



Citation: *AT v Minister of Employment and Social Development*, 2023 SST 83

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

Decision

Appellant: A. T.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 26, 2022 (issued by
Service Canada)

Tribunal member: George Tsakalis

Type of hearing: Videoconference

Hearing date: January 9, 2023

Hearing participants: Appellant
Appellant's spouse

Decision date: January 16, 2023

File number: GP-22-1376

Decision

[1] The appeal is allowed.

[2] The Appellant, A. T., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of April 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant was born in 1962. He finished high school and went to trades school. He received certificates in scaffolding and appliance repair. The Appellant always worked in physical jobs. He last worked as a deckhand on a lobster boat in December 2020. The Appellant had suffered from Crohn's disease for many years. He was diagnosed with a major neurological disorder in March 2021.

[4] The Appellant applied for a CPP disability pension on September 2, 2021. The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says his medical condition stops him from working at any type of job.

[6] The Minister says that the medical evidence did not show that the Appellant had a disability as defined under the CPP.

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2020. This date is based on his CPP contributions.¹

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 GD2-79-80.

[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.²

[10] This means I have to look at all of the Appellant’s medical conditions together to see what effect they have on his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Appellant is able to regularly do some kind of work that he could earn a living from, then he 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.³

[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 Appellant has to prove he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he is disabled.

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of December 31, 2020. I reached this decision by considering the following issues:

- Was the Appellant’s disability severe?
- Was the Appellant’s disability prolonged?

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.

Was the Appellant's disability severe?

[15] The Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations do affect his ability to work

[16] The Appellant has Crohn's disease, myasthenia gravis, and anxiety. Myasthenia gravis is a neurological condition that leads to muscle weakness. It can result in difficulties with vision, walking, and swallowing.

[17] However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.⁵ 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 his ability to work.⁶

[18] I find that the Appellant has functional limitations that affect his ability to work.

– What the Appellant says about his functional limitations

[19] The Appellant says that his medical condition has resulted in functional limitations that affect his ability to work.

[20] The Appellant struggled in school because of dyslexia. He got his GED when he was 31 years old. He worked in physical jobs throughout his life. He worked as a mechanic in the army. He worked on an assembly line at an automobile factory. He worked as a heavy equipment and machine operator. He went to trades school and obtained an appliance service technician certificate. He ran his own appliance repair business for six years. He obtained a scaffolding certificate and worked as a scaffolder from 2013 to 2017 in the oil and gas industry. He stopped working in the oil and gas industry because he burned out. The hours were long, and he was spending too much time away from home.

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[21] The Appellant then worked as a labourer for a tree service company from October 2019 to February 2020. He worked full-time loading and unloading equipment and operating chain saws. He was laid off from this job because of the COVID-19 pandemic.

[22] The Appellant last worked as deckhand on a lobster boat for three weeks in November and December 2020. He was laid off before Christmas because this was seasonal work. The Appellant said he struggled at this job. He noticed problems with his strength and endurance that he had never experienced before.

[23] The Appellant thought his condition started deteriorating in September or October 2020. He had low energy. He had some difficulty walking and felt that he staggered to the left. He had difficulty lifting. The Appellant thought that he had some sort of bug that would go away. He did not go to the doctor to complain until he “crashed”. He ended up going to the emergency room in January 2021 with severe swallowing difficulties.

[24] The Appellant’s spouse testified that the Appellant experienced significant fatigue when he worked on the lobster boat in November and December 2020. He had difficulty swallowing in December 2020, which is a symptom of myasthenia gravis. The Appellant’s birthday is on December 31st. She and the Appellant remembered that he experienced drooping in one his eyelids at the time of his birthday in 2020. Drooping eyelids are another symptom of myasthenia gravis.

[25] The Appellant and his spouse both testified that myasthenia gravis has had a devastating impact on his life. The Appellant has experienced incontinence. He had had Crohn’s disease for many years. But myasthenia gravis makes him less aware of when he is having a bowel movement. He has difficulty completing his housekeeping chores. He starts his household chores and does not complete them. He has difficulty driving because of blurred vision. He has difficulty standing. He lost 25 pounds because he had difficulty swallowing.

[26] The Appellant wants to work. But he feels that he cannot work at any job. He was offered the chance to return to work in 2021 on the lobster boat. But he turned the job offer down because of his medical condition.

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

[27] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2020.⁷

[28] The Minister says the Appellant did not provide such evidence. The Appellant did not go to the emergency room for his illness until January 2021.⁸ I agree that the Appellant did not see a neurologist until February 2021.⁹ The neurologist suspected the Appellant had myasthenia gravis and provided the Appellant with medication to deal with that condition. The Appellant was not formally diagnosed with myasthenia gravis until undergoing an electromyography in March 2021.¹⁰

[29] However, I am still satisfied that the Appellant began experiencing myasthenia gravis symptoms in December 2020.

[30] The Appellant saw a neurologist on February 24, 2021. The neurologist noted that the Appellant had begun experiencing myasthenia gravis symptoms six to eight weeks before this appointment.¹¹ This means the Appellant may have begun experiencing these symptoms before December 31, 2020.

[31] The Appellant’s neurologist also said in a June 2022 report that the Appellant began experiencing weakness very late in 2020 or very early in 2021.¹²

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁸ See GD2-210

⁹ See GD2-115-116

¹⁰ See GD2-111-112

¹¹ See GD2-115-116

¹² See GD2-93-94

[32] The Appellant told a Minister's representative that he was perfectly fine until his symptoms of myasthenia gravis started in January 2021. The Appellant almost had to go on a ventilator because of difficulty swallowing.¹³

[33] However, the medical evidence shows that the Appellant complained of pain with swallowing when he saw his family doctor on December 17, 2020.¹⁴

[34] I find that I find that the Appellant's myasthenia gravis symptoms started in December 2020. There is documented evidence of some swallowing difficulty before December 31, 2020. His neurologist referred to symptoms possibly starting in late 2020. The Appellant and his wife said he suffered from fatigue before December 31, 2020. He and his wife remembered he had a droopy right eyelid on his birthdate. I am troubled that the Appellant told a Minister's representative that he was perfectly fine until January 2021. But the Appellant is not a medical doctor. He may not have understood the significance of his medical symptoms before December 31, 2020, but I am satisfied that they existed at that time.

[35] The medical evidence confirms the evidence of the Appellant and his spouse that myasthenia gravis has had a major impact on the Appellant's life. The Appellant has experienced drooping eye lids.¹⁵ He has had difficulty chewing and swallowing.¹⁶ He has had double vision.¹⁷ He experienced urgency with bowel movements and chronic diarrhea.¹⁸ He experienced weakness and fatigue, and lacked energy.¹⁹

[36] The Appellant's family doctor advised the Minister in March 2022 that the Appellant's myasthenia gravis symptoms were unpredictable. They affected his ability to perform and complete tasks. The doctor did not think the Appellant would be able to work.²⁰

¹³ See GD2-153

¹⁴ See GD2-178

¹⁵ See GD2-177

¹⁶ See GD2-115-116

¹⁷ See GD2-174

¹⁸ See GD2-97 and 115-116

¹⁹ See GD2-15-16, 109-110 and 174

²⁰ See GD2-14

[37] The Appellant's family doctor completed a medical report for the Minister in June 2021. He said the Appellant had difficulty with overhead reaching. The Appellant had an inability to concentrate on tasks. The Appellant could not lift. The Appellant's family doctor believed that he could not work.²¹

[38] In June 2022, the neurologist, told the Minister that the Appellant should avoid physical activity because physical activity worsened his medical condition. He also said that myasthenia gravis affected the Appellant's eye muscles. This meant that any job that required the Appellant to use his eyes for repeated tasks could worsen his medical condition.²²

[39] The Minister pointed out that some of the medical evidence showed the Appellant's medical condition had improved. He was able to drive, his ability to swallow had improved, and he was walking normally.²³ However, I am satisfied that the Appellant still had a severe medical condition that began in December 2020. There were acute phases of the Appellant's medical condition, especially in early 2021 from which the Appellant showed improvement. But his condition never improved to the point where he could return to work.

[40] I acknowledge that the Appellant has Crohn's disease and anxiety. But his disabling condition is myasthenia gravis.

[41] The medical evidence shows that the Appellant's myasthenia gravis led to severe fatigue, difficulty seeing, driving, concentrating, and lifting that prevented him from doing his usual physical work by December 31, 2020.

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

²¹ See GD2-206-214

²² See GD2-93-94

²³ See GD4-5-6

– **The Appellant has followed medical advice**

[43] 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

[44] The Appellant has followed medical advice.²⁶ He has seen neurologists. He has tried medications, including Mestinon and Prednisone to treat his myasthenia gravis. He has also tried walking exercises recommended by his doctors.

[45] 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 him from earning a living at any type of work, not just his usual job.²⁷

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

[46] When I am deciding whether the Appellant can work, I can't just look at his medical condition and how it affects what he can do. I must also consider factors such as his:

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

[47] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.²⁸

[48] I find that the Appellant can't work in the real world. The Appellant was 58 years old on December 31, 2020. He understands English. He has some post-secondary

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

²⁸ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

education. But he struggled in school. His work experience has been confined to physical work. He has little experience using computers. The Appellant's background suggests that he can only work at physical jobs and sedentary jobs that do not require using computers.

[49] I am satisfied that the Appellant could not perform physical work by December 31, 2020 because he lacked energy to perform such work.

[50] I do not believe the Appellant could have handled any type of sedentary work by December 31, 2020 because of his impairments, which included severe fatigue and difficulty concentrating. I do not believe the Appellant can upgrade his education and work on a computer because of severe fatigue and vision problems. I do not believe that he could have handled a driving job because of severe fatigue and vision problems. I accept the evidence of the Appellant, his spouse, and his family doctor that his symptoms are unpredictable and affected his ability to complete household and work tasks. I do not believe the Appellant could have sustained activities for a long enough period of time to work in a real world setting. I also do not believe the Appellant could have worked on a regular basis at any type of job because of the unpredictability of the severity of his symptoms that began in December 2020.

[51] I am satisfied the Appellant suffered from myasthenia gravis in December 2020 and has not had work capacity since. His testimony was credible. He had an excellent work ethic. His Record of Earnings showed that he worked for more than 30 years. I am satisfied that he would work if he could. I am satisfied that his medical condition stops him from working at any job. When an Appellant does not have any work capacity, they do not have to find alternative employment.²⁹ I do not believe the Appellant has had work capacity since December 2020.

[52] I find that the Appellant's disability was severe as of December 2020, which is around the time he began experiencing symptoms of myasthenia gravis.

²⁹ See *Inclima v. Canada (Attorney General)*, 2003 FCA 117 and *Balkanyi v. Canada (Attorney General)*, 2021 FCA 164

Was the Appellant's disability prolonged?

[53] The Appellant's disability was prolonged.

[54] The Appellant's condition began in December 2020. It has continued since then, and it will more than likely continue indefinitely.³⁰

[55] Myasthenia gravis has no known cure. The Appellant's family doctor does not expect that he will return to work.³¹

[56] I find that the Appellant's disability was prolonged as of December 2020.

When payments start

[57] The Appellant's disability became severe and prolonged in December 2020.

[58] There is a four-month waiting period before payments start.³² This means that payments start as of April 2021.

Conclusion

[59] I find that the Appellant is eligible for a CPP disability pension because his disability was severe and prolonged.

[60] This means the appeal is allowed.

George Tsakalis

Member, General Division – Income Security Section

³⁰ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that you have to show a severe and prolonged disability by the end of your minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

³¹ See GD2-212

³² Section 69 of the *Canada Pension Plan* sets out this rule.