Citation: *MF v Minister of Employment and Social Development*, 2023 SST 376

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	M. F.
Representative:	Ashwin Ramakrishnan
Respondent:	Minister of Employment and Social Development

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated May 21, 2020 (issued by Service Canada)

Tribunal member:	Adam Picotte
Type of hearing:	Teleconference
Hearing date:	May 10, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	May 12, 2023
File number:	GP-20-1060

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant was 52 years old when she last qualified for a CPP disability benefit in December 2012.[1] She worked most of her life in laundry services. She continued working in laundry services until 2018, when she stopped due to her disability.

[4] The Appellant applied for a CPP disability pension on September 27, 2018. 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 that she can no longer work because of spinal stenosis, chronic back pain and fibromyalgia caused by degenerative disc disease, osteoarthritis in her knees, and degenerative changes of the SI joints.

[6] The Minister says that the medical evidence does not identify that the Appellant attempted to obtain lighter work, and in fact, supports that she continued working at physical work until 2018. Therefore, it is the Minister's position that the Appellant retained the residual capacity to work well beyond her December 2012 MQP, or August 2013 possible prorate date. The Minister says this does not meet the criteria of severe and prolonged within the meaning of the CPP.[2]

[1] She also qualified up to August 2013 based on proration. That is discussed below.
[2] GD10-8

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2012. This date is based on her contributions to the CPP.[3]

[8] The Appellant had CPP contributions in 2013 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if she became disabled between January 2013 and August 2013.[4]

[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.[5]

[11] 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.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.[6]

[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.

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[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 section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on GD2-70-71.
[4] This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.
[5] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.
[6] Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[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.

Reasons for my decision

[15] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2012, or August 31, 2013.

Was the Appellant's disability severe?

[16] 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 don't affect her ability to work**

[17] The Appellant has:

- Spinal Stenosis and chronic lower back pain from disc degenerative disease;
- Fibromyalgia
- Degenerative changes of the SI joints; and
- Osteoarthritis in her knees.

[18] However, I can't focus on the Appellant's diagnoses.[7] Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.[8] 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.[9]

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

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

– What the Appellant says about her functional limitations

[20] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says that she has had the following functional limitations since 2012.

- **Shoulder pain** - this prevented the Appellant from picking up laundry and bringing it to her vehicle for the purpose of cleaning. As a result, she relied upon the assistance of colleagues working at her last place of employment.
- **Walking** – The Appellant is limited in her ability to walk. She cannot walk far and when she does walk, she uses a cane to move around.
- **Home maintenance** – The Appellant is unable to cook meals for her family. She relies on her husband and her son to make food. Her husband is primarily responsible for cleaning their house. She also relies on her husband to assist with cleaning her in the shower. Her husband also doing the vacuuming and sweeping of floors.
- **Fatigue** – The Appellant has a difficult time sleeping. This causes her to be fatigued throughout the day. She is unable to sleep on her own mattress. As a result, she will often sleep on her couch. This ends up not being restful for her.
- **Difficulty using hands** – The Appellant's elbows and fingers are prone to going numb. This makes it hard for her to do fine tasks. She has a difficult time lifting and holding objects.
- **Knee pain** – The Appellant is no longer able to serve Christmas dinner at the legion because her knees give out and it is too painful to walk.
- **Reaching** – She cannot reach too far as her arms feel like there's bricks weighing them down.

- **Concentration and memory** – The Appellant is unable to concentrate when there is a lot of noise. Her memory is gone, and she is unable to remember when she is doing from time to time.

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

[21] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2012, or August 31, 2013.[10]

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

[23] Dr. Ellis wrote that the Appellant had been unable to work since 2011.[11]

[24] Similarly, Dr. Colp wrote that M. F. has been disabled since the beginning of 2012 and has been disabled and unable to do any type of work since that time.[12]

[25] Dr. Colp also provided a medical report in September 2018. He wrote that he started to treat the Appellant in 2016. Dr. Colp provided the following diagnoses for the Appellant[13]:

- Spinal Stenosis;
- Chronic lower back pain;
- Disc degenerative disease;
- Fibromyalgia;
- Degenerative changes of the SI joints; and
- Bilateral knee Osteoarthritis.

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[10] See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.
[11] GD2-44
[12] GD3-2
[13] GD2-228

[26] Dr. Colp also noted that the Appellant experienced lumbosacral pain. This included pain with prolonged sitting, walking, and standing. This was noted to be worse with any weightlifting.[14]

[27] The Appellant was also noted to experience morning stiffness, but this would turn to pain as the day goes on. She was noted to suffer from poor sleep and had a difficult time getting comfortable in bed.[15]

[28] She was also noted to experience bilateral knee pain. As a result, she was limited to walking only short distances.[16]

[29] The medical evidence supports that the Appellant's back, and knee conditions resulted in impairments that interfered with her ability to engage in daily activities and work.

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

– **The Appellant has followed medical advice**

[31] To receive a disability pension, an appellant must follow medical advice.[17] 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.[18]

[32] The Appellant has followed medical advice.[19] The Minister made no comment about the Appellant having not followed medical advice in its submissions. Moreover, in reviewing the file material I saw no suggestion that the Appellant has not followed medical advice.

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[14] GD2-229
[15] GD2-229
[16] GD2-229
[17] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[18] See *Lalonde v Canada (Minister of Human Resources Development*), 2002 FCA 211.
[19] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[33] 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.[20]

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

[34] 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

[35] 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.[21]

[36] I find that the Appellant can work in the real world.

[37] I am mindful in making this determination that the Appellant's MQP expired in December 2012 or on a prorated basis, August 2013.

[38] However, the evidence is clear that the Appellant continued working until 2018.

[39] The Appellant's record of earnings demonstrates substantially gainful earnings in 2016 and 2017.[22] She had earnings just below the substantially gainful amount in 2018.

[40] The Minister made an inquiry with the Appellant's employer at the time to determine the nature and extent of the work that she performed. To do this it sent a questionnaire to the employer to fill out.

[20] See *Klabouch v Canada (Social Development)*, 2008 FCA 33.
[21] See *Villani v Canada (Attorney General)*, 2001 FCA 248.
[22] The CPP Regulations sets out a formula for establishing substantially gainful earnings at Section 68.1.

[41] In the Employer's Questionnaire, the employer noted that the Appellant took all of the hours that were available and that her attendance was good, the quality of her work satisfactory and that she was an asset to the team until she was physically unable to do the work, which was described as physical work involving lifting, standing, bending, and reaching.[23]

[42] The employer also noted that while no special equipment was required, the Appellant did require assistance for carrying linen and had some difficulty with prolonged standing.

[43] While limitations were identified for which the employer indicated accommodations were made, the employer stated that the Appellant was able to do her job until her physical restrictions progressed such that she was no longer able to continue as of September 2018.

[44] I asked the Appellant during the oral hearing to address these responses from her former employer and to correct anything that she thought may be inaccurate. She confirmed the information contained in the employer's response was accurate.

[45] The Appellant told me that she did the work required of her every day.

[46] She was provided with assistance from staff that worked on site. She told me they would assist with loading her vehicle with the laundry and that her husband would assist her in unloading her vehicle. However, she was responsible for doing the laundry and in particular folding napkins.

[47] The Appellant's representative asked her about a notice from her physician that indicated 90% of her job was done by others. The Appellant testified that this was incorrect. She was responsible for doing her work. My understanding, having heard from the Appellant is that while she was responsible for doing the laundry and folding napkins, she was assisted with loading and unloading her vehicle.

[23] GD2-100-102

The Appellant did not work for a benevolent employer

[48] Under the CPP, if the Appellant has substantially gainful earnings, they may still qualify for a CPP disability benefit if they worked for a benevolent employer. 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.[24]

[49] When I think about the job demands placed on the Appellant, I am mindful that she worked for this employer for approximately 6 years. During that time, the employer was satisfied with her work effort and noted that the Appellant worked whenever work was available. I am also mindful that she was provided with some assistance with loading her vehicle to bring materials to her home for washing.

[50] However, I am unable to conclude that this amounts to benevolent employment. The demands placed on her appeared to be no different than any other person would have in her circumstances. Her work product was meaningful, and the expectations were that she would return the next day with clean laundry so that the materials would be ready for the next group of people.

[51] For these reasons, I am unable to conclude that the Appellant worked for a benevolent employer.

[52] Having determined that the Appellant did not work for a benevolent employer, I am satisfied that the Appellant’s earnings were substantially gainful in 2016 and 2017. As a result, she was regularly able to engage in substantially gainful employment after the expiration of her MQP.

[53] Therefore, she did not have a severe disability.

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

Conclusion

[54] 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 was prolonged.

[55] This means the appeal is dismissed.

Adam Picotte

Member, General Division – Income Security Section