



Citation: *MS v Minister of Employment and Social Development*, 2022 SST 1593

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: M. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 28, 2021
(issued by Service Canada)

Tribunal member: Brianne Shalland-Bennett

Type of hearing: Teleconference

Hearing date: November 29, 2022

Hearing participants: Appellant

Decision date: December 4, 2022

File number: GP-21-2442

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant is 56 years old with a high school education. She has done physical and sedentary work at the Liquor Control Board of Ontario (LCBO). She worked there for over 30 years. She last worked as a project coordinator. She stopped working in April 2020 because of her mental health. She also feels pain from her heel spurs that affects her mobility. She says she was supposed to try a return to work plan in September 2022, but her employer didn't accommodate her.

[4] The Appellant applied for a CPP disability pension on April 19, 2021.¹ 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 evidence shows the Appellant may be able to do suitable work within her limitations.²

[6] The Appellant doesn't think she can work at any job. She says her mental health got worse because her employer didn't accommodate her and her benefits ended.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that is severe and prolonged by the hearing date, November 29, 2022.³

¹ See GD2-31 to 49.

² See GD5.

³ 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

[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.⁴

[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).

[11] This is so I can get a realistic or “real world” picture of whether her disability is severe. If the Appellant can regularly do some kind of work that she could earn a living from, 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.⁵

[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 is disabled.

Matters I have to consider first

I gave the Appellant the option to submit documents after the hearing

[15] During the hearing, I asked the Appellant if she wanted to submit additional documents after the hearing. This included:

- updated evidence from her family doctor, Dr. Bridge
- updated medical notes from her psychiatrist, Dr. Cochrane

section 44(2) of the *Canada Pension Plan*. The Appellant’s CPP contributions are on GD2-6 to 7. 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.

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

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

- any medical evidence from her podiatrist, Dr. Poupore

[16] I explained that if she wanted to submit documents after the hearing, I would accept them. I explained the Minister would also have an opportunity to respond to whatever she submitted.

[17] On the day of the hearing, the Appellant chose not to submit more documents.
Reasons for my decision

[18] I find the Appellant hasn't proven she had a severe and prolonged disability by the hearing date.

Is the Appellant's disability severe?

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

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

[20] The Appellant has:

- major depressive disorder
- a panic disorder
- anxiety
- agoraphobia
- plantar fasciitis
- heel spurs
- perimenopause

[21] However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁷ When I

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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.⁸

[22] I find the Appellant has functional limitations that affect her ability to work.

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

[23] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[24] Here is what she says about her mental health and cognitive limitations:

- Her employment, financial situation, and insurance trigger her anxiety.
- She is constantly worried about everything.
- Her anxiety is overwhelming and debilitating.
- She has low energy and motivation.
- She has panic attacks at least once a day. They are unpredictable.
- She doesn't socialize and avoids going out.
- She has some limitations with her focus. She doesn't read anymore but can watch the news until something becomes too upsetting and she stops.

[25] Here is what the Appellant says about her physical limitations:

- She has constant pain in her heels. It feels like she stepped on nails.
- She can't stand or walk for over 15 minutes because of the pain.
- She has a burning pain in her heels, even when sitting.
- She feels pain when she is sleeping, and it disrupts her sleep.
- Her heel pain causes pain that sears into her back.
- Because of her pain, she has to take many breaks.
- With some activities, she "pays the price" and has to rest and put her feet up.⁹
- Her mental health affects her ability to function physically.
- She struggles to get out of bed because of her fatigue, pain, and anxiety.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

⁹ These activities include standing or walking for too long.

[26] Here is what the Appellant says about her sleep and fatigue:

- With medication, she sleeps for two hours at a time.
- She wakes through the night because of hot flashes, heel pain, and anxiety.
- She is always exhausted, even after sleeping.
- She has to take naps throughout the day.

[27] The Appellant says her conditions affect her activities of daily living:

- Her husband and daughter do most of the cleaning and cooking.
- On an “okay day,” the Appellant can shower and make a cup of tea.
- On a “good day,” the Appellant can put in and fold a load of laundry, do some light cleaning based on her heel pain, and what she can do on an “okay day.”
- Most days are “bad days.” On those days, she struggles to get out of bed.¹⁰

[28] The Appellant says she was improving and feeling more positive around September 2022. She says someone from her insurer reached out to her employer about trying to go back to her regular job, with modifications. These modifications included doing either office work or working from home. She was going to try to work three days a week. She would have had support from Dr. Cochrane.

[29] However, the Appellant says her employer didn't have any type of work for her. Soon after, her insurer stopped her long-term benefits. Since then, her anxiety and depression are worse. She felt like everyone “dropped [her] like she was nothing.”

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

[30] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by the hearing date.¹¹

¹⁰ The Appellant says it's hard to predict when she will have an “okay day” or “good day.” An “okay day” can be a couple of times a week. A “good day” can be once every other week.

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

[31] First, I considered what the medical evidence says about the Appellant's plantar fasciitis, heel spurs, and pain from these conditions.

[32] Dr. Bridge is the Appellant's family doctor. Here is what she says about the Appellant's limitations:¹²

- She has severe pain in both feet.
- She feels pain in her hips and leg.
- She can't walk any distance because of pain.
- She can't stand for any length of time because of pain.
- Sitting is uncomfortable because of hip and leg soreness.

[33] I find the medical evidence supports that the Appellant has pain and is restricted in her mobility because of her heel spurs. It also shows she had some improvements with her mobility in her mobility by August 2021.¹³

[34] I asked the Appellant if she recently treated her heel spurs and pain. I also asked if the heel pain had gotten worse since she applied for benefits.

[35] The Appellant says her heel pain is worse. She says Dr. Bridge referred her to a podiatrist, Dr. Poupore. She began treatment in October 2022. She says Dr. Poupore knows all about her severe heel pain.

[36] As mentioned, I gave the Appellant the option to submit documents from Dr. Poupore about their interactions. She chose not to do so. So, there is no objective medical evidence that the Appellant's heel pain has changed since August 2021.

[37] Next, I considered what the medical evidence says about her sleep and fatigue.

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

¹² See GD2-19 to 21 and GD2-71 to 79.

¹³ See GD2-19 to 21 and GD2-71 to 79. I find Dr. Bridge's evidence isn't clear about what those specific improvements are. She only notes "some improvement".

[39] Dr. Bridge says she has insomnia, even with sleeping aids. She wakes throughout the night with hot flashes and anxiety. She is fatigued throughout the day and needs to nap.¹⁴

[40] Next, I considered what the medical evidence says about her mental health.

[41] Here is what Dr. Bridge says:¹⁵

- She has anxiety attacks multiple times a day.
- She has debilitating panic attacks randomly, day and night.
- She is apathetic and depressed.
- She has no desire to go out, socialize, or do grocery shopping.
- She can't concentrate on tasks during the day.
- Her anxiety and panic make it hard for her to function normally.
- She could not work because of her mental health.

[42] Dr. Bridge treats the Appellant for her mental health, but she defers to the Appellant's psychiatrist, Dr. Cochrane for a more in-depth analysis and prognosis.¹⁶ So, I place more emphasis on what Dr. Cochrane says about the Appellant's mental health.

[43] I find Dr. Cochrane's evidence shows there has been some improvement in the Appellant's mental health conditions and she may have some capacity to work.

[44] Here is what Dr. Cochrane said in his initial assessment in November 2020:¹⁷

- She had physical symptoms relating to perimenopause.¹⁸
- She had panic attacks and intense anxiety.
- She had a depressed mood and low energy.
- She reported concentration issues.
- She had low energy.

¹⁴ See GD2-19 to 21 and GD2-71 to 79.

¹⁵ See GD2-19 to 21 and GD1-17 to 23.

¹⁶ See GD2-20.

¹⁷ See GD2-87 to 89.

¹⁸ I note that Dr. Cochrane doesn't explain what these symptoms are and how they affect the Appellant.

- She had social anxiety, complicated by the pandemic restrictions.

[45] Here is what Dr. Cochrane has reported since then:¹⁹

- In March 2021, she managed her instrumental activities of daily living.
- In May 2021, she had anxiety and a low mood. She felt stressed because of her home life. She felt hostage because of the pandemic restrictions.
- In December 2021, he didn't think she could go back to her regular job.
- In February 2022, she had a low mood. Her anxiety waxed and waned. She had vegetative changes that went against a return to her regular job.
- In May 2022, she was expecting a return to her regular job in October 2022.

[46] By August 2022, Dr. Cochrane said the Appellant had improved with treatment. Her mood was stable but low. This is because of the negative feelings she had relating to her employer and her experiences at work. He didn't mention any ongoing limitations with her concentration or her fatigue. He thought she could go back to her regular job in October 2022. He thought her prognosis for recovery was very good.²⁰

[47] I asked the Appellant if she had spoken to Dr. Cochrane since August 2022. She said she had. She said he was encouraging and that she should be patient while waiting for an update from the LCBO. Her next appointment with Dr. Cochrane is scheduled for December 5, 2022.

[48] The Appellant's file doesn't include any updates from Dr. Cochrane since August 2022. It also doesn't include any updates from Dr. Bridge since August 2021.

[49] As mentioned, I gave the Appellant the option to submit documents with an update about her mental health from either Dr. Cochrane or Dr. Bridge. She chose not to do so. So, there is no evidence that Dr. Cochrane changed his opinion about the Appellant's mental health or her capacity to work after August 2022.

¹⁹ See GD4-3, GD4-5, GD4-12 to 13, and GD4-15.

²⁰ See GD4-2 and GD4-16.

[50] The medical evidence shows the Appellant has:

- pain in her heels, legs, and hips
- some restrictions with her mobility ²¹
- ongoing limitations caused by her mental health, including a low mood and anxiety

[51] The medical evidence also shows that, by August 2022, the Appellant had improvements with her mental health and had the capacity to return to her regular job.²² At that time, Dr. Cochrane thought her prognosis for recovery was very good.²³

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

– **The Appellant has followed medical advice**

[53] To receive a disability pension, an appellant must follow medical advice.²⁴ 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.²⁵

[54] The Appellant has followed medical advice.²⁶ Here are her experiences:

- She has done shockwave therapy for her heel spurs, but it doesn't help.
- She is seeing a foot and ankle specialist, but she still has pain.
- She takes Tylenol and Advil for her heel pain. Sometimes, it helps.
- She takes sertraline. She says it helps. She says it allows her to be "here." ²⁷
- With medication, she still has trouble sleeping.
- She says acupuncture and physiotherapy aren't helpful. She takes Lorazepam when she needs it for her anxiety. Sometimes, she can take it

²¹ See GD19 to 21.

²² See GD4-2.

²³ See GD4-2 and GD4-16.

²⁴ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁵ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

²⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁷ I asked the Appellant what "here" meant, but she said it was hard to explain.

three days in a row. Sometimes, there are days when she doesn't take it. It helps, but it makes her drowsy.

[55] 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.²⁸

– **The Appellant can work in the real world**

[56] 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

[57] 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.²⁹

[58] I find the Appellant can work in the real world. Here is why:

[59] The Appellant has many positive qualities that would allow her to do other work suitable to her limitations:

- She is 56 years old, with many years until the standard age of retirement (65).
- She speaks English fluently.
- She has a high school education and did skills training throughout her career.
- She has some computer skills and has used programs like Word and Excel.
- Her work experience has included physical and administrative tasks.

²⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

²⁹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[60] The Appellant says she built her career with the LCBO. She says she was planning to retire with the LCBO. She says since they refused her accommodation request, her anxiety and depression are back to where they were two years ago. She says she can barely make it through the day, both mentally and physically.

[61] I sympathize with the Appellant's situation with her employer and insurer. But I find the evidence shows she may be able to do some type of work.

[62] I find the Appellant may not be able to do physically demanding work because of the pain she feels with her heel spurs. This means she could not do a job where she would have to stand or walk for long periods. But she may be able to do sedentary work where she is sitting.

[63] I acknowledge the Appellant may have some discomfort and soreness with sitting. But she may be able to find a job where she can take breaks or stretch.

[64] The Appellant described that her concentration affects her ability to work. However, I find it would not prevent her from doing suitable work. She can't read a novel, but she can focus on a news program. I find she could have tried to find suitable work that didn't require a lot of reading.

[65] I understand that the Appellant says that her fatigue is one of the reasons she would not be able to work. As I mentioned, she says she is always tired. She says she has no energy and has to nap throughout the day.

[66] However, the medical evidence doesn't support ongoing limitations caused by her fatigue or concentration that would prevent her regularly from working at any job.

[67] There is no updated information from Dr. Bridge since August 2021. Since then, the Appellant has had some improvements.³⁰ Dr. Cochrane doesn't mention specific limitations related to her fatigue or concentration in his most recent reports.³¹

³⁰ This is supported by Dr. Cochrane's medical evidence and what the Appellant testified.

³¹ See GD4-2 and GD4-14 to 16.

[68] I place more weight on the medical evidence because it is an objective assessment of her capacity to work.

[69] Even if the Appellant believes her pain, fatigue, concentration, and other mental health limitations prevent her from doing all types of work now, the medical evidence shows she still had the capacity to work as of the hearing date.

[70] Dr. Cochrane supported a return to her regular job by August 2022.³² The Appellant testified that she was going to either work from home or do a desk job. She was going to try and work three days a week. She was supposed to get continued support from Dr. Cochrane. The Appellant said Dr. Cochrane continued to be supportive in their last meeting, which was around October 2022.

[71] The Appellant was willing to try to gradually return to her regular job in September 2022. This included either working from home or doing a desk job, part-time. At that time, her conditions weren't so severe that she wasn't willing to **try**.

[72] The Appellant says that her conditions have gotten worse since October 2022. The hearing took place in November 2022.

[73] I gave the Appellant a chance to submit documents to support what she says about her conditions. I also explained I would give her time to gather this evidence. But, the Appellant chose not to do this.

[74] There is no evidence that Dr. Cochrane changed his opinion about the Appellant's mental health or her capacity to work after August 2022.

[75] There isn't any other medical evidence included with the file that supports a decline in the Appellant's conditions or ability to work in the month following her experiences with her employer and insurer. For those reasons, I find the Appellant can work in the real world.

³² See GD4-2.

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

[76] 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.³³ Finding and keeping a job includes retraining or looking for a job that she can do with her functional limitations.³⁴

[77] I have found that the Appellant could work in the real world by the date of the hearing. I have also found that the medical evidence shows she had the capacity to work by the date of the hearing.

[78] The Appellant hasn't made efforts to work since she stopped working. Because she hasn't shown that she was unsuccessful in obtaining and maintaining a suitable job because of her conditions, I can't find that she had a severe disability by the hearing date.

Conclusion

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

[80] This means the appeal is dismissed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section

³³ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

³⁴ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.