Citation: *ND v Minister of Employment and Social Development*, 2023 SST 107

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	N. D.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated February 3, 2022 (issued by Service Canada)

Tribunal member:	Jackie Laidlaw
Type of hearing:	Teleconference
Hearing date:	January 17, 2023
Hearing participants:	Appellant M. D., Witness D. D., Witness
Decision date:	January 26, 2023
File number:	GP-22-484

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant has a serious disease, advanced pulmonary arterial hypertension. She had symptoms in 2003, while on maternity leave. She returned to work in 2004 and was diagnosed with pulmonary hypertension. She began treatments and continued to work for five years. She was laid off work due to downsizing in 2009. At that point she chose to be a stay-at-home mother as her daughter grew up. She planned to return to work once her daughter turned 16. By that time, her disease had advanced to primary pulmonary hypertension, and she could no longer work.

[4] The Appellant applied for a CPP disability pension on July 8, 2021. 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's condition did not significantly restrict her function by December 31, 2011, which is when she last met the contribution requirements for a CPP disability pension. She returned to work following maternity leave and starting therapy. She stopped working due to a layoff and not for medical reasons.

What the Appellant must prove

[6] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2011. This date is based on her contributions to the CPP.[1]

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

[8] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.[2]

[9] 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.

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

[11] 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.

[12] The Appellant has to prove she has a severe and prolonged disability by December 31, 2011. 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 that date.

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[1] 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 GD 2-52.
[2] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.
[3] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[13] I accept that the Appellant has primary pulmonary hypertension. I also accept that it has escalated in the past few years, making her incapable of working at this point. Unfortunately, I find that while she had the disease in 2011, it did not prevent her from working at any substantially gainful occupation by December 31, 2011.

[14] Here are my reasons.

Was the Appellant's disability severe by December 31, 2011?

[15] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations didn't affect her ability to work

[16] The Appellant has primary pulmonary hypertension.

[17] However, I can't focus on the Appellant's diagnosis.[4] Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.[5]

[18] I find that the Appellant didn't have functional limitations that affected her ability to work by December 31, 2011.

– What the Appellant says about her functional limitations

[19] The Appellant says that her medical condition has resulted in functional limitations that affect her ability to work after she stopped working. She stated that she had side effects from the medications, such as aches and occasional nausea. She did not complain much. She could not climb hills or do as much as she could before the disease. The Appellant stated that she did not intend to be a stay-at-home mother if she had not been sick. She would have relied upon her parents or daycare to take care of her daughter while she worked.

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[4] See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[5] See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[20] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2011.[6]

[21] In 2013, respirologist Dr. Swiston noted that the Appellant felt she was independent in her activities of daily living. She had been stable on bosentan therapy (Tracleer) since 2004.[7] In 2018, Dr. Swiston stated she had maintained on bosentan since 2004 and tadalafil since 2013 and done well. Overall, she was doing well.[8] The Appellant testified that she did well on the bosentan. It made her feel better and she was able to function. The bosentan stopped being effective around 2013, and she was put on tadalafil.

[22] In 2019, she added the selexipag to the bosentan and tadalafil. As well, there was the indication of a future lung transplant.[9] Her condition began to show significant progression in dyspnea, or difficulty breathing.[10] The Appellant, and her husband also testified this was when her health took a turn for the worse. She had bad side effects to the selexipag. She deteriorated further when she was put on intravenous treatment in 2021.

[23] In 2021, Dr. Swiston's nurse practitioner, Lisa Lee, found she had functional limitations of dyspnea, presyncope on exertion and an inability to lift, carry, push, or pull. On June 7, 2021, Lisa Lee recommended the Appellant stop working and noted it was unknown if she would be able to return to any work.[11] Since then, the Appellant has been monitored to see if she needs a lung, or heart, transplant.

[24] In her notice of appeal, the Appellant indicated that her health started to deteriorate in 2018, and again in 2020.[12] At the hearing, the Appellant testified that she

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[6] See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.
[7] See GD 2-73 April 17, 2013
[8] See GD 2-77 December 18, 2018
[9] See GD 2-79 February 26, 2019
[10] See GD 2-81 a note from Dr. Celine Bergeron, respirologist, July 1, 2021, stating she had significant progression of dyspnea over a year ago.
[11] See GD2-40 medical report of July 8, 2021
[12] See GD 1

felt she could no longer work as of 2017. She also stated that she always thought she would return to work, but after the selexipeg treatment and the intravenous treatment she felt that would not happen.

[25] The medical evidence shows that she was functioning well up to 2019. I accept her testimony that it was 2017 or 2018 when she felt her health decline. When she started the selexipeg in 2019, her condition declined further. The Appellant noted in her notice of appeal that she was ready to return to work in 2018 then her health failed. All these dates are well beyond December 31, 2011.

[26] The medical evidence doesn't show that the Appellant had functional limitations that affected her ability to work by December 31, 2011.

– **The Appellant could work in the real world at December 31, 2011**

[27] When I am deciding whether the Appellant could work, I can't just look at her medical condition and how it affected what she could do. I must also consider factors such as her:

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

[28] 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.[13]

[29] The Appellant was 43 years-old at the time of her MQP. She is fluent in the English language. She has a high school diploma, and has taken courses as a dental lab technician. She worked as a dental lab technician assistant for 23.5 years. Her age, language and education would not prevent her from working or finding suitable employment. She did not go to college to become a dental lab technician, rather learned the skills on the job and took courses over the years while working. I find this

[13] See *Villani v Canada (Attorney General)*, 2001 FCA 248.

past work and life experience in "learning on the job" would be a valuable asset to finding other employment.

[30] I find that the Appellant could work in the real world.

[31] 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 condition.[14] Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.[15]

– **The Appellant worked as a stay-at-home mother**

[32] Once she was laid off, she and her husband both decided to it would be a good time for her to stay home and care for their young daughter.

[33] The Appellant said that mentally her disease was draining, and she was relieved when she was laid off that she could now stay home with her daughter. Her husband stated that because they live in a rural area, they had talked about her staying at home until their daughter was independent with her own driver's license. The plan was always for the Appellant to return to work once this happened.

[34] Both she and her daughter stated she did a great job as a mother. Her daughter said the only thing she was limited from doing was attending class field trips because she was not able to walk up the hills due to shortness of breath.

[35] The Appellant testified that in the early years she did perform her daily routines, managing the house and taking care of her daughter. At the time she was working. She stated it was not until much later, maybe when her daughter was eight that she started to get worse. She said she would then see her doctors every three months to monitor her condition and alter her medications.

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[14] See *Inclima v Canada (Attorney General)*, 2003 FCA 117.
[15] See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

[36] While she stated this happened around 2011, the medical evidence shows it was closer to 2013. Dr. Swiston started her on Tadalafil in 2013.[16] I find it unlikely that if her condition began to worsen in 2011 that the doctor would wait two years to alter her medication. Dr. Swiston noted in 2013 the last time she saw the Appellant was 2008.[17] The Appellant also began to see Dr. Swiston's nurse practitioner, Lisa Lee in April 2013. Therefore, I find it is more than likely her condition changed in 2013, after her MQP.

[37] Both the Appellant and her daughter noted that she had so many doctor's appointments it would affect her ability to take care of her daughter. The doctors' appointments were having blood drawn once a month, and seeing three doctors once each every six months. In the first few years of her diagnosis, she was going to several doctors to determine the disease, and then the appropriate treatment. However, she was working at the time, so this did not apply to her efforts as a stay-at-home mother. There is no evidence to show the appointments affected her ability to work either. By 2011, the medical information showed she had been stable and doing well on the drug bosentan since 2004. He daughter was eight years old and at school full time in 2011. While the daughter was at school, the Appellant would have the time to go to her appointments. This does not present a substantial inability to care for her daughter.

[38] Even if the Appellant's condition began to worsen in 2011, there is no medical evidence to show that it changed her functional abilities. Her testimony, and that of her daughter, are that she was capable of functioning as a stay-at-home mother, with a few limitations of climbing hills.

– **The Appellant didn't try to find and keep a suitable job after being downsized**

[39] The Appellant stated that she was able to find a new job when she was downsized. She chose to stay at home.

[16] See GD 2-77 December 18, 2018
[17] See GD2-73 April 17, 2013

[40] The Appellant noted in her notice of appeal that she was prepared to return to work in 2018, then her health deteriorated.[18]

[41] I find through the Appellant's testimony, and the testimony of the witnesses her husband and her daughter that she was a capable stay-at-home mother. She had always planned to return to work, which indicates she felt she was capable of working but chose to stay home. She testified she felt she was incapable of returning to work in 2017 or 2018. This is well after December 31, 2011.

[42] After she was laid off in 2009, she was capable of finding other employment which would provide income. Instead, she chose to work as a stay-at-home mother. She was not laid off due to any complications with her health. Her disease did not make her incapable regularly of working at job where she would make a substantially gainful income after 2009 until the end of 2011.

[43] Therefore, I can't find she had a severe disability by December 31, 2011.

Conclusion

[44] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe. Because I have found that her disability wasn't severe, I didn't have to consider whether it is prolonged.

[45] This means the appeal is dismissed.

Jackie Laidlaw

Member, General Division – Income Security Section

[18] In her testimony the Appellant stated it was 2017 when she felt she could not return to work.