Citation: *ST v Minister of Employment and Social Development*, 2023 SST 1244

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	S. T.
Representative:	G. T.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated June 3, 2021 (issued by Service Canada)

Tribunal member:	Adam Picotte
Type of hearing:	Teleconference
Hearing date:	April 28, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	May 1, 2023
File number:	GP-21-2300

Decision

[1] The appeal is dismissed.

[2] The cancellation of the Appellant's Canada Pension Plan (CPP) disability pension is confirmed. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was born in 1979 she applied for, and was granted, a CPP disability benefit with an effective date of February 2015. The basis of her disability was depression, anxiety, post-traumatic brain injury, psychosis, fibromyalgia, and a substance abuse disorder. Her benefit was suspended in December 2018 when the Minister received a notice of earnings from the Canada Revenue Agency (CRA).

[4] The Minister made inquiries into the Appellant's recent work history and determined that she had been substantially gainfully employed effective April 1, 2017. It allowed for a three-month paid work trial from April 1, 2017 to June 30, 2017. As a result, an overpayment started July 1, 2017. The Minister refused her reconsideration request. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that she cannot afford to repay the Minister the amount of the overpayment assigned on her claim. She also says that she had already advised the Minister that she had returned to work and as such this is a situation of an administrative error on the part of the Minister.

[6] The Minister says it reassessed the Appellant's continuing eligibility for CPP disability following the receipt of information from the CRA showing she had employment earnings in 2017 of $16,195.00 and in 2018 of $23,741.00. Subsequent earnings were also noted in 2019 of $39,066.00 and in 2020 of $42,858.00. The Minister says on this basis, it concluded the Appellant was no longer disabled as of April 1, 2017. It allowed for a three-month paid work trial from April 1, 2017, to June 30, 2017, after which time it applied an overpayment to the Appellant's account.

What the Minister must prove

[7] This is a cancellation of a CPP disability benefit. As a result, the Respondent bears the onus of proving that the Appellant was no longer disabled as of April 2017. For the Respondent to succeed, it must prove the Appellant no longer had a disability that was severe and prolonged by April 2017. This date is based on the date determined by the Minister to cancel the CPP benefit.

[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.[1]

[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.[2]

[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 Respondent has to prove that the Appellant no longer had a severe and prolonged disability. It has to prove this on a balance of probabilities. This means that it has to show that it is more likely than not that the Appellant was no longer disabled.

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

Matters I have to consider first

I don`t have jurisdiction to consider an appeal based on an administrative error

[14] The Appellant alleged that the Respondent made an error in not terminating her CPP disability benefit when she notified it that she had returned to work. I make no findings in this respect. I have not made any findings in this respect because I do not have jurisdiction over administrative errors or erroneous advice.

[15] The CPP refers to "administrative error in the administration of this Act,"[3] and it is clear that the authority to take remedial action is reserved for the Minister.[4] The Tribunal does not have jurisdiction to entertain an appeal of a decision under this part of the CPP.

[16] As a result, I cannot make a finding, nor would it be appropriate for me to do so in respect of an allegation of administrative error, as asserted by the Appellant in this case.

Reasons for my decision

[17] I find that the Appellant no longer had a severe and prolonged disability as of April 2017. 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?

[18] The Appellant's disability was no longer severe. I reached this finding by considering several factors. I explain these factors below.

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[3] Section 66(4) CPP
[4] Section 66(4) of the CPP ends with "[...] the Minister shall take such remedial action as the Minister considers appropriate [...]"

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

[19] The Appellant has several medical conditions that impact her level of function:

- Depression;
- Anxiety;
- Agoraphobia;
- PTSD;
- Substance abuse disorder;
- Fibromyalgia; and
- Low back pain

[20] However, I can't focus on the Appellant's diagnoses.[5] Instead, I must focus on whether she continued to have functional limitations that got in the way of her earning a living.[6] 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 affected her ability to work.[7]

[21] I find that the Appellant continued to have functional limitations that affected her ability to work.

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

[22] The Appellant says that her medical conditions continued to impact her level of function. She says that while she returned to work in 2017, she missed 3-4 days of work a week.

[23] I asked her whether she was provided with any accommodations in her workplace and she advised me that she was not.

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

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[5] See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[6] See *Klabouch v Canada (Social Development)*, 2008 FCA 33.
[7] See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[24] There was ample medical evidence at the time the Appellant's claim was accepted to demonstrate a severe disability.

[25] Dr. Ketch, Family Physician, completed the physician's portion of the British Colombia Persons With Disabilities (PWD) Application on January 21, 2015. The Appellant was diagnosed with major depression, anxiety, agoraphobia, posttraumatic head injury, posttraumatic stress disorder, substance abuse, psychosis, borderline personality disorder, low back pain and fibromyalgia. Dr. Ketch indicated that the Appellant had been in and out of the hospital with psychotic episodes. The Appellant was homeless, though at the time was in a temporary recovery house.

[26] On January 15, 2016, Dr. Ketch completed a CPP disability medical report. He wrote that the Appellant's diagnoses remained the same. Dr. Ketch reported that the Appellant was cognitively impaired, prescribed antidepressants and required community supports.

[27] However, on February 28, 2019, Dr. Ketch wrote that the Appellant's previous diagnoses resulting in disability had resolved. As a result, she no longer qualified as having a disability and he recommended that her provincial person with disability (PWD) benefits be discontinued.[8]

[28] It is not clear from the medical evidence on file how the Appellant was doing in and around the time she commenced employment in 2017.

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

[29] 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

[8] GD2-7

- past work and life experience

[30] 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.[9]

[31] I find that the Appellant was able to work in the real world.

[32] I asked the Appellant about her return to work in 2017. She told me that in 2017 she returned to work as a cashier at X grocery store. She did this work four days a week for 6-8 hours a day. She was paid approximately $16.00 an hour for this work. She consistently worked at X from April 2017 until she left her employment for a position with X, a community assistance organization.

[33] I asked the Appellant what her job duties consisted of. She told me that she was responsible for ringing orders through the cash register and light cleaning.

[34] I also asked if her employer provided her with any accommodations. In asking this, I explained to her what accommodations were. She told me that she was not accommodated but that she did miss some shifts. She told me that she would typically miss 3-4 shifts per month because of her mental health. She told me that her employer was aware of her mental health condition. She expressed to the employer that she was struggling but that her employer was understanding. Nevertheless, her job duties were not changed.

The Appellant had substantially gainful earnings

The CPP regulations has a formula for assessing whether an applicant's occupation is substantially gainful.[10]

In a list below, I have included the Appellant's earnings for the years 2017 – 2020 and have also included the year's substantially gainful amounts (SGA).

[9] See *Villani v Canada (Attorney General)*, 2001 FCA 248.
[10] See section 68.1 *Canada Pension Plan Regulations*

Year	Earnings	SGA
2017	$16,195.00	$15,763.92
2018	$23,741.00	$16,029.96
2019	$39,066.00	$16,347.60
2020	$42,858.00	$16,651.92

[35] It is evident from the earnings that each year from 2017 to 2020, that the Appellant had earnings above the substantially gainful amounts as set out in the CPP regulations. I accord significant weight to this fact.

The Appellant did not work for a benevolent employer

[36] I have also considered whether the Appellant worked for a benevolent employer. This is important because if she worked for a benevolent employer the fact she had substantially gainful earnings may not be as persuasive in my analysis. A "benevolent employer" is someone who will vary the conditions of the job and modify their expectations of the employee, in keeping with her or his limitations. The demands of the job may vary, the main difference being that the performance, output, or product expected from the client are considerably less than the usual performance output or product expected from other employees.[11]

[37] I am unable to find that the Appellant worked for a benevolent employer. The Appellant's job duties consisted of ringing through people's orders and light cleaning. The Appellant confirmed that she was no provided with any accommodations. In other words, her job duties were the same as expected of others who were employed as cashiers.

[38] I also considered whether the Appellant's 3-4 absences a month might qualify as working for a benevolent employer. I have determined that it would not. While missing 3-4 shifts a month may seem to be at the higher end of absences, the work that the

[11] *Atkinson v. Canada* (Attorney General), [2014] F.C.J. No. 840, 2014 FCA 187

Appellant performed while in the workplace was the same work anticipated of other staff. Her work was not reduced or modified to accommodate her illness.

[39] I am unable to conclude that the Appellant worked for a benevolent employer.

[40] As the Appellant was not employed by a benevolent employer, was regularly working 6-8 hours a day for over a year at X, and had substantially gainful earnings throughout this time, I have determined that she was no longer severely disabled as of April 2017.

Conclusion

[41] I find that the Appellant was no longer severely disabled as of April 2017. Because I have found that her disability was no longer severe, I didn't have to consider whether it was no longer prolonged.

[42] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section