



Citation: *PM v Minister of Employment and Social Development*, 2022 SST 1223

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

## Decision

**Appellant:** P. M.  
**Representative:** S. M.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated June 9, 2021 (issued by  
Service Canada)

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**Tribunal member:** Shannon Russell

**Type of hearing:** Teleconference  
**Hearing date:** October 25, 2022

**Decision date:** October 31, 2022  
**File number:** GP-21-1552

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Appellant is a 60-year-old woman who began having medical problems in 1994. She applied for CPP disability benefits in September 2019. In her application, she reported that she cannot work because of degenerative disc disease, whiplash, herniated discs in her neck, and spondylolisthesis.<sup>1</sup>

[4] The Minister of Employment and Social Development (Minister) denied her application. The Minister explained that the Appellant was not eligible for disability benefits because she was not disabled when she last met the contributory requirements of the CPP.

[5] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[6] The Appellant says that she has a disability that prevents her from working. She says her medical problems began with an assault that happened in 1994. She adds that if she had known she could have applied for disability benefits years ago, then she would have done so.

[7] The Minister says that the Appellant last met the contributory requirements in March 1991. As such, she can only get the disability benefits if she became disabled between January 1, 1991 and March 31, 1991. The Appellant's file shows she did not become disabled at any time in 1991.

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<sup>1</sup> Page GD2R-33

## What the Appellant must prove

[8] To succeed with her appeal, the Appellant must prove she has made enough contributions to the CPP to qualify for disability benefits.

[9] If the Appellant shows she made enough contributions to the CPP to qualify for disability benefits, then she must also show that her disability was severe and prolonged by the date that she last met the contributory requirements of the CPP.

[10] The CPP legislation 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] 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>

[13] The onus is on the Appellant to prove her case. She has to prove her case on a balance of probabilities. This means that she has to show that it is more likely than not she meets the eligibility requirements for the disability benefits.

## Matters I have to consider first

### The parties did not attend the hearing

[14] Neither the Appellant nor her representative (her husband) attended the hearing. This did not surprise me. The Appellant’s representative had written to the Tribunal on October 20, 2022 to say that neither he nor the Appellant would be “joining the Tribunal”. He explained that someone had made a mistake in the Appellant’s file, and that he could not “fight a government that wants Grandmothers living on the street by following misinformation”.<sup>4</sup>

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<sup>2</sup> The definition of a severe disability is set out in subparagraph 42(2)(a)(i) of the *Canada Pension Plan*.

<sup>3</sup> The definition of a prolonged disability is set out in subparagraph 42(2)(a)(ii) of the *Canada Pension Plan*.

<sup>4</sup> Page GD7-1

[15] It was not clear to me whether the Minister planned on sending a representative to the hearing, and so I convened the hearing at the scheduled time. No one from the Minister's office attended the hearing.

[16] I decided to render my decision in this matter. I can do that when I am satisfied that the parties got the notice of hearing.<sup>5</sup>

[17] I am satisfied that each party got the notice of hearing. The notice of hearing was sent to the parties by email on September 14, 2022. The *Social Security Tribunal Regulations* say that when the Tribunal sends a document to a party by email, the document is deemed to have been communicated to that party the next business day.<sup>6</sup> This means that I can assume the parties received the notice of hearing on September 15, 2022.

[18] The Appellant's representative's letter of October 20, 2022 also supports a finding that the Appellant got the notice of hearing. Although the letter does not specifically refer to the hearing date of October 25, 2022, it is reasonable for me to infer from the timing of this letter that both the Appellant and her representative were aware of the hearing date.

## **Reasons for my decision**

[19] The Appellant hasn't proven she meets the eligibility requirements for CPP disability benefits. I will now explain why.

### **The Appellant did not make enough contributions to the CPP to qualify for disability benefits**

[20] The Appellant did not make enough contributions to the CPP to qualify for disability benefits.

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<sup>5</sup> Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

<sup>6</sup> This is set out in section 19 of the *Social Security Tribunal Regulations*.

### **What the CPP legislation says about contributions**

[21] The CPP is a contributory program. This means that the Appellant must meet the contributory rules of the CPP to qualify for disability benefits.

[22] Contributions to the CPP are made on employment earnings. To be valid, a contribution must have been made on earnings that are above a certain amount. For example, in the year 2021, a person needed to have earnings of at least \$6,100 in order to have made enough contributions to the CPP for that year. If a person earned less than \$6,100 in 2021, then any contributions that person made to the CPP in 2021 would be refunded through the income tax program.

[23] To meet the current contributory rules, the Appellant needed to have contributed to the CPP in either

- four of the last six calendar years of her contributory period<sup>7</sup>; or
- three of the last six calendar years of her contributory period if she also had at least 25 years of contributions to the CPP<sup>8</sup>.

[24] If a person does not meet the contributory requirements at the time they applied for disability benefits, then they may still qualify for disability benefits if they met the contributory requirements at some point in the past and if they have been continuously disabled since the date they met those contributory requirements.<sup>9</sup> This rule helps to ensure that people who apply late for disability benefits can still get disability benefits, provided of course that the contributory and other eligibility rules are met.

[25] The contributory rules have changed over time. For people who became disabled before January 1, 1998, the rules required valid contributions to the CPP in 5 out of 10 years or in 2 out of 3 years.

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<sup>7</sup> This rule is set out in subparagraph 44(2)(a)(i) of the *Canada Pension Plan*.

<sup>8</sup> This rule is set out in subparagraph 44(2)(a)(i.1) of the *Canada Pension Plan*.

<sup>9</sup> This rule is set out in subparagraph 44(1)(b)(ii) of the *Canada Pension Plan*.

### What the CPP legislation says about the contributory period

[26] Generally speaking, the **contributory period** is the time during which a person can contribute to the CPP.

[27] Section 44 of the CPP explains how a person's contributory period is calculated. This provision sets out when a contributory period starts and when a contributory period ends. It also sets out the circumstances in which a person can exclude (or drop) months from their contributory period.

[28] A contributory period starts the later of January 1, 1966 (when the CPP began) or the month the person reaches age 18.<sup>10</sup> For CPP purposes, a person reaches an age the month after their actual birthday.<sup>11</sup>

[29] A contributory period ends with the month in which a person is determined to have become disabled.<sup>12</sup> The earliest a person can be deemed to have become disabled is 15 months before the date of the application for disability benefits.<sup>13</sup>

[30] There are two ways in which a person can shorten their contributory period. In each case, the contributory period is shortened by excluding (or dropping) certain years from the contributory period.

[31] The first type of exclusion applies to people who have received CPP disability benefits in the past.<sup>14</sup> This exclusion does not apply to the Appellant because she has never received CPP disability benefits.

[32] The second type of exclusion arises in the context of child rearing. If a person did not contribute to the CPP because they were caring for a child under the age of 7, then

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<sup>10</sup> Subparagraph 44(2)(b)(i) of the *Canada Pension Plan*.

<sup>11</sup> Subsection 2(2) of the *Canada Pension Plan*.

<sup>12</sup> Subparagraph 44(2)(b)(ii) of the *Canada Pension Plan*.

<sup>13</sup> Paragraph 42(2)(b) of the *Canada Pension Plan*.

<sup>14</sup> This exclusion is set out in subparagraph 44(2)(b)(iii) of the *Canada Pension Plan*.

that person can remove the applicable child rearing years from their contributory period.<sup>15</sup> This exclusion applies to the Appellant.

### **The Appellant's contributory period and years of contributions**

[33] The Appellant was born in August 1962, and so her contributory period began in September 1980 (the month after her 18<sup>th</sup> birthday). The earliest the Appellant's contributory period could end is June 2018, which is 15 months before the date of her application for disability benefits.

[34] The Appellant's record of contributions to the CPP shows that she contributed to the CPP in two years – namely, 1980 and 2016. The Appellant also had **some** earnings in 1991.<sup>16</sup> Her earnings in 1991 were not enough to trigger a valid CPP contribution. However, her earnings in 1991 could be prorated if she became disabled in the year 1991, but before the end of her prorated month.<sup>17</sup> I will say more about the proration shortly.

[35] The Appellant has provided a list of jobs she has done since 1994.<sup>18</sup> I am not sure if the Appellant believes that each of these jobs led her to make valid contributions to the CPP. If this is what she believes, then I should explain that I can only recognize the contributions that are reported on the Appellant's statement of CPP contributions, also sometimes called a record of earnings. This is because the CPP legislation says that entries on a record of earnings are presumed to be accurate.<sup>19</sup>

[36] The Appellant has 3 children. Her children were born in July 1981, July 1983, and April 1990.<sup>20</sup>

[37] The child rearing exclusion allows the Appellant to drop the years from her contributory period when her children were under the age of 7, provided the Appellant

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<sup>15</sup> This exclusion is set out in subparagraph 44(2)(b)(iv) of the *Canada Pension Plan*.

<sup>16</sup> The Appellant's contributions are at pages GD2R-51 to GD2R-52, GD2R-55, and GD2R-56.

<sup>17</sup> This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

<sup>18</sup> Page GD1-5

<sup>19</sup> This is set out in section 97 of the *Canada Pension Plan*.

<sup>20</sup> The birthdates are reported at page GD2R-31.

did not also have valid contributions in those years. This means the Appellant is able to drop the years 1982 to and including 1989, 1991 (if the earnings in 1991 are not prorated), and 1992 to and including 1996.

**The Appellant did not meet the contributory requirements at the time of her application**

[38] The Appellant did not meet the contributory requirements at the time of her application for disability benefits.

[39] The last six years of the Appellant's contributory period were 2013, 2014, 2015, 2016, 2017 and 2018. During this time, the Appellant had only one year of contributions. That was in 2016. She, therefore, doesn't meet the requirement of having 4 years of contributions in a 6 year period. She also doesn't meet the requirement of having 3 years of contributions in a 6 year period plus at least 25 years of contributions in total.

**The Appellant did not meet the contributory requirements at any time in the past**

[40] I next looked at whether there was ever a time when the Appellant met the contributory requirements.

[41] The Minister says the Appellant met the contributory requirements in March 1991, provided she became disabled between January 1, 1991 and March 31, 1991.

[42] I don't agree with the Minister's position.

[43] To meet the contributory requirements in 1991, the Appellant needed to have contributed in either 5 out of 10 years or in 2 out of 3 years. The Appellant never had 5 years of contributions, and so she doesn't meet the first rule.

[44] I turn now to the 2 out of 3 rule. The Minister says the Appellant meets this rule, although with proration. I disagree. The only way the Appellant could meet the 2 out of 3 year rule is if the year 1990 is removed from her contributory period. I can't remove that year from the Appellant's contributory period because the Appellant did not have a child



under the age of 7 for that entire calendar year. Her third child was born in April 1990. I can only remove full calendar years from a contributory period. In other words, I cannot remove just the months of a calendar year when a child was under the age of 7.<sup>21</sup>

### **The Appellant did not become disabled in 1991**

[45] In the event that I am wrong in the way that I have applied the child rearing provision, then the Appellant would still not qualify for disability benefits.

[46] If the Appellant is entitled to remove 1990 from her contributory period, then she would meet the 2 out of 3 year contributory rule in 1991 with proration.

[47] There is some inconsistency in the Minister's records about when in 1991 the Appellant met the contributory requirements.<sup>22</sup> In my view, the Appellant had enough earnings in 1991 to essentially buy her six months of coverage.<sup>23</sup> But it doesn't matter whether the Appellant met the contributory requirements with proration in March 1991 or in June 1991. This is because the Appellant did not become disabled at any time in 1991.

[48] First, the Appellant has acknowledged on multiple occasions that she was not disabled in 1991. She says her medical problems began with an assault that occurred in 1994.<sup>24</sup>

[49] Second, there is no suggestion in the medical evidence that the Appellant was disabled in 1991. Instead, the medical reports link the onset of the Appellant's injuries to an incident that happened in 1994.<sup>25</sup>

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<sup>21</sup> In this regard, I am relying on the decisions from the Pension Appeals Board in *Ley v. MHRD* (October 28, 2002), CP 17771 (PAB), and *Abbott v. Minister of Social Development* (January 10, 2006), CP 21427 (PAB). Neither of these decisions is binding on me. However, I find them persuasive.

<sup>22</sup> For example, in the Minister's initial decision, the Minister said the Appellant has a prorated MQP of June 1991 (page GD2R-21). However, in the Minister's reconsideration decision, the Minister said the Appellant has a prorated MQP of March 1991 (page GD2R-6).

<sup>23</sup> I arrived at this by first dividing the year's basic exemption for 1991 (\$3000) by 12 (the number of calendar months in a year).  $3000 \div 12 = 250$ . I then divided the Appellant's earnings in 1991 (\$1595) by 250. This gave me 6.38, or six months of coverage.

<sup>24</sup> See, for example, pages GD2R-15, GD2R-60, GD1-3, GD4-1, and GD5-1.

<sup>25</sup> See, for example, the medical reports at pages GD2R-84, GD2R-88, and GD3-1.

[50] The Appellant did not meet the contributory requirements in 1994 or at anytime since then. This means she is not eligible for disability benefits.

**I cannot change or ignore the contributory rules**

[51] The Appellant may not agree with the rules about contributory requirements. However, these are the rules that have been enacted by Parliament. I don't have the ability to change them, and I don't have the ability to ignore them.

**Conclusion**

[52] The Appellant isn't eligible for CPP disability benefits because she didn't meet the contributory requirements for those benefits.

[53] This means the appeal is dismissed.

Shannon Russell  
Member, General Division – Income Security Section