



Citation: *AD v Minister of Employment and Social Development*, 2023 SST 46

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

# Decision

**Appellant:** A. D.  
**Representative:** Jacob Aitcheson

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

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

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**Tribunal member:** James Beaton

**Type of hearing:** Videoconference  
**Hearing date:** January 17, 2023  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** January 20, 2023  
**File number:** GP-21-1603

## Decision

[1] The appeal is allowed.

[2] The Appellant, A. D., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of December 2018. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant is 57 years old. She last worked in inventory maintenance for a retail store, and as a part-time college instructor. In August 2018, she was in a motorcycle accident which seriously injured her right leg. She had three surgeries before being discharged from the hospital in September 2018. She has since been diagnosed with somatic symptom disorder, depression, anxiety, and post-traumatic stress disorder (PTSD).

[4] The Appellant applied for a CPP disability pension on October 11, 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 Minister says the Appellant taught a course in the summer of 2019 and should have improved further since then. Therefore, she could go back to teaching if she were to be properly accommodated. Alternatively, she could do some other type of work.

[6] The Appellant says her teaching contract was a failed work attempt. She doesn't believe that she could go back to teaching or to any other job.

[7] I agree with the Appellant.

## What the Appellant must prove

[8] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2021. This date is based on her contributions to the CPP.<sup>1</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>2</sup>

[11] This means I must look at all of the Appellant’s medical conditions together to see what effect they have on her ability to work. I must also look at her background (including her age, level of education, language abilities, 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 capable regularly of doing 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.<sup>3</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 must prove she has a severe and prolonged disability. She must prove this on a balance of probabilities. This means she must 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 GD2-132 and 133.

<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

[15] I find that the Appellant had a severe and prolonged disability as of August 2018. 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?

[16] The Appellant's disability was severe by December 31, 2021. I reached this finding by considering several factors. I explain these factors below.

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

[17] The Appellant has:

- an impaired right leg
- somatic symptom disorder
- depression
- anxiety
- PTSD

[18] However, I can't focus on the Appellant's diagnoses.<sup>4</sup> Instead, I must focus on whether she has functional limitations that got in the way of her earning a living by December 31, 2021.<sup>5</sup> When I do this, I must 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>6</sup>

[19] I find that the Appellant had functional limitations by December 31, 2021.

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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**

[20] The Appellant says her medical conditions have resulted in functional limitations that affected her ability to work by December 31, 2021.<sup>7</sup>

[21] In terms of her **physical limitations**, she says she was in a wheelchair for four or five months after the accident. Now, she has to use a walker or a four-pronged cane. She can't climb stairs, or sit or stand for more than 20 minutes at a time. She sits to do the dishes. When she sits, she usually keeps her right leg elevated because of poor circulation. She used to be very active, but has gained as much as 50 pounds since the accident because of her limited mobility.

[22] Because she has to put weight on her arms to use her walker or cane, she gets pain in her arms, shoulders, and neck. This impacts her ability to push, pull, and carry. Her ability to do housework is also limited. A personal support worker helps with many of the chores while a neighbour takes care of mowing her lawn and shovelling snow.

[23] She says everything takes her four times longer to do because she has to take a lot of breaks. That's why she only makes a "nice meal" for herself once every week or two. She gardens (as a way to get herself out of the house and keep busy), but only for 5 to 10 minutes at a time; she has to bend from the waist to pick weeds.

[24] She can still drive, but only short distances.

[25] She doesn't feel rested after sleeping.

[26] In terms of her **cognitive limitations**, she says she has trouble remembering things, learning new things, making decisions, and thinking of the right words to say in conversations. She used to journal and write fiction for pleasure. She had to give up those hobbies because they are too frustrating now.

[27] In terms of her **emotional and behavioural limitations**, she says she is easily stressed, especially when she leaves the house. She used to be a "social butterfly," but

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<sup>7</sup> What the Appellant says about her functional limitations can be found at GD2-108 to 120 and on the hearing recording.

now she doesn't like interacting with people—she becomes irritable and impatient. She can't control her emotions and will sometimes have outbursts. Some days, when she is especially depressed, she struggles to change out of her pajamas or even to get out of bed.

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

[28] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2021.<sup>8</sup>

[29] There is a wealth of medical evidence to support virtually everything that the Appellant says about her functional limitations.<sup>9</sup>

[30] A couple of quotes summarize her condition well from the objective perspective of her healthcare providers. First, an occupational therapy assessment concluded that her limitations “significantly impede useful functioning across all spheres of basic and instrumental activities of daily living.”<sup>10</sup> Second, a psychological assessment found that “[h]er tolerance for any degree of interpersonal interaction without high risk of agitation, temper, withdrawal/avoidance, decompensation, anxious rumination, psychological deterioration, etc., is extremely poor.”<sup>11</sup>

[31] The only area where the medical evidence is mixed is in regard to her cognitive functioning. A neuropsychological assessment noted that her cognitive abilities were generally good (and considerably above average in some areas). But at the same time, it recognized that the Appellant's **perception** of her own cognitive functioning was low, and that this could be explained by pain, reduced stamina, and emotional symptoms.<sup>12</sup>

[32] Another assessment, by a speech language pathologist, observed occasional word-finding errors and lapses in thought during conversation. The report states that the

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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, for example, GD2-50 to 54, 164 to 172, and 1403 to 1410; GD4-12 to 58, 69, 70, 108, 109, and 150 to 233; GD5-39, 40, and 198 to 214; GD6-31 (sleep has improved but is still problematic); and GD7-2 to 12.

<sup>10</sup> See GD4-167.

<sup>11</sup> See GD4-57 and 58.

<sup>12</sup> See GD5-207.

Appellant's focus, memory, planning, problem-solving, and decision-making abilities were likely to be affected.<sup>13</sup> The Appellant's social worker wrote that the Appellant had trouble focusing when playing games or doing puzzles.<sup>14</sup>

[33] In light of this mixed evidence, all from qualified healthcare professionals, I give considerable weight to the Appellant's testimony concerning her cognitive limitations. Her testimony can be supported by at least some of the medical evidence. Considering that her testimony about her other functional limitations is well supported, I believe her testimony in this area as well. She was straightforward and detailed in her answers to questions and didn't appear to exaggerate her symptoms.

[34] The medical evidence supports that the Appellant's functional limitations prevented her from doing her retail or teaching jobs by December 31, 2021. Her retail job involved unloading merchandise—her physical limitations prevented that.<sup>15</sup> Her teaching job involved sustained focus and interaction with others—her cognitive, emotional, and behavioural limitations prevented that. I will discuss this more later, when I talk about the Appellant's attempt to return to teaching after the accident.

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

– **The Appellant followed medical advice**

[36] To receive a disability pension, an appellant must follow medical advice.<sup>16</sup>

[37] The Appellant followed medical advice. There is no evidence that she refused any treatment. She pursued her treatment diligently, despite living in a relatively small and remote community. She continues to see:

- an occupational therapist

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<sup>13</sup> See GD4-200 to 221. The report noted that vision changes might have influenced the test results. I asked the Appellant whether her vision had been tested since the accident. She confirmed that it was tested in November 2022 and that her prescription had changed, but not much. I conclude that vision changes likely didn't impact the test results.

<sup>14</sup> See GD4-230 to 233.

<sup>15</sup> The Appellant described her job duties at the hearing.

<sup>16</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

- a physiotherapist
- a rehabilitation therapist
- a social worker<sup>17</sup>

[38] She takes Tylenol and Advil for pain, Zoloft (sertraline) for her mental health conditions, and Trazodone to help her sleep. Her dosages of Zoloft and Trazodone were both increased in December 2022.<sup>18</sup>

[39] 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>19</sup>

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

[40] 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

[41] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say she can work.<sup>20</sup>

[42] I find that the Appellant can't work in the real world. She was unable to work as of December 31, 2021.

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<sup>17</sup> See the hearing recording.

<sup>18</sup> See GD4-87 to 101 and the hearing recording.

<sup>19</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>20</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.



[43] I consider her **age** to be a neutral factor. She was 56 years old as of December 31, 2021. She wasn't just starting out in the workforce, but she still had nearly 10 years left before the standard retirement age.

[44] Her **education** gives her basic skills that favour employability. She didn't finish high school initially. Later she returned to school, earning her diploma at age 35. She also completed some courses in millwright drafting. She later taught that subject as an instructor herself.<sup>21</sup>

[45] Her **language abilities** and **experience** similarly favour employability. She is fluent in English. She has worked for many years, including as:

- a restaurant server
- a bartender
- a taxi driver (for 17 years)
- a cafeteria worker
- an inventory maintenance person in the retail sector
- a college instructor<sup>22</sup>

[46] Unfortunately, these positive factors don't overcome her extensive functional limitations. There is simply no job that she could do in the real world. She can't do physical work or cognitively demanding work. She can't do work that requires interacting with other people (such as customer service work). She can't do sedentary work because she needs to have her leg elevated and change positions often. Even if she could do some kind of work, she isn't regularly able to do that work. Many days, she stays in bed and can't motivate herself to get dressed. No employer would hire her for full- or part-time work knowing that she could not keep a predictable work schedule.

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<sup>21</sup> See GD2-120, GD7-2 to 12, and the hearing recording.

<sup>22</sup> See GD2-119 and the hearing recording.

– **The Appellant’s failed attempt to return to work**

[47] The Minister argues that the Appellant can work. As evidence, the Minister points to the fact that the Appellant accepted and completed a teaching contract in the summer of 2019 with her old employer.

[48] I disagree. The Appellant’s return to teaching can’t be considered a successful return to work, or as evidence of residual work capacity. Rather, it reinforces that she **cannot** work. I will explain why.

[49] The contract required the Appellant to teach three hours on Monday and three hours on Wednesday, for five weeks. It is true that she completed the contract. However, she was constantly forgetting things and could not answer questions effectively. Her students even corrected her. This wasn’t normal for the Appellant. She had designed the course and taught it multiple times before; she was intimately familiar with the content.<sup>23</sup> Furthermore, she testified that she had no energy to do anything else for the duration of the contract. Clearly, teaching wasn’t sustainable.

[50] This testimony is consistent with what the Appellant told her occupational therapist, Ms. Blackwell, in August 2020. Ms. Blackwell wrote:

Although she technically delivered the required material, she was not satisfied with the quality of her teaching. She experienced significant physical and cognitive fatigue such that she could not schedule any activities the day of or after teaching. She reported difficulty with cognitive flexibility, recall and processing, particularly when put on the spot and asked a question she was not prepared for. She stated that everything was much more effortful.

Ms. Blackwell noted that the Appellant had turned down other teaching contracts since then because of her “inability to cope with the physical, cognitive and emotional demands.” This was hard for her given her financial situation.<sup>24</sup> This supports that if she could have worked, she would have.

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<sup>23</sup> See GD2-99 and the hearing recording.

<sup>24</sup> See GD4-158.

[51] I acknowledge that the Appellant was supposed to be assigned to a classroom on the main floor so that she didn't have to climb stairs. Unfortunately, she was assigned to a classroom on the second floor. A student helped her carry her equipment.<sup>25</sup> Even if she had been on the main floor, this accommodation would not have allowed her to teach. Her cognitive, emotional, and behavioural abilities were, and are, too significant.

[52] In addition, I recognize the Appellant's struggles to upgrade her education through online courses after the accident. The effort caused her additional stress and anxiety, and led to angry outbursts.<sup>26</sup> Again, this reinforces that the Appellant can't work or retrain for suitable work.

[53] I find that the Appellant's disability was severe as of August 2018, the date of her accident. She hasn't been regularly able to work since then.

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

[54] The Appellant's disability was prolonged by December 31, 2021.

[55] The Appellant's conditions began in August 2018. These conditions have continued since then.<sup>27</sup> The latest medical evidence from March 2022,<sup>28</sup> combined with the Appellant's testimony, confirms this.

[56] The Appellant's conditions will more than likely continue indefinitely. Years have passed since the accident. The Appellant has been extensively and comprehensively treated. Despite this, her prognosis is guarded.<sup>29</sup> Her psychologist wrote in January 2021 that she was permanently disabled and could never return to work (or retrain for

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<sup>25</sup> See GD2-99.

<sup>26</sup> See GD4-230 to 233; GD5-198 to 214; GD6-41; and GD7-2 to 12.

<sup>27</sup> In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant must show a severe and prolonged disability by the end of their MQP and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

<sup>28</sup> See GD7-2 to 12.

<sup>29</sup> See GD5-45 and 180.

work) again.<sup>30</sup> A physical medicine and rehabilitation specialist wrote that she had reached maximum recovery—that was in December 2020.<sup>31</sup>

[57] I find that the Appellant’s disability was prolonged as of August 2018.

### **When payments start**

[58] The Appellant’s disability became severe and prolonged in August 2018.

[59] There is a four-month waiting period before payments start.<sup>32</sup> This means payments start as of December 2018.

### **Conclusion**

[60] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged by December 31, 2021.

[61] This means the appeal is allowed.

James Beaton  
Member, General Division – Income Security Section

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<sup>30</sup> See GD4-57 and 58.

<sup>31</sup> See GD4-105 and 106.

<sup>32</sup> Section 69 of the *Canada Pension Plan* sets out this rule.