



Citation: *JK v Minister of Employment and Social Development*, 2023 SST 1056

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

Decision

Appellant: J. K.
Representative: Ashwin Ramakrishnan

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 29, 2022 (issued by
Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Teleconference
Hearing date: July 14, 2023
Hearing participants: Appellant

Decision date: July 31, 2023
File number: GP-22-1067

Decision

[1] The appeal is allowed.

[2] The Appellant, J. K., is eligible for Canada Pension Plan (CPP) disability benefits. Payments start as of April 2020. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is a 45-year-old man. He had a heart attack in 2011, when he was in his early 30s.

[4] At the time of the heart attack, the Appellant was working as a field assessor for a municipal assessment agency. His job involved a lot of travel. His job required him to go to people's homes and do inspections of their property. The assessments were not scheduled and so his visits caught people off guard. Sometimes, the unannounced visits led people to be angry with him and to act aggressively towards him. After a while, this took a toll on the Appellant's mental health.

[5] The Appellant returned to work about 6 weeks after the heart attack. He continued working for many years after that. Over time, his mental health got worse. So, he applied to be a residential assessor. A residential assessor analyzes data to determine the value of property for tax purposes.¹

[6] The Appellant got the residential assessor job. This job was supposed to be different from his job as a field assessor because it was supposed to be an office job. However, his boss wanted him to do the field assessor job and the residential assessor job at the same time. The Appellant knew he couldn't do both jobs, so he saw his family doctor and got a letter saying he could only do the office job.

[7] The Appellant did the office job for about one year, but his mental health didn't improve. He stopped working in June 2019, and hasn't worked since.

¹ Page GD2-47

[8] The Appellant applied for CPP disability benefits in March 2021. In his application, he said he can't work because depression, anxiety and stress prevent him from having the mental capacity needed to perform at work and at home.²

[9] The Minister of Employment and Social Development (Minister) denied his application at both the initial and reconsideration levels of review. The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[10] The Appellant says his disability is severe and prolonged. He can't go back to his usual job, and he doesn't have the ability to do a different type of job. He gets panic attacks every day, he struggles being around other people, his memory is bad, and he has difficulty with concentration. Even if he got a job, he wouldn't be a reliable employee. He's been compliant with treatment, but his disability has just gotten worse.

[11] The Minister acknowledges that the Appellant may not be able to return to his job as a residential assessor. However, the Minister believes the Appellant should be able to do a different type of job that is suited to his abilities. The Minister also asserts that the Appellant hasn't followed all of the treatment recommendations that have been made to him.

What the Appellant must prove

[12] To succeed with his appeal, the Appellant must prove he has a disability that was severe and prolonged by December 31, 2021. This date is based on his contributions to the CPP.³

[13] The words "severe" and "prolonged" are defined in the CPP legislation.

² Page GD2-39

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 subsection 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on pages GD2-61 to GD2-66.

[14] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁴

[15] 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 disability benefits.

[16] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

[17] 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.

[18] The Appellant has to prove his case. He has to prove it on a balance of probabilities. This means that he has to show that it is more likely than not he was disabled by December 31, 2021.

Matters I have to consider first

I accepted documents that were filed late

[19] The filing deadline for documents was June 10, 2023.⁶ After the filing deadline, each party filed more documents.

[20] The Appellant filed medical documents on June 22, 2023.⁷ The Minister filed an addendum to their written submissions on June 30, 2023.⁸

⁴ The definition of "severe" is set out in subparagraph 42(2)(a)(i) of the *Canada Pension Plan*.

⁵ The definition of "prolonged" is set out in subparagraph 42(2)(a)(ii) of the *Canada Pension Plan*.

⁶ The Tribunal explained the filing deadline in its letter of April 11, 2023.

⁷ Pages GD7-1 to GD7-38

⁸ The Minister's addendum is at pages GD8-1 to GD8-3.

[21] At the beginning of the hearing, I asked the Appellant's representative to explain why he couldn't have filed the medical documents sooner than June 22, 2023. He said that his office made a mistake by not noticing sooner that the documents were not on file. He said they corrected the mistake as soon as they realized what had happened. He also pointed out that the late-filed documents are relevant because they are about medical treatment.

[22] I told the Appellant and his representative that I would accept the late-filed documents into the record. I explained that I was doing so mainly because the documents are clearly relevant to the Appellant's appeal and because the Minister had had a chance to comment on them prior to the hearing.

Reasons for my decision

[23] The Appellant has a disability that was severe and prolonged by December 31, 2021. 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 by December 31, 2021?

[24] Yes. The Appellant's disability was severe by December 31, 2021. Here's why.

– My focus is on functional limitations and not diagnoses

[25] The Appellant has been diagnosed with major depressive disorder, generalized anxiety disorder, adjustment disorder, alcohol use disorder, and cannabis use disorder.

[26] However, I can't focus on the Appellant's diagnoses.⁹ Instead, I must focus on whether he has functional limitations that got in the way of him earning a living by the

⁹ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

end of 2021.¹⁰ 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.¹¹

– **The Appellant has functional limitations that affected his ability to work by the end of 2021**

[27] The evidence shows that the Appellant has functional limitations that affected his ability to work by December 31, 2021.

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

[28] The Appellant acknowledges that, from a physical perspective, his heart condition doesn’t prevent him from working. However, he says that his heart condition plays a role in his disability in that it affects his mental health.

[29] The Appellant says that his mental health conditions have resulted in functional limitations that affect his ability to work. He says

- he began having panic attacks and social anxiety when he was working. For example, he would get panic attacks at work. When he got panic attacks while driving to a work site, he had to pull over to the side of the road. When he got panic attacks at the office, he had to lie down on the office floor.
- he also struggled when he wasn’t at work. For example, he reached a point where he couldn’t bring his young son to Beavers anymore. Even going to the beach with his family caused him to feel “scared to death”.
- the panic attacks cause symptoms that mimic the symptoms of a heart attack. These include shortness of breath, tingling in the arms and legs, and pronounced heart beats. When he feels a panic attack coming on, he worries it is another heart attack and the worry just intensifies the panic attack.
- since he stopped working, his panic attacks have only gotten worse. He gets them every day. They are crippling.
- every day is a bad day. When he wakes up in the morning, all he feels is dread. He has no interest in anything.

¹⁰ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹¹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- he doesn't feel emotions anymore. For example, they recently had to put down their dog of 16 years, and he didn't feel any emotions about this.
- he doesn't go shopping anymore. This is because of his anxiety. Even going to a park with his kids is difficult. He'll drive around town until he finds a park that isn't busy. This is because he struggles being around other people.
- His inability to do the things he used to be able to do makes him feel worthless, guilty and irritable.
- His mental health conditions negatively affect his memory, concentration, and ability to multi-task. He "blanks out" all the time.

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

[30] The Appellant must provide some medical evidence to support a finding that his functional limitations affected his ability to work by December 31, 2021.¹²

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

[32] In April 2020, a psychiatrist (Dr. Saleh) reported that since the Appellant's heart attack about 10 years ago, the Appellant gets extreme anxiety and even panic attacks when he experiences symptoms like irregular heartbeats or palpitations. In addition to this, and for more than six months before he stopped working, the Appellant has been experiencing constant racing thoughts and excessive irrational worries that are difficult to control.¹³

[33] In June 2021 (two years after the Appellant stopped work), the Appellant's family doctor (Dr. Kielty) reported that, despite counselling and medications, the Appellant remains **severely restricted**. Dr. Kielty described the Appellant's depressive symptoms as severe, and noted the Appellant has poor concentration and poor executive function.¹⁴

¹² See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹³ Page GD2-133

¹⁴ Page GD2-125

[34] In August 2021, Dr. Kiely noted the Appellant was basically “barricaded” in his house, with very little social interaction.¹⁵

[35] In October 2021, Dr. Keezer, Psychologist, reported that the Appellant had finished 11 of 12 therapy sessions, and was not progressing as she had hoped. She said the Appellant has potential barriers for returning to work, including difficulties with:

- coping with reasonable amounts of expected workplace stress;
- managing workplace relationships, especially those that may include criticism;
- monitoring and regulating stress reactions including fight or flight responses;
- focusing and remembering daily tasks when experiencing stress; and
- balancing home life stress with work life stress.¹⁶

[36] In December 2021, Dr. Kiely reported that the Appellant’s mental health conditions result in **severe impairments** with respect to maintaining routines, social interactions, emotional stability, cognitive function, and restorative sleep. Dr. Kiely also said the Appellant has **moderate impairments** with respect to his self care and memory.¹⁷

[37] In January 2022, Dr. Rasic performed an independent psychiatric evaluation. During that assessment, the Appellant described struggles with worry and panic; problems with concentration, focus and sustaining attention; difficulty with cognitive persistence and pace; and challenges with interpersonal situations leading to avoidance behaviours. All of this was having a **substantial impact** on his functioning. Dr. Rasic diagnosed generalized anxiety disorder and chronic major depressive disorder of moderate severity. With respect to specific limitations, Dr. Rasic said the Appellant has a reduced ability to:¹⁸

- complete tasks with deadlines, time pressures, or high cognitive demands;

¹⁵ Page GD2-141

¹⁶ Page GD2-98

¹⁷ Page GD2-23

¹⁸ Pages GD2-73 to GD2-81

- complete tasks with frequent co-worker/client contact due to interpersonal sensitivity;
- complete tasks where error rate would be significantly impacted by reduced concentration;
- multitask;
- perform tasks that require organization.

[38] In March 2023, Dr. Kielty reported that the Appellant has **severe impairments** with things like concentration, retaining new information, multi-tasking, making decisions, following instructions, completing domestic tasks, interacting with others, tolerating stress and frustration, and being productive and punctual.¹⁹

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

– **The Appellant has made strong efforts to improve his functionality**

[40] To receive disability benefits, an appellant must follow medical advice.²⁰ 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.²¹

[41] The Minister says the Appellant hasn't followed Dr. Rasic's recommendations for medications and additional psychotherapy.

[42] With respect to the medications, the Minister points out that Dr. Rasic said the Appellant's medications (sertraline and bupropion) are appropriate, but the doses are on the low end. Dr. Rasic recommended increasing the sertraline to 200 mg a day and the bupropion (Wellbutrin) to 450 mg a day. Dr. Rasic also said that if the increased dosages don't help, then there are other medications that can be tried, including Aripiprazole (Abilify).²²

¹⁹ Page GD5-3

²⁰ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²¹ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

²² Page GD2-80

[43] I acknowledge that this is what Dr. Rasic recommended. However, I can't find the Appellant has been non-compliant with the medication recommendations.

[44] First, the Appellant increased his dosage of sertraline from 50 mg to 100 mg. The Appellant also increased his dosage of bupropion from 150 mg to 300 mg. These are the maximum dosages he can tolerate, according to his family doctor.²³

[45] Second, the Appellant has given a reasonable explanation for why he wasn't able to increase the dosage of the bupropion further. He explained that when the dosage of his bupropion was increased, he received a call from the pharmacist (more than once) expressing concern about the higher dosage given the Appellant's heart history.

[46] Third, the Appellant also explained that some medications and dosages resulted in intolerable side effects, such as debilitating heart burn, excessive drowsiness, and muscle weakness. The Appellant added that yet another medication was simply too expensive for him to afford. That medication cost about \$1200 every three months.

[47] With respect to therapy, the Minister points out that Dr. Rasic recommended psychotherapy in the form of regular structured sessions using cognitive behavioral strategies on a weekly basis. The Minister acknowledges that the Appellant tried to engage in additional counselling after the consult with Dr. Rasic in January 2022. However, the Minister suggests that the Appellant's efforts weren't enough because he only participated in group-like therapy, and even then he missed 3 of 7 sessions. The Minister also says that the Appellant signed up for an anger management program, but he didn't attend any of those sessions.

[48] Again, I acknowledge that Dr. Rasic did indeed recommend more psychotherapy. However, I don't share the Minister's concerns about compliance.

[49] The evidence shows that in 2022, the Appellant was in the process of transitioning to community support programs because he had lost his medical benefits.²⁴ To his credit, the Appellant had his first consult with an adult mental health

²³ Page GD5-4

²⁴ Page GD1-5

counselling program on February 9, 2022, less than one month after his consult with Dr. Rasic.

[50] At his first consult, the Appellant clearly said he wanted one-to-one services. However, this appears not to have been a timely option for him because the therapist noted she discussed the waitlist and transfer list with the Appellant, after which the Appellant agreed to enroll in an upcoming Anxiety and Depression Group.²⁵

[51] The Appellant started the group program in March 2022.²⁶ He missed 3 of 7 sessions. The reasons for the missed sessions are recorded in the therapist's notes. The reasons were directly related to the Appellant's mental health struggles. For example, the notes show the Appellant missed one of the sessions (his third class) because he'd had a really bad day. He rated the day as 9+ out of 10.²⁷

[52] In these circumstances, I don't view the missed sessions as a compliance issue. The Appellant finished the program.²⁸ Moreover, soon after finishing the program, the Appellant wrote to his therapist and asked about anger management sessions.²⁹ This shows further effort to improve his functionality.

[53] The Minister is correct to point out that the Appellant was enrolled in the anger management program, but didn't attend any sessions. Again, I don't see this as problematic. The Appellant enrolled in the anger management program on his own initiative. It wasn't recommended to him by any of his treating practitioners. Even so, the Appellant gave reasonable explanations for why he couldn't attend that program. He explained that he missed the first two sessions because his brother was in a life-threatening accident and required two brain surgeries. The Appellant had to drive his mother to the hospital in a different city. The Appellant also gave a reasonable explanation for missing the third session. He had simply mixed up the time for the session. He thought the sessions were in the evening rather than the morning. This

²⁵ Page GD7-4

²⁶ Page GD7-4

²⁷ Page GD7-5

²⁸ Page GD7-6

²⁹ Page GD7-7

appears to have been an honest mistake because the evidence includes an email he wrote to his therapist asking about the times because he logged into the zoom meeting and nothing was happening.³⁰

[54] The Appellant told me that after he missed the 3rd session, his therapist told him he couldn't continue with the program. He perceived his final interaction with the therapist to be a very "cold" one and, as such, he couldn't bring himself to re-enroll.

[55] When I look at the evidence as a whole, in the context of the Appellant's mental health conditions, I find the Appellant has made strong efforts to improve his functionality. He has tried several different medications at varying dosages, he has undergone two psychiatric assessments, and he has participated in therapy with several therapists, including Dr. Ruth Parsons (June 2019 to February 2020),³¹ Dr. Quinlan (February 2021 to about April 2021)³², and Dr. Keezer (June 2021 to October 2021).³³

– **The Appellant stopped abusing alcohol and cannabis**

[56] In April 2020, a psychiatrist (Dr. Saleh) reported that the Appellant's diagnoses included an alcohol use disorder (mild to moderate in severity) and a cannabis use disorder (mild to moderate in severity).³⁴

[57] I asked the Appellant if he still has challenges with respect to alcohol and cannabis, and he said he does not. He confirmed he stopped both by December 2021, when his daughter was born.

[58] I accept the Appellant's evidence. I do so knowing that it is consistent with what the Appellant reported to Dr. Rasic in January 2022.

³⁰ Pages GD7-9 and GD7-11

³¹ Pages GD2-46 and GD2-417

³² Pages GD2-146 to GD2-155 and GD2-185 to GD2-189

³³ Pages GD2-142 to GD2-145 and GD2-270 to GD2-273

³⁴ Page GD2-136

– **The Appellant hasn't been able to work since 2019**

[59] The Appellant hasn't had any work capacity since he stopped working in June 2019.

[60] First, the Appellant has had significant functional limitations since stopping work. These include difficulties with concentration, focus, learning new things, social interactions, managing stress, multi-tasking, and being punctual. He struggles with basic activities, like shopping or taking his kids to the park. On top of all of this, he gets unpredictable and debilitating panic attacks.

[61] Second, the Appellant's psychologist and the Appellant's family doctor have said the Appellant can't work.

[62] In October 2021, Dr. Keezer reported that the Appellant doesn't have the skills for a successful return to work. She explained that his current level of functioning would preclude him from being able to experience "normal" levels of workplace stress in an adaptive way.³⁵

[63] In December 2021, Dr. Kielty reported that the Appellant is not competitively marketable to prospective employers. Dr. Kielty explained that the Appellant has been unable to achieve a functional status that would allow him to return to gainful employment.³⁶ In April 2022, Dr. Kielty repeated his opinion that the Appellant's mental health conditions prevent him from working.³⁷ In November 2022, Dr. Kielty added that given the severity of the Appellant's symptoms, he wouldn't even be able to work in a limited role.³⁸ As recent as March 2023, Dr. Kielty confirmed that the Appellant's limitations are severe and he can't work.³⁹

³⁵ Page GD2-98

³⁶ Page GD2-22

³⁷ Page GD3-2

³⁸ Page GD4-3

³⁹ Pages GD5-3 to GD5-5

[64] The opinions of Dr. Keezer and Dr. Kielty are deserving of weight. Both practitioners have seen the Appellant on multiple occasions, and so they are well positioned to comment on the Appellant's capacity to work.

[65] I turn now to child care. The Appellant has three children. His children were born in April 2013, May 2016, and December 2021. The Appellant helps with child care. However, there is nothing in the evidence to suggest that the child care the Appellant provides shows a regular capacity to pursue a substantially gainful occupation.

[66] The Appellant explained that he is not a reliable child care provider. Because of this, his spouse hasn't worked outside of the home since their baby was born in December 2021. Instead, she now works from home, and even then she only works about 10 hours a week. She schedules the bulk of her work for when the youngest child is napping. The Appellant explained that there are other things that they do to make his days easier. For example, they make sandwiches in the evening so that the Appellant doesn't need to make lunches for his children the next day.

[67] Again, the Appellant's ability to help with child care when he is able is not indicative of work capacity.

– **The Appellant has favourable employability factors**

[68] When I am deciding if the Appellant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his age, level of education, language abilities, and past work and life experience. 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.⁴⁰

[69] The Appellant's representative submits that the Appellant doesn't have any transferrable skills and is not employable in the real world. I disagree.

[70] In December 2021, the Appellant was only 43 years of age, and so his age wouldn't be a barrier to getting and keeping a job. He has many years ahead of him

⁴⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

before the average age of retirement. The Appellant is proficient in English. He also has a good education in that he obtained his high school equivalency, studied civil engineering technology in college for two years, and has a certificate from the Institute of Municipal Assessors.⁴¹ Added to all of this is his work history in the field of property assessments. His job required travel, measurements, interactions with the public, and office work. So clearly the Appellant has transferrable skills.

[71] Despite the Appellant's favourable employability factors, his mental health conditions have rendered him incapable regularly of pursuing any substantially gainful occupation since 2019.

Was the Appellant's disability prolonged by December 31, 2021?

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

[73] In December 2021, Dr. Kielty described the Appellant's disabling symptoms as **indefinite**, and he reported that the Appellant's disabling condition is unlikely to improve within a reasonable period of time such that a successful return to the workforce will be possible. He added that the Appellant had exhausted treatment options without success.⁴²

[74] In January 2022, Dr. Rasic noted that the Appellant has been experiencing significant symptoms for some time without substantial improvement. With this in mind, and knowing there were still treatment options to try, he described the prognosis for recovery as fair.⁴³

[75] Unfortunately, the treatments the Appellant tried after January 2022 did not improve the Appellant's functionality in any significant way.

[76] In April 2022, Dr. Kielty reported that the Appellant's mental health disability is prolonged in that it is likely long term and of indefinite duration.⁴⁴

⁴¹ Page GD2-48

⁴² Pages GD2-20 and GD2-21

⁴³ Page GD2-80

⁴⁴ Page GD3-2

[77] About one year later, Dr. Kielty wrote that the Appellant's response to treatment has been poor, and his restrictions are likely permanent. Dr. Kielty said that he didn't expect the Appellant to recover or return to work.⁴⁵

When payments start

[78] The Appellant's disability became severe and prolonged in June 2019, when he stopped working.

[79] However, the CPP legislation says that, for payment purposes, a person can't be considered disabled more than 15 months before the Minister receives their application for disability benefits.⁴⁶ After that, there is a 4-month waiting period before payments start.⁴⁷

[80] The Appellant applied for disability benefits in March 2021. That means he is considered to have become disabled in December 2019 (15 months before March 2021).

[81] Payment of the disability benefits starts as of April 2020 (4 months after December 2019).

Conclusion

[82] I find that the Appellant is eligible for CPP disability benefits because his disability was severe and prolonged by December 31, 2021.

[83] This means the appeal is allowed.

Shannon Russell

Member, General Division – Income Security Section

⁴⁵ Pages GD5-3 to GD5-5

⁴⁶ This rule is set out in paragraph 42(2)(b) of the *Canada Pension Plan*.

⁴⁷ This rule is set out in section 69 of the *Canada Pension Plan*.