



Citation: *LQ v Minister of Employment and Social Development*, 2023 SST 428

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

Decision

Appellant: L. Q.
Representative: Lisette Leblanc
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 1, 2022 (issued
by Service Canada)

Tribunal member: James Beaton
Type of hearing: Teleconference
Hearing date: April 11, 2023
Hearing participants: Appellant
Appellant's representative
Decision date: April 17, 2023
File number: GP-22-261

Decision

[1] The appeal is allowed.

[2] The Appellant, L. Q., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of May 2022. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 59 years old.¹ She was born in Italy and immigrated to Canada at age three.² After high school, she worked as a hairdresser for a few years. Then she worked as a housekeeper, most recently at a long-term care (LTC) facility. She stopped working in April 2020, shortly after the start of the covid pandemic in March 2020. The pandemic made her work more demanding. And she was anxious about getting covid herself. She tried to return to work at the LTC facility unsuccessfully in November 2020.³

[4] The Appellant applied for a CPP disability pension on September 24, 2021. She based her application on chronic myeloid leukemia (CML), or blood cancer. She was diagnosed with CML in 2010; it is in remission.⁴ She also listed anxiety, depression, and high blood pressure in her application.⁵ 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 Minister says the Appellant might be anxious about working in LTC because of covid, but she can still work somewhere else. Her CML is in remission and her other conditions have improved.

[6] The Appellant says she can't work anywhere because of the side-effects of her CML medication and her other medical conditions.

¹ The Appellant confirmed her date of birth at the hearing, since two different dates are given in the file.

² See GD7-8 to 12.

³ See the hearing recording.

⁴ See the hearing recording.

⁵ The Appellant's application is at GD2-34 to 56.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2022. This date is based on her contributions to the CPP.⁶

[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.⁷

[10] This means I must look at all of the Appellant’s medical conditions together to see what effect they have on her ability to work. I must also look at her background (including her age, level of education, language abilities, 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 capable regularly of doing 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.⁸

[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 must prove she has a severe and prolonged disability. She must prove this on a balance of probabilities. This means she must show that it is more likely than not she is disabled.

⁶ 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 GD8-9 and 10.

⁷ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁸ 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 had a severe and prolonged disability as of January 2022. 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?

[15] The Appellant's disability was severe by December 31, 2022. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affected her ability to work

[16] The Appellant has:

- CML
- anxiety and depression
- high blood pressure
- sciatica (pain, tingling or numbness radiating from the back down the leg)

[17] However, I can't focus on her diagnoses.⁹ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living by December 31, 2022.¹⁰ When I do this, I must look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.¹¹

[18] I find that the Appellant had functional limitations by December 31, 2022.

– What the Appellant says about her functional limitations

[19] The Appellant says her medical conditions have resulted in functional limitations that affected her ability to work by December 31, 2022.

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

¹⁰ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

[20] The Appellant's CML is in remission. However, the medication she takes for it causes side effects. She must take this medication for the rest of her life. At some point, she switched from the brand name medication (Gleevec) to the generic form (imatinib). She says her side effects got worse at that point, but she can't remember when she switched. She only switched because her health coverage would no longer pay for the brand name medication, which costs about \$5,000 per month.¹²

[21] She says side effects include:

- poor sleep, which makes her fatigued
- poor memory and focus
- nausea
- high cholesterol and low iron
- a high risk of developing diabetes¹³

[22] High cholesterol, low iron, and a high risk of developing diabetes aren't functional limitations. They don't affect her ability to work.

[23] She says she is anxious and depressed. Sometimes she gets panic attacks at the grocery store and has to leave. Usually, though, she is able to keep herself from panicking.¹⁴ In her application, she also rated her ability to do certain things as poor, such as:

- keep at difficult tasks
- figure out what to do when she is stressed
- ask for help from co-workers
- deal with people she doesn't know
- control emotions and impulses that others would probably consider inappropriate

¹² See the hearing recording.

¹³ See GD2-34 to 56 and the hearing recording.

¹⁴ The Appellant said this at the hearing.

[24] She says she has high blood pressure, but she didn't identify any related functional limitations that would impact her ability to work.

[25] She says she has low back pain that radiates down one leg. She can only sit for 10 minutes before she has to change positions. She can only stand long enough to do dishes. She can walk fine, but she goes slowly. She hired a housekeeper to help with some of the chores. She does "light" cleaning herself.¹⁵

– **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 December 31, 2022.¹⁶

[27] The Appellant provided medical evidence from:

- Dr. Chacko, her family doctor
- Dr. Lipton, her oncologist
- Dr. Khan, who is either a general practitioner or a psychiatrist¹⁷
- her physiotherapist

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

[29] The Appellant's persistently poor sleep is well documented in the medical evidence. She has only experienced temporary periods of improvement in this area.¹⁸

[30] The medical evidence reflects struggles with memory and focus. For example, the Appellant is distracted during conversation, she must write everything down, and she needs appointment reminders so she doesn't forget.¹⁹

¹⁵ See the hearing recording.

¹⁶ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁷ The Minister believes Dr. Khan is a general practitioner providing therapy (GD8-4). The Appellant believes Dr. Khan is a psychiatrist providing therapy (see the hearing recording). Ultimately, I don't consider Dr. Khan's status as important as the fact that he provided therapy.

¹⁸ The Appellant's poor sleep began by August 2019 (GD3-90 and 91). Her sleep improved around January and February 2022 (GD3-226 to 235 and GD7-4 and 5) but soon declined again (GD3-235 to 253).

¹⁹ See GD2-92 and 93, GD3-171 to 175 and 226 to 235, and GD9-156 to 166.

[31] The medical evidence supports that she takes imatinib at night because that is the best way for her to manage her nausea.²⁰

[32] Dr. Khan's notes support that she is anxious and depressed.²¹ Dr. Chacko wrote that she is a very anxious person.²² However, her panic attacks have been infrequent since January 2022.²³

[33] Lastly, the medical evidence supports that the Appellant has sciatica.²⁴ Her specific symptoms aren't noted, but I accept the Appellant's testimony on this point. I have no reason to disbelieve what she told me.

[34] The medical evidence supports that the Appellant's functional limitations—specifically her limitations with standing and doing “heavy” cleaning—prevented her from doing her job as a housekeeper by December 31, 2022.

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

– **The Appellant didn't follow all medical advice**

[36] To receive a disability pension, an appellant must follow medical advice.²⁵ If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so.²⁶ If they don't have a reasonable explanation, then I must also consider what effect, if any, the medical advice might have had on the appellant's disability.²⁷

[37] The Appellant hasn't followed all medical advice. Dr. Chacko prescribed Imovane to help her sleep. The Appellant is supposed to take it every night.²⁸ But she only takes it some nights because she feels “uncomfortable” taking it every night. She admits that it does help her sleep. She didn't mention any side effects from it.

²⁰ See GD3-90 and 91.

²¹ See, for example, GD3-182 to 186 and 206 to 215, and GD9-176 to 188.

²² See GD4-4 and 5.

²³ See GD3-215 to 253 and GD9-127 to 156.

²⁴ See, for example, GD3-215 to 225, and GD9-4, 11, and 12.

²⁵ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁶ See *Brown v Canada (Attorney General)*, 2022 FCA 104.

²⁷ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

²⁸ See GD4-5, where Dr. Chacko included “Imovane 7.5 mg od [once daily]” in a list of medications.

[38] The Appellant's explanation for not taking Imovane regularly was vague and unreasonable. Therefore, I must consider the impact on her overall disability of her not following this medical advice. As I discuss below, I believe the Appellant has been disabled since January 2022 even without considering her fatigue.

[39] The Appellant has followed the rest of the medical advice that her healthcare providers have given her. She is diligent about taking imatinib. Initially, she didn't take the full dose of Cipralex for anxiety and depression, but she has been taking the full dose since November 2021.²⁹

[40] For sciatica, the Appellant went to physiotherapy. Her physiotherapist recently moved, so the Appellant is looking for a new one. In the meantime, she continues to do exercises at home. She started seeing her new family doctor a month ago, following Dr. Chacko's retirement.³⁰

[41] 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.³¹

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

[42] 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

²⁹ See GD3-160 to 163, 165 to 169, 171 to 175, and 182 to 186.

³⁰ See GD4-8 to 18 and the hearing recording.

³¹ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

[43] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say she can work.³²

[44] I find that the Appellant can't work in the real world. She was unable to work as of January 2022. Before that, she was still regularly capable of doing substantially gainful work, although maybe not in an LTC facility. On this point, I agree with the Minister. I disagree with Dr. Chacko, who thought the Appellant would no longer return to any type of work by December 2021.³³ Here are my reasons why.

[45] The Appellant's income at the LTC facility was substantially gainful until she stopped working in 2020.³⁴ I believe she could have kept working after that. She didn't give evidence that her job as a housekeeper required sustained focus. In her daily life, she coped with poor memory by writing things down.³⁵ She mainly experiences nausea after taking imatinib. That is why she takes it at night. She told Dr. Lipton and Dr. Khan that she tolerates the nausea.³⁶

– **The impact of covid on the Appellant's ability to work**

[46] Much of the Appellant's anxiety and depression revolves around her fear of getting covid from working in an LTC facility, and the stress of a higher workload caused by increased sanitation standards there. Her evidence on this point was consistent across her application and her testimony.

[47] In her application, she wrote: "Covid made the work load 100x more demanding and difficult." She added: "From my cancer diagnoses, and now Covid, I'm feeling overwhelming anxiety, and extreme fatigue. Working in [a] long term care setting makes

³² See *Villani v Canada (Attorney General)*, 2001 FCA 248.

³³ See GD4-4 and 5.

³⁴ As of 2014, section 68.1 of the *Canada Pension Plan Regulations* defines a substantially gainful income as income that is at least as much as an applicant could get from a disability pension. The Appellant's earnings exceeded that amount from 2014 to 2019 (GD8-10). According to her testimony, she worked regularly scheduled shifts during that period. She was regularly capable of working.

³⁵ See GD3-226 to 235.

³⁶ See GD3-93, 94, and 165 to 169.

it even worse. I'm scared [and] rightfully so! My work place has been hit hard with COVID" (her emphasis).³⁷

[48] The Appellant's representative argued that the Appellant's mental health was impacted **specifically** by the prospect of working in LTC during covid. She wrote:

In April 2020, it is common knowledge that Covid hit long term care facilities particularly hard ... [The Appellant] was one of the unsung heroes of this health crisis as a long-term care worker, and it has taken a significant toll on her mental health. ...

[The Appellant] fulfilled her employment duties by going to work at the long-term care facility, which exposed her to Covid every day prior to the availability of the Covid vaccine. In other words, she was exposed to traumatic circumstances, and it created an environment in which she became extremely anxious, fearful and depressed.

By April 2020, [the Appellant] took a leave of absence from her work to try to protect herself from potentially detrimental and possibly fatal exposure to Covid.

After receiving Covid vaccinations, [the Appellant] felt ready to attempt a return to work in November 2020.³⁸

[49] Dr. Chacko's medical report from October 2021 also draws a connection between the Appellant's declining mental health and her fear of getting covid at work: "The onset of Covid put extreme fear in her life when she became aware of her immunocompromised condition and exposure to cases at workplaces. After her vaccination she returned to work in [November] but now has been overcome with mental and physical exhaustion."³⁹

[50] It makes sense that the Appellant's workload would have increased with covid. And I can understand her fear of getting covid while working in a facility where covid might spread rapidly. However, both of these concerns are related to her **specific workplace**, not her medical conditions. Her anxiety and depression would not keep her

³⁷ See GD2-43 and 44.

³⁸ The Appellant's submissions are at GD9-196 to 205. I have removed references to file page numbers from the quote.

³⁹ See GD2-89.

from working outside of LTC, where the risk of getting covid would be lower and the workload would be less demanding. I note that she is able to leave her house to attend physiotherapy appointments.⁴⁰ She generally manages to avoid having panic attacks.

[51] Furthermore, the Appellant's claim that she was physically unable to do her job after 10 years of taking cancer medications isn't supported by the medical evidence. Dr. Lipton repeatedly wrote that she was doing well on her medications, except in January 2018.⁴¹ The side effects that she does have don't keep her from working.

[52] Finally, objective evidence is needed to establish that an applicant is at greater physical risk from covid than the average person.⁴² The Appellant didn't provide such evidence. In her letter, Dr. Chacko didn't explain how the Appellant's CML, which is in remission, puts her at greater risk than the average person.

[53] In summary, the Appellant's medical conditions didn't keep her from being able to do housekeeping work outside of LTC until January 2022.

– **The reason the Appellant could no longer work as of January 2022**

[54] It was in January 2022, when the Appellant's sciatica began, that she was no longer regularly able to do substantially gainful work of any kind.⁴³ Her physical functional limitations made her unable to work as a housekeeper. She hired her own housekeeper around March 2022.⁴⁴

[55] I don't believe the Appellant can do or retrain for other types of work. She has a high school education, a hairdresser diploma, and good English skills. But she has no experience doing sedentary work. She has only worked as a hairdresser and a housekeeper. Her computer skills are poor.⁴⁵ Her age (59) puts her at a disadvantage

⁴⁰ See GD3-245 to 253.

⁴¹ See GD3-78 to 85, 88 to 91, 93 to 95, 97, and 98, and GD7-4 and 5.

⁴² I am persuaded by the reasoning of the Tribunal's Appeal Division in *Minister (Employment and Social Development) v CY*, 2023 SST 260, which also involved an appellant whose cancer had been in remission for 10 years.

⁴³ See GD3-215 to 225.

⁴⁴ See GD9-120 to 126.

⁴⁵ See GD2-48 and 49, and the hearing recording.

for finding an employer who would hire her to do work in which she has no experience. Even if she had experience, she can only sit for 10 minutes at a time.

Was the Appellant's disability prolonged?

[56] The Appellant's disability was prolonged as of January 2022.

[57] The Appellant was diagnosed with CML in 2010. Although it is in remission, she will have to take medication for the rest of her life. Her medication causes side effects. She has experienced anxiety and depression for years, and sciatica for over a year. She has pursued treatment for these conditions. Despite this, her functional limitations persist. Dr. Chacko doesn't expect her mental health to improve.⁴⁶ There is no medical opinion in the file about whether her sciatica will improve. But I accept her testimony that her sciatica has gotten worse.

[58] All of this suggests that the Appellant's disability will be severe indefinitely.⁴⁷

When payments start

[59] The Appellant's disability became severe and prolonged in January 2022. There is a four-month waiting period before payments start.⁴⁸ This means payments start as of May 2022.

Conclusion

[60] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged by December 31, 2022.

[61] This means the appeal is allowed.

James Beaton
Member, General Division – Income Security Section

⁴⁶ See GD2-86.

⁴⁷ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant must show a severe and prolonged disability by the end of their MQP and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

⁴⁸ Section 69 of the *Canada Pension Plan* sets out this rule.