



Citation: *MR v Minister of Employment and Social Development*, 2023 SST 172

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

Decision

Appellant: M. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 24, 2021 (issued by
Service Canada)

Tribunal member: Michael Medeiros

Type of hearing: Teleconference

Hearing date: February 1, 2023

Hearing participant: Appellant

Decision date: February 21, 2023

File number: GP-21-1976

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant is 37 years old. She's struggled with mental illness for a long time. She has other medical issues too, including a thyroid disorder. She's worked for the same employer since 2007. In June 2018, she had to stop working because of her medical conditions. She tried returning to work in March 2019, but had to stop again in January 2020. She went back to work in September 2021. She's worked full-time since September 2022.

[4] The Appellant applied for a CPP disability pension on December 10, 2020. 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 continues to have limitations because of her conditions that affect her ability to work. She's a lot better than she was when she stopped working in June 2018. Medication helps, which took time to get right. However, her medications are still getting adjusted, and her conditions create ongoing challenges.

[6] The Minister says the evidence doesn't establish that the Appellant's medical conditions keep her from working. It is recognized that she has chronic mental health conditions that affected her ability to work in 2018 and 2019. However, the psychiatric evidence showed that she responded to treatment. She has now returned to work, as her family doctor had expected.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by the hearing date.¹

[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 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.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 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.

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 at GD5-12. In this case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

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.

Reasons for my decision

[14] I find that the Appellant hasn't proven she had a severe and prolonged disability by the hearing date.

Was the Appellant's disability severe?

[15] 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 affect her ability to work but don't keep her from working

[16] The Appellant has:

- bipolar disorder and borderline personality disorder
- major depressive disorder and anxiety
- hypothyroidism
- iron deficiency anemia
- wrist tendonitis
- sleep apnea / insomnia
- eczema
- torn meniscus in knee
- fractured ankle
- whiplash from motor vehicle accident

[17] However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she has functional limitations that get in the way of her 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 affect her ability to work.⁶

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.

[18] I find that the Appellant has functional limitations that affect her ability to work, but don't keep her from working.

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

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She had to stop working for long periods of time because of her conditions. She's been back at work since September 2021, working full-time since September 2022. She is trying her hardest to continue working while managing her conditions.

[20] The Appellant has worked for the federal government since 2007. In 2017, she moved with her family to a new city. She continued to work for the same employer. In June 2018, she had to stop working because of her symptoms of depression and anxiety. She struggled to get out of bed and ready for work. She had no motivation. She was crying regularly at work. She had problems with concentration and memory. Her anxiety was high. She was experiencing social phobias. She had difficulty sleeping. She wasn't able to do her job.

[21] The Appellant was prescribed medication. It took some time to get the right medication at the right dose. She returned to work in March 2019 on a gradual basis. She was working between two and four days a week up until the end of 2019. She was assessed by psychiatrists and her medication continued to be adjusted.

[22] She stopped working again in January 2020. She called in sick because her eyes were twitching, and she was really stressed out. Her boss said that she needed a doctor's note to return to work. The Appellant saw her family doctor, Dr. Solgi, who had recently taken over her care. He didn't think she was ready to return to work and didn't give her a note. She went through a stressful period in her personal life in 2020. The eye twitching continued. She continued to stay off work. She had further setbacks in 2021 – she tore the meniscus in her knee in March and fractured her ankle in June.

[23] She went back to work in September 2021. She was in a better place mentally. She was more emotionally stable than when she stopped working in January 2020. The

medication was working better. It was a gradual return, starting with two half days a week. It took many months, but she eventually worked her way up to four full days. She was in a motor vehicle accident in November 2021, which caused whiplash, but she only missed one day of work because of it.

[24] In September 2022, she started working full-time hours. She works 5 days a week, 7.5 hours a day, although she takes 45 minutes of sick time a day to allow for body breaks. She still has difficulty sleeping. Her medication continues to be monitored and adjusted. She's only missed 4 full days for insomnia, pain, or her mental health since going full-time.

[25] She says it's been "okay" working again. When she went off work in June 2018, it was really bad. Back then, she was "balling her eyes out" all the time. Now, she doesn't find it as "soul crushing," and enjoys being able to help her clients. She does note that she would have a hard time with her anxiety if she was working in an office instead of from home. She still gets exhausted. She can still get easily upset and emotional with colleagues. She tends to drop things and can't type very well because of her wrists, but ergonomic aids help.

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

[26] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by the hearing date.⁷

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

[28] The Appellant's family doctor, Dr. Solgi, said in his medical report dated May 25, 2021, that she's had bipolar disorder, mood disorders, anxiety, and depression for several years.⁸ These conditions made her tired, emotional, teary, and unable to concentrate. Dr. Solgi also diagnosed hypothyroidism, which was treated with medication that the Appellant responded well to. Hypothyroidism caused fatigue.⁹ Dr.

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

⁸ See Dr. Solgi's medical report, dated May 25, 2021, at GD2-78 to 83.

⁹ See Dr. Solgi's report, dated August 10, 2020, at GD2-253.

Solgi said that the Appellant's mental health conditions were likely to improve, and he expected the Appellant to return to at least modified work within six to twelve months.

[29] The Appellant has seen several psychiatrists. The psychiatric diagnoses include the following conditions:

- bipolar II disorder¹⁰
- borderline personality disorder¹¹
- major depressive disorder¹²

[30] Other medical diagnoses include iron deficiency anemia, eczema, sleep disordered breathing/sleep apnea.¹³

[31] The medical evidence supports that the Appellant's functional limitations affected her ability to work.

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

– **The Appellant has followed medical advice**

[33] To receive a disability pension, an appellant must follow medical advice.¹⁴ 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.¹⁵

[34] The Appellant has followed medical advice. She takes several different medications for her mental illnesses, including a mood stabilizer. It took time to get the right combination of medication at the right dose. She also takes medication for her

¹⁰ See Dr. Mirmiran's assessment, dated August 6, 2019, at GD2-223; and Dr. Telio's report, dated March 24, 2021, at GD2-89.

¹¹ See Dr. Mirmiran's report, dated December 3, 2019, at GD2-237; and Telio's report, dated March 24, 2021, at GD2-89.

¹² See Dr. Osiogo's report, dated September 28, 2018, at GD2-105.

¹³ See Dr. Somerville's report dated October 30, 2020, at GD2-315 and 316; Dr. Solgi's report, dated March 3, 2020, at GD2-225 and 226; Dr. Roman's chart note, dated February 28, 2019, at GD2-172; and Dr. Roman's letter, dated April 9, 2019, at GD2-157.

¹⁴ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁵ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

thyroid disorder. She follows advice about psychological treatment. She's seen a counsellor since early 2020. She would see a psychiatrist more regularly if she could, but she was discharged back into the care of her family doctor.

[35] I now have to decide whether the Appellant can regularly do any type 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.¹⁶

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

[36] 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

[37] 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.¹⁷

[38] If the Appellant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts weren't successful because of her medical conditions.¹⁸ Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.¹⁹

[39] I find that the Appellant can work in the real world. She is only 37 years old with a college education and a strong work history. She's been back to work since September 2021, and working full-time since September 2022. I recognize that this isn't without its

¹⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

¹⁷ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁸ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

¹⁹ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

challenges, but to her credit she's been able to manage her conditions while working regularly for some time now.

[40] The Appellant has earned a substantially gainful living since returning to work in September 2021.²⁰ In 2021, she earned \$12,064 in less than four months of work.²¹ In 2022, she earned at least \$36,847.58.²²

[41] The Appellant has shown that despite her serious medical conditions, she has the capacity for substantially gainful work. There have been periods of time since June 2018 that she wasn't able to work. However, medication, counselling, and her own determination have helped her achieve a sustained return to work.

Conclusion

[42] 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.

[43] This means the appeal is dismissed.

Michael Medeiros
Member, General Division – Income Security Section

²⁰ Section 68.1 of the CPP Regulations says that “substantially gainful, in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension,” which is calculated as 12 times the maximum monthly disability benefit for each year. For 2021, the substantially gainful amount was \$16,693.92. For 2022, it was \$17,577.96.

²¹ See earnings and CPP contributions, at GD5-12.

²² The Appellant testified about her 2022 earnings. She referred to a pay slip that recorded her 2022 earnings up to December 7, 2022.