conditions or limitations from that time. Dr. Toor did not provide any detail about that condition or offer any information about how it affected the Appellant. The report shows no impairments or functional limitations related to seizure disorder.

[26] The Witness saw his mother have a seizure when he was a teenager. It would not be possible to use his testimony as medical evidence required to prove disability. The Witness is the Appellant's son. The fact that he remembers her having a seizure cannot be considered medical evidence for the purpose of proving disability. Also, his memory of when the event happened was not clear. So, I can't even rely on his testimony as reliable evidence that the Appellant had symptoms of a condition by December 31, 2008.

[27] The medical evidence on file describes her health many years after December 31, 2008. There is no medical evidence about her conditions and how they affected her by December 31, 2008. I asked the Representative if the Appellant could obtain medical records or evidence from that time. She said she wouldn't be able to obtain and/or file medical evidence from that time. The Appellant said she thinks she saw a doctor for seizures before 2008 but she can't remember where or who the doctor was. But it would not be possible to obtain medical records earlier than those on file.

[28] There is no medical evidence to show that the Appellant had functional limitations that affected her ability to work by December 31, 2008. As a result, she hasn't proven she had a severe disability.

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

[30] This allows me to realistically assess an appellant's ability to work.<sup>11</sup>

[31] I don't have to do that here because the Appellant did not prove she had a severe disability by December 31, 2008.<sup>12</sup>

## **The Appellant is not eligible for a PRDB**

### **– The Appellant does not meet the contributory requirements for a PRDB**

[32] The PRDB is a monthly benefit available to people who receive an early CPP retirement pension. It is payable in combination with the retirement pension until an appellant turns 65 years old.<sup>13</sup>

[33] Not all disabled recipients of an early retirement pension are eligible for a PRDB. To be eligible, a person must have contributed to the CPP for a minimum number of years. For people with fewer than 25 years of contributions (like the Appellant) they must contribute in four of six full calendar years before the year they applied.<sup>14</sup> The Appellant applied in 2020. The preceding six full calendar years were 2014 to 2019. She had no contributions in those years. Even if the Appellant had applied as soon as the law came into effect, she would have no contributions in the six years before the application.

[34] The law that created the PRDB came into effect on January 1, 2019. Therefore, to receive a PRDB an appellant's MQP must end no earlier than January 2019.<sup>15</sup> The file shows the Appellant no contributions to the CPP after December 31, 2008.<sup>16</sup> This means she does not meet the contributory requirements for a PRDB.

---

<sup>11</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>12</sup> See *Giannaros v Minister of Social Development*, 2005 FCA 187.

<sup>13</sup> See section 44(1)(h) of the *Canada Pension Plan*.

<sup>14</sup> See the Appeal Division's explanation in *N.L. v. Minister of Employment and Social Development*, 2020 SST 741.

<sup>15</sup> Paragraph 44(1)(h) *Canada Pension Plan*

<sup>16</sup> The Appellant's record of Contributions is on pages GD2-72 and 73,

## **Conclusion**

[35] The Appellant did not prove she had a severe disability by December 31, 2008. That means she is not eligible to cancel her retirement pension in favour of a disability pension. Also, she did not make the minimum contributions to be eligible for a PRDB.

[36] This means the appeal is dismissed.

Anne S. Clark  
Member, General Division – Income Security Section