



Citation: *SV v Minister of Employment and Social Development*, 2023 SST 173

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

## Decision

**Appellant:** S. V.  
**Respondent:** Minister of Employment and Social Development

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

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**Tribunal member:** Selena Bateman  
**Type of hearing:** Teleconference  
**Hearing date:** February 20, 2023  
**Hearing participant:** Appellant  
**Decision date:** February 24, 2023  
**File number:** GP-22-902

## Decision

[1] The appeal is dismissed.

[2] The Appellant, S. V., 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 40 years old. She has mental health conditions, tennis elbow and radial tunnel syndrome. She went off work in February 2021 because of stress, anxiety, and depression. She returned to work in November 2022 and has worked since then, with sick days off work.

[4] The Appellant applied for a CPP disability pension on October 18, 2021. 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't do her job because she has poor concentration and communication. She has multiple stressors in her life. She returned to work on November 1, 2022, because of financial need.

[6] The Minister says that the medical evidence doesn't support a severe disability. The Minister says that while she has limitations, the evidence doesn't keep her from doing suitable part-time work.<sup>1</sup>

## What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that is severe and prolonged by the hearing date.<sup>2</sup>

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<sup>1</sup> See GD5-4 and 5.

<sup>2</sup> 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 GD2-40. In this

[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.<sup>3</sup>

[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.<sup>4</sup>

[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.

## **Matters I have to consider first**

### **The Appellant asked me to adjourn the hearing**

[14] The Appellant asked me to adjourn the hearing (that is, change the hearing date) because she had an urgent family matter to attend to. I agreed to reschedule the hearing. The hearing took place at the rescheduled date and time.

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case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## Reasons for my decision

[15] I find that the Appellant hasn't proven she had a severe and prolonged disability by the hearing date of February 20, 2023.

### Is the Appellant's disability severe?

[16] The Appellant's disability isn't severe. I reached this finding by considering several factors. I explain these factors below.

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

[17] The Appellant has:

- left shoulder tendinosis
- radial tunnel syndrome and right tennis elbow
- anxiety and depression

[18] However, I can't focus on the Appellant's diagnoses.<sup>5</sup> Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.<sup>6</sup> 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.<sup>7</sup>

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

#### – 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:

- She has anxiety and depression. She feels overwhelmed, with poor concentration, poor communication, social withdrawal, and irritability.
- She has carpal tunnel in both hands and wrists, with hand numbness.
- She has left shoulder pain.

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- She has obsessive compulsive disorder. No limitations were identified.<sup>8</sup>
- She has left shoulder pain. Pain disturbs her sleep. She falls asleep around 9:00 am with her child, then wakes up and goes to her bed. She is awake sometimes around 3:00 am. She says she gets 6 hours of sleep a night.

– **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 affect her ability to work by the hearing date of February 20, 2023.<sup>9</sup>

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

[23] The medical records don’t mention obsessive compulsive disorder traits or a diagnosis. I find that she doesn’t have this condition.

[24] The Appellant has other mental health conditions that began in October 2020. She has difficulty maintaining focus on work. She saw Dr. Garcia, psychiatrist, in August 2021. His impression was that she has **situational anxiety** and **depression** related to COVID isolation, caring for a child with special needs, and landlord and work difficulties. The Appellant saw Dr. Garcia a second time in June 2022.<sup>10</sup>

[25] The Appellant has difficulty with sleep and has fatigue.<sup>11</sup>

[26] The Appellant saw Dr. Kazmi, neurologist, for right-hand numbness in September 2020. She had mild to moderate right carpal tunnel syndrome. The medical evidence doesn’t support that she has left carpal tunnel syndrome. She saw Dr. Tuli, orthopedic surgeon, in November 2021. Dr. Tuli diagnosed her with **radial tunnel syndrome** and **right tennis elbow**.<sup>12</sup> The Appellant has left shoulder pain from **tendinosis**.<sup>13</sup>

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<sup>8</sup> The CPP disability application notes “OCD” as a condition that prevents her from working. See GD2-9.

<sup>9</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>10</sup> See GD 2-64, 69, and 70; and GD4-43 and 44.

<sup>11</sup> See GD2-64 and 69.

<sup>12</sup> See GD1-19 and 70.

<sup>13</sup> See GD2-69.

[27] The medical evidence supports that the Appellant's mental health symptoms, pain and right-hand numbness impacted her ability to work her usual job.

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

– **The Appellant hasn't followed all medical advice**

[29] To receive a disability pension, an appellant must follow medical advice.<sup>14</sup> 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.<sup>15</sup>

[30] Dr. Tuli recommended physiotherapy for her tennis elbow and radial tunnel syndrome. If that failed, he thought that carpal tunnel release surgery would help the numbness in her fingers.<sup>16</sup> Dr. Rofeal, family doctor, also suggested physiotherapy for her left shoulder pain.<sup>17</sup>

[31] The Appellant didn't try physiotherapy. Paying for physiotherapy upfront would be a financial concern for her. But she does stretches from an exercise sheet she was provided. I accept the Appellant's explanation as reasonable given her circumstances for why she wasn't able to do physiotherapy. She is making attempts to mitigate these issues in line with the direction provided by her treating physicians.

[32] In 2020, Dr. Kazmi suggested she wear a night brace for her hand numbness.<sup>18</sup> The Appellant wears the brace.

[33] The Appellant tried psychiatric medication to treat her anxiety and depression. The Appellant was not interested in trying further medication because of failed previous trails. In June 2022, Dr. Garcia suggested removing medication due to lack of benefit.

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<sup>14</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

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

<sup>16</sup> See GD1-70 and 71.

<sup>17</sup> See GD2-83.

<sup>18</sup> See GD1-12.

– **Psychotherapy was recommended, but not tried**

[34] For her anxiety, Dr. Garcia suggested cognitive behavioural therapy as a treatment, either through her workplace benefits, private counseling or with a local family services organization. Dr. Garcia also thought that grief therapy and maybe marital therapy would help with her recovery. He noted that he didn't provide this service himself.<sup>19</sup>

[35] Dr. Rofeal also thinks she needs psychotherapy for anxiety and depression. He advised her to seek psychotherapy three times according to the medical records.<sup>20</sup>

[36] The Appellant refused therapy. She says:

- She has a hard time committing to appointments. She is worried about feeling judged.
- She didn't try therapy through Family Services of York Region. Someone may recognize her, which would cause her embarrassment. She doesn't want people to know about her personal life.
- She refused outpatient therapy through Ontario Shores. She completed a phone assessment, but then turned down the service. She didn't want to go to the location to have in-person therapy. The Appellant didn't inquire about phone or video therapy. She didn't talk to Dr. Rofeal about refusing this service.
- She didn't try couples counseling. She doesn't want to talk about her personal life.
- She can't afford to see a psychologist.<sup>21</sup>

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<sup>19</sup> See GD4-43.

<sup>20</sup> See GD1-51 and GD2-74 and 84.

<sup>21</sup> See GD4-52.

– **The Appellant’s refusal to try therapy isn’t reasonable**

[37] The Appellant’s care providers recommended therapy to treat anxiety and depression. The Appellant hasn’t tried therapy. I find that she hasn’t made reasonable efforts for the following reasons.

[38] She is aware of her anxiety condition.

[39] I don’t find that her disability or personal situation acted as a significant barrier to her accepting treatment. Talking to people causes her anxiety or may cause possible embarrassment. However, the medical records show that she attends appointments with her doctors for physical and mental health needs. This suggests that while possibly difficult, engaging with the medical system and health care professionals is not a complete barrier to her receiving treatment.

[40] She follows no other mental health therapeutic interventions suggested by her treating care providers. Her psychiatrist and family doctor both suggested therapy as a course of treatment for her main disabling conditions.

[41] The Appellant saw Dr. Rofeal on April 1, 2022. She said she couldn’t afford to see a psychologist. Dr. Rofeal then made a referral to Ontario Shores for treatment of poor functioning, depression, and anxiety. He noted that she would be open to telemedicine services.<sup>22</sup> The Appellant didn’t talk to Dr. Rofeal about her reasons for declining Ontario Shores or find out if phone therapy would be available, which she prefers.

[42] Some health and community services are no cost or low-cost, reducing or eliminating the issue of accessibility. I accept that private therapy would not be financially possible for the Appellant’s situation.

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<sup>22</sup> See GD4-52 to 55.



[43] The Appellant didn't produce evidence to suggest that her doctors changed their minds about her need for therapy or that they more recently suggested alternative treatment.

[44] The Appellant made other attempts to treat her mental health conditions. She exercises. She uses apps to quit smoking and drinking alcohol. She does online searches for self-improvement material. She gets daily emails from "Better Health" on topics such as self-improvement, life and philosophy, and meditation. She pursued medical cannabis to help treat her mental health symptoms.

[45] Her own attempts to treat her mental health aren't similar to psychotherapy; they aren't an acceptable substitute. Her approach isn't what Dr. Rofeal or Dr. Garcia think she needs to treat her mental health issues. There is no medical oversight. There is no way for her to be assessed and treated. They are not tailored to her needs, and may not be authored by registered therapists or physicians.

[46] Because I found the Appellant's decision to refuse therapy unreasonable, I next need to consider the impact of the refusal on her conditions. The doctors thought there was at least some potential or hope for mental health improvement with therapy. Otherwise, it doesn't make sense for the doctors to suggest this treatment option consistently in the medical evidence.

[47] After stopping psychiatric medication around June 2022, the Appellant was advised to focus on psychotherapy. This tells me that Dr. Garcia thought therapy was important and the next appropriate step in her treatment plan. I give Dr. Garcia's opinion weight because he is a specialist in psychiatry and assessed the Appellant on two occasions.

[48] Following medical advice may have made a difference in reducing her anxiety, stress, and depression symptoms which are her main functional limitations that affect her ability to work.

[49] Even if I found that the Appellant followed medical advice, I would still find that she isn't disabled. She works her usual job that is substantially gainful. To be severe,

the Appellant's functional limitations must prevent her from earning a living at any type of work.<sup>23</sup>

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

[50] 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

[51] 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.<sup>24</sup>

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

[53] The Appellant is 40 years old. She has high school education. She described having difficulty with theory classes in high school, but excelled in English, music, and art. She completed a college program in aesthetics. She speaks English and French. Since 2015 she has been working as a French customer service representative. Her personal characteristics have good employment odds for entry-level jobs, administrative, and customer service roles. Her personal circumstances don't add barriers to employment.

[54] The Appellant completes daily life tasks and care of others. She drives her son to school. She is responsible for meal preparation, groceries, cleaning, and laundry at home. In addition to this, she returned to work.

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<sup>23</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>24</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

– **The Appellant returned to her usual work**

[55] 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.<sup>25</sup> Finding and keeping a job includes retraining or looking for a job she can do with her functional limitations.<sup>26</sup>

[56] The Appellant made efforts to work. These efforts don't show that her disability gets in the way of earning a living.

[57] The Appellant returned to work on November 1, 2022. She says her doctor wrote a note clearing her for work. Her doctor said it was her decision if she wanted to return to work. The Appellant works seven-hour days, five days a week. She earns \$18.25 per hour. She works from home and does customer service and administration duties.

[58] Her functional limitations don't get in the way of her duties. In the medical evidence, the Appellant notes her functional limitations as being unable to communicate with customers and poor concentration. The Appellant doesn't have job performance issues. She says her customer service is great. Sometimes her right hand goes numb with too much use. She uses her left hand instead.

[59] She has reasonable accommodations at work. She takes breaks as needed. Her new manager is supportive and notes that she needs to improve the time that she is at her computer for during her shift. The manager is addressing the issue by offering a 'split shift' with work hours from 9:00 am to 2:00 pm and 5:00 pm to 7:00 pm. In between shifts she can relax to help reduce feelings of being overwhelmed.

[60] Her employer is flexible and willing to offer split shifts. I find that this is a reasonable accommodation to be made by an employer, and not one that would cause undue hardship given the nature of the role. It isn't an accommodation that goes beyond what might be required in the competitive marketplace.<sup>27</sup>

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<sup>25</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

<sup>26</sup> See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

<sup>27</sup> See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

[61] The Appellant is performing a needed role at the company. She is doing valued work in the competitive workforce.

[62] The Appellant is capable of pursuing work with consistent frequency. The Appellant misses time off work, but not all the time is due to her medical conditions. The Appellant has taken approximately 30% of her workdays off due to physical illness (for example, bronchitis), issues related to her child, as well as stress, anxiety, and depression. And this is while she remains without recommended mental health treatment.

[63] I am not satisfied that her disability gets in the way of her earning a living. The evidence doesn't show that the Appellant is unsuccessful at maintaining her employment because of her health conditions.

[64] The Appellant says that she returned to work because of financial reasons. She works full-time because she doesn't want to lose her workplace benefits, vacation, and sick time. Part-time work is available with the company. At the hearing, she said she believes she could maintain 20 hours of work per week.

[65] The evidence suggests that the Appellant is regularly capable of working a remunerative occupation that is substantially gainful. If the Appellant maintains working 24.5 hours per week on average as she has been, she will earn approximately \$1,788 per month. This figure is above what is considered substantially gainful.<sup>28</sup>

[66] Therefore, I can't find that the Appellant had a severe disability by February 20, 2023.

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<sup>28</sup> See section 68.1 of the *Canada Pension Plan Regulations*. The CPP disability maximum monthly payment for January 2023 is \$1,538.67. "Substantially gainful" means an occupation that provides a salary or wage equal to or greater than the maximum amount a person could receive as a disability pension. I considered her return-to-work time between November 2022, to February 2023, and factored in total estimated absences.

## **Conclusion**

[67] I find that the Appellant isn't eligible for a CPP disability pension because her disability isn't severe. Because I have found that her disability isn't severe, I didn't have to consider whether it is prolonged.

[68] This means the appeal is dismissed.

Selena Bateman

Member, General Division – Income Security Section