



Citation: *SB v Minister of Employment and Social Development*, 2022 SST 1218

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

## Decision

**Appellant:** S. B.  
**Representative:** Malathi Yogaraajah

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated November 19, 2020 (issued  
by Service Canada)

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**Tribunal member:** Michael Medeiros

**Type of hearing:** Teleconference

**Hearing date:** November 23, 2022

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

**Decision date:** December 11, 2022

**File number:** GP-20-1958

## Decision

[1] The appeal is allowed.

[2] The Appellant, S. B., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of August 2021. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant is 39 years old. She was born in Jamaica. She came to Canada when she was about 15 years old. She started to have medical issues after a car accident in 2014. Her conditions got worse over the last few years after several other injuries. Her symptoms include headaches, dizziness, heart palpitations, back and other pain, anxiety, and depression. She stopped working in April 2021 after another car accident.

[4] The Appellant applied for a CPP disability pension on September 24, 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 Appellant says she has a severe and prolonged disability. Her medical conditions create limitations that keep her from doing any job. She has been dealing with constant symptoms that have affected her ability to work for a long time. She tried to keep working, but it became too much after the car accident in April 2021.

[6] The Minister says the evidence doesn't support a finding that the Appellant is disabled within the meaning of the CPP. The evidence doesn't show a severe medical condition or impairment that would prevent her from performing suitable work. She may have limitations that keep her from doing her usual physical job, but not from doing all types of work. Her treatment has been conservative and she hasn't exhausted all of her treatment options.

## 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>1</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>2</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>3</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>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 at GD6-13. 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>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.

## Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of April 2021. 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?

[15] The Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

#### – The Appellant's functional limitations affect her ability to work

[16] The Appellant has:

- post-concussive syndrome
- chronic migraine / medication overuse headache
- benign positional vertigo
- heart palpitations
- back, hip, neck, and shoulder pain (scoliosis, spinal stenosis, degenerative disc disease, myofascial injury)
- PTSD, anxiety, and depression
- sleep apnea

[17] However, I can't focus on the Appellant's diagnoses.<sup>4</sup> Instead, I must focus on whether she has functional limitations that get in the way of her 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 affect her ability to work.<sup>6</sup>

[18] I find that the Appellant has functional limitations that affected her ability to work.

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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.

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

[19] The Appellant says that her medical conditions create limitations that have affected her ability to work. The combination of her symptoms keeps her from working any job. She tried pushing through her various conditions and keep working, but she could not continue after another accident in April 2021.

[20] The Appellant's medical issues began in 2014. She hit her head in a motor vehicle accident. She started having episodes where she would feel dizzy and get heart palpitations. She would also feel anxious.

[21] In February 2018, she injured her head when part of the ceiling fell on her in the shower. This increased her symptoms of dizziness and anxiety, and also caused chronic headaches. She continued to get frequent heart palpitations.

[22] In November 2019, she injured her lower back at work. She went on modified duties for a period of time, but continued working.<sup>7</sup> In January 2021, she slipped and fell on ice, injuring her shoulder and hip.

[23] In April 2021, she was in a motor vehicle accident. She further injured her lower back and hips. This accident also increased her other symptoms, including her anxiety. She stopped working after the accident. She tried returning in August 2021, but only lasted a week. The back pain was too much for her to bear.

[24] She had another motor vehicle accident in October 2021. This accident further increased her symptoms. Since then, she feels like she is only getting worse.

[25] The Appellant has the following limitations because of her medical conditions:

- **Sit / Stand / Walk** – She can't be in one position for too long (maybe 20 minutes). She has to move around because of the pain in her back and hips. Walking also causes pain. She can keep her pain at around 5 out of 10 (10

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<sup>7</sup> See letter from Bayshore Home Care Solutions, dated January 2, 2020, at GD2-40; and Dr. Shuldiner's functional abilities form, dated January 13, 2020, at GD2-38 and 39.

being the most painful) if she can move and stretch, but the pain can go up to a 9. She has a hard time getting out of bed in the morning.

- **Lift / Carry** – She can't lift or carry anything heavy. The pain in her shoulders becomes too severe. She also can't raise her left arm above her head.
- **Balance / Dizziness** – She often feels dizzy. It affects her everyday. It can make her feel off-balance, especially when changing positions or making a sudden movement.
- **Headaches** – She always wakes up with a headache. She tries to restrict the amount of medication she uses, but sometimes has no choice because the headache is so strong.
- **Anxiety / Mood** – She feels a lot of anxiety. She doesn't like being outside the home or around other people. She feels withdrawn and doesn't trust others. She often feels like she wants to give up.
- **Heart palpitations / Panic attacks** – She gets frequent episodes where her heart flutters. It can happen with other symptoms, like feeling dizzy, shaky, and short of breath. They feel like panic attacks. They are unpredictable, but seem to happen when she tries to do too much.
- **Sleep** – She doesn't sleep well. She gets up three to four times a night. She has nightmares. Pain in different parts of her body affects her sleep. Headaches wake her up too. She always feels tired.
- **Concentrate** – She can't focus on a task for too long. She has problems with short-term memory. She is constantly forgetting things. She can't concentrate at all when she has a headache.
- **Driving** – She can't drive very far. She gets severe back pain from sitting. Driving also makes her anxious.

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

[26] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by the hearing date.<sup>8</sup>

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

[28] Medical records confirm episodes of **heart palpitations** and **dizziness** since 2014.<sup>9</sup> Hospital records confirm emergency room visits for heart palpitations in 2017.<sup>10</sup> Dr. Gupta diagnosed atrial fibrillation in February 2018.<sup>11</sup> She went to the emergency room again in August 2020 and was assessed by Dr. Lo, who thought that a part of her symptoms might be related to anxiety.<sup>12</sup> In June 2021, Dr. Yanagawa also thought her symptoms were anxiety-related.<sup>13</sup> Dr. Al-Den diagnosed the Appellant with **benign positional vertigo** in September 2021, based on a four-year history.<sup>14</sup>

[29] Hospital records confirm an emergency room visit in February 2018 and related tests for the head injury in the shower.<sup>15</sup> Symptoms of pain (head, neck, shoulder, back), headaches, dizziness, anxiety, and sleep and memory problems were noted by her chiropractor shortly after the accident.<sup>16</sup>

[30] The Appellant has been tracked for possible multiple sclerosis since March 2020.<sup>17</sup> She was recently assessed by a neurologist, Dr. Krysko, at the MS clinic in January 2022.<sup>18</sup> She didn’t meet the criteria for an MS diagnosis, but the clinic will continue to follow her. Dr. Krysko said the most likely diagnosis at this time includes

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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.

<sup>9</sup> See Dr. Sivaji’s letter, dated February 13, 2014, at GD7-23 and 24.

<sup>10</sup> See ER records, dated August 16, 2017, at GD7-33-41; and dated October 12, 2017, at GD7-42.

<sup>11</sup> See Dr. Gupta’s notes, dated February 10, 2018, at GD7-44 and 45.

<sup>12</sup> See Dr. Lo’s report, dated August 29, 2020, at GD5-108 to 109.

<sup>13</sup> See Dr. Yanagawa’s letter, dated June 27, 2021, at GD5-181.

<sup>14</sup> See Dr. Al-Den’s report, dated September 16, 2021, at GD13-55 to 58.

<sup>15</sup> See ER record and CT scan (head), dated February 21, 2018 and April 4, 2018, at GD7-46 to 48.

<sup>16</sup> See chiropractor’s consultation notes, dated February 23, 2018, at GD13-8.

<sup>17</sup> See Dr. Corrin’s letter and MRI, dated April 21, 2020, at GD2-13 to 15.

<sup>18</sup> See Dr. Krysko’s letter, dated January 31, 2022, at GD13-68 to 75.

**post-concussive syndrome, chronic daily migraine without aura, and medication overuse headache.**<sup>19</sup>

[31] Imaging of the Appellant's spine in September 2018 showed **mild degenerative disc disease** and **kypho-scoliosis**.<sup>20</sup> She went to emergency room in April 2019 because of lower back pain.<sup>21</sup> A scan showed **mild spinal stenosis**.<sup>22</sup>

[32] The Appellant saw an orthopaedic surgeon, Dr. Kwok, in March 2020. A scan of her spine showed **degenerative changes** and she was diagnosed **mild spinal stenosis**.<sup>23</sup> Dr. Kwok confirmed **mild scoliosis** and **mild kyphosis** in August 2020.<sup>24</sup> She saw Dr. Kwok again in March 2021 (after a slip and fall) and June 2021 (after a car accident). Dr. Kwok further diagnosed **bursitis in her hips** and **myofascial injury to her spine and possibly her hips**.<sup>25</sup> Imaging done in February 2021 showed **shoulder tendinosis**.<sup>26</sup>

[33] The Appellant was diagnosed with **mild sleep apnea** in May 2016.<sup>27</sup> A sleep lab report in March 2019 found that she continued to have mild sleep apnea.<sup>28</sup>

[34] The Appellant's family doctor, Dr. Shuldiner, said in a September 2019 medical report that she has had **anxiety and depression** for years.<sup>29</sup> A psychiatrist, Dr. Slyfield, confirmed a diagnosis of anxiety disorder in February 2019.<sup>30</sup> Dr. Shuldiner diagnosed **PTSD** as well in a June 2021 medical report.<sup>31</sup> Dr. Shuldiner's reports noted many

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<sup>19</sup> See Dr. Krysko's letter, dated January 31, 2022, at GD13-73.

<sup>20</sup> See diagnostic imaging report, dated September 5, 2018, at GD13-36 and 37.

<sup>21</sup> See ER records, dated April 12, 2019, at GD13-39.

<sup>22</sup> See CAT scan report, dated April 12, 2019, at GD5-44 and 45.

<sup>23</sup> See Dr. Kwok's letter, dated March 11, 2020, at GD2-28.

<sup>24</sup> See Dr. Kwok's letter, dated August 6, 2020, at GD5-95 and 96. See also imaging report, dated July 29, 2020, at GD2-12.

<sup>25</sup> See Dr. Kwok's letters, dated March 4, 2021, and June 8, 2021, at GD5-154 and 176. See also imaging reports, dated April 16, 2021, at GD5-166; dated February 10, 2021, at GD13-44 and 45.

<sup>26</sup> See imaging report, dated February 8, 2021, at GD13-42 and 43.

<sup>27</sup> See Dr. Glazer's sleep study report, dated May 10, 2016, at GD7-28 and 29.

<sup>28</sup> See sleep lab report, dated March 4, 2019, at GD7-52 to 57.

<sup>29</sup> See Dr. Shuldiner's medical report, dated September 10, 2019, at GD2-77 to 80.

<sup>30</sup> See Dr. Slyfield's notes, dated February 25, 2019, at GD7-88 and 89.

<sup>31</sup> See Dr. Shuldiner's medical report, dated June 1, 2021, at GD7-15 and 16.



symptoms and limitations, including problems with mood, panic attacks, sleep, concentration, and task completion.

[35] Dr. Shuldiner said in July 2021 that the Appellant's multiple medical issues (back, neck, and shoulder pain; dizziness; anxiety) "together make it not very possible for her to work."<sup>32</sup>

[36] The medical evidence supports that the Appellant's medical conditions created limitations that affected her ability to work.

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

– **The Appellant has reasonably followed medical advice**

[38] To receive a disability pension, an appellant must follow medical advice.<sup>33</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>34</sup>

[39] The Appellant has followed medical advice. She has had trouble finding consistent psychological counselling/therapy, doesn't take prescription medication for anxiety, and has stopped physiotherapy for now, but her explanations are reasonable.

[40] The Appellant saw a chiropractor from February to September 2018, but had to stop because she could not afford the treatment.<sup>35</sup> She did physiotherapy off and on for many years. She tries to do exercise daily that she learned through physiotherapy. She went about once a week from April 2021 until March 2022. It would help relieve the pain for only about an hour after a treatment. She also stopped going because of anxiety from traveling to the appointments and the back pain from driving. She's willing to try physiotherapy again.

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<sup>32</sup> See Dr. Shuldiner's note, dated July 20, 2021, at GD5-2.

<sup>33</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>34</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>35</sup> See chiropractor records, at GD13-5 to 27.

[41] She takes a prescription medication for pain (naproxen), but it only provides temporary relief. She also takes medication for heart palpitations (bisoprolol) and vertigo (betahistine), which don't stop these symptoms from happening, but help reduce their intensity.

[42] The Appellant was prescribed medication to treat her anxiety, but she could not tolerate it. It made her very drowsy. She felt worse with the medication. She finds that she can tolerate some cannabis products that help her with the anxiety and pain.

[43] The Appellant has tried different counsellors/therapists to treat her mental illnesses. She met weekly with a psychiatrist, Dr. Cooper, for about a year prior to switching to Dr. Slyfield in February 2019.<sup>36</sup> She only met with Dr. Slyfield a few times as appointments were interfering with her work schedule. She spoke with a counsellor at a community health care centre in March 2020, but the pandemic got in the way.<sup>37</sup> She tried again in April 2021, but found the counsellor was so busy that they could not connect.<sup>38</sup> Also in April 2021, she was referred to a psychotherapy service by Dr. Shuldiner, but she could not afford it.<sup>39</sup> She saw psychologists arranged through her insurance lawyers in September and October 2022 once a week for six weeks. She says that Dr. Shuldiner has also arranged for another counsellor to start seeing her in January 2023.

[44] In my view, the Appellant's explanations for her treatment decisions are reasonable for the following reasons:

- She has been managing multiple medical conditions that require different treatments and attention. It is reasonable that she would find it difficult to treat each condition consistently.
- She has genuinely tried to find a therapist. She continues to seek help.
- She tried taking anxiety medication, but could not handle the side effects.

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<sup>36</sup> See Dr. Slyfield's notes, dated February 25, 2019, at GD7-88.

<sup>37</sup> See health centre clinical notes, dated March 18, 2020, at GD7-7 and 8.

<sup>38</sup> See health centre clinical notes, dated March 18, 2020, at GD7-9 to 12.

<sup>39</sup> See referral to psychotherapy service, dated April 27, 2021, at GD5-171.

- She did physiotherapy for a year before she stopped in March 2022, and it wasn't improving her condition. Travelling to appointments caused her pain and increased her anxiety. She continues to do the exercises at home.

[45] 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.<sup>40</sup>

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

[46] 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

[47] 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>41</sup>

[48] If the Appellant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts weren't successful because of her medical conditions.<sup>42</sup> Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.<sup>43</sup>

[49] I find that the Appellant can't work in the real world. Her severe functional limitations leave her with no ability to work. I disagree with the Minister that she has the capacity for some type of work. She is young and has college level certificates in the medical office assistant and personal support worker fields – factors that could help her

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<sup>40</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>41</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>42</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

<sup>43</sup> See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

find work. However, these factors don't overcome her severe limitations that keep her from doing any work.

[50] The Appellant's limitations are from several medical conditions that, together, prevent her from working. Each condition alone might seem manageable. But, together, they create significant barriers to gainful employment.

[51] The Appellant's medical conditions severely limit her ability to do the following:

- **Complete basic tasks** – Her ability to walk, stand, sit, and carry out physical tasks is limited. She is often in pain, dizzy, and fatigued. Headaches and anxiety limit her concentration.
- **Keep a schedule** – Her symptoms can be unpredictable, but are felt daily. Intense pain, dizziness, heart palpitations, headaches, and panic attacks are common.
- **Function in public** – Anxiety makes it difficult to function in public and interact with others. People, especially crowds, can trigger panic attacks.

[52] I find that the Appellant has no capacity for substantially gainful work. The evidence proves that any work in her condition is unrealistic. I find that the Appellant's disability was severe as of April 2021, when she stopped working after a motor vehicle accident. She says that she was pushing herself to work, but after the accident in April 2021, she simply could not do it anymore, and I believe her.

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

[53] The Appellant's disability was prolonged.

[54] The Appellant's conditions became disabling in April 2021 after she was in a motor vehicle accident. These conditions have continued since then, and they will more than likely continue indefinitely.<sup>44</sup>

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<sup>44</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.

[55] In my view, the evidence doesn't support that the Appellant's conditions will improve at a certain point in the future. Her symptoms have been constant for a long time. Her future treatment options are similar to those already attempted, which so far, haven't led to any real improvement.

[56] I find that the Appellant's disability was prolonged as of April 2021.

### **When payments start**

[57] The Appellant's disability became severe and prolonged in April 2021.

[58] There is a four-month waiting period before payments start.<sup>45</sup> This means that payments start as of August 2021.

### **Conclusion**

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

[60] This means the appeal is allowed.

Michael Medeiros  
Member, General Division – Income Security Section

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<sup>45</sup> Section 69 of the *Canada Pension Plan* sets out this rule.