



Citation: *AA v Minister of Employment and Social Development*, 2022 SST 1631

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: A. A.
Representative: Maninder Singh
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 10, 2021 (issued
by Service Canada)

Tribunal member: James Beaton
Type of hearing: Videoconference
Hearing date: December 1, 2022
Hearing participants: Appellant
Appellant's representative
Decision date: December 7, 2022
File number: GP-21-1813

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. A., 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 50 years old. He last worked delivering pizzas around 2014. He applied for a CPP disability pension on September 2, 2020. He based his application on a number of mental and physical health conditions. The Minister of Employment and Social Development (Minister) refused the Appellant's application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[4] The Appellant says his medical conditions are longstanding and his family doctor doesn't expect him to get better. He says his medical conditions and personal circumstances make him unable to work.¹

[5] The Minister acknowledges that the Appellant's medical conditions cause functional limitations. However, the Minister believes that the Appellant is still regularly able to work that he could earn a living from.²

What the Appellant must prove

[6] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2015. This date is based on his contributions to the CPP.³

[7] The *Canada Pension Plan* defines "severe" and "prolonged."

¹ The Appellant's written submissions are at GD6-4 to 25.

² The Minister's written submissions are at GD4 and GD8.

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 section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are at GD3-6.

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

[9] This means I must look at all of the Appellant's medical conditions together to see what effect they have on his ability to work. I must also look at his background (including his 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 his disability is severe. If the Appellant is regularly able to do some kind of work that he could earn a living from, then he isn't entitled to a disability pension.

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

[11] 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.

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

Reasons for my decision

[13] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2015.

Was the Appellant's disability severe?

[14] The Appellant's disability wasn't severe by December 31, 2015. I reached this finding by considering several factors. I explain these factors below.

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

– **The Appellant’s functional limitations affected his ability to work**

[15] The Appellant has:

- anxiety and depression
- sleep apnea
- asthma
- irritable bowel syndrome (IBS)
- diabetes
- back pain

[16] However, I can’t focus on the Appellant’s diagnoses.⁶ Instead, I must focus on whether he has functional limitations that got in the way of him earning a living by December 31, 2015.⁷ 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 his ability to work.⁸

[17] I find that the Appellant had functional limitations by December 31, 2015.

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

[18] The Appellant says his medical conditions have resulted in functional limitations that affected his ability to work by December 31, 2015.⁹

[19] Due to **anxiety and depression**, he feels unmotivated, hopeless, and frustrated. He experiences panic attacks every day or two. When they happen, he uses a puffer and gets some fresh air.

[20] Due to **sleep apnea**, he only gets a few hours of interrupted sleep per night. So he is tired during the day and will sleep for brief periods throughout the day. He has a CPAP machine, but he can’t wear the mask because it makes him claustrophobic. He

⁶ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁸ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

⁹ What the Appellant says about his functional limitations can be found in his application (GD2-93 to 98) and on the hearing recording.

believes that poor sleep causes his daily **headaches**, which he manages by taking Tylenol and lying in a room with the light off.

[21] Due to **asthma**, he is often short of breath when doing physical activities, like housework. He has puffers, but he says they don't help. He has been hospitalized for flare-ups, most recently in 2019. He says he is **overweight**, which makes his asthma worse. He can't walk or stand for long either.

[22] Due to **IBS**, he frequently experiences muscle cramps and the urge to vomit or to use the bathroom. He also has gastroesophageal reflux disease (GERD), but he didn't explain how this affects his ability to work.

[23] Due to **back pain**, he has trouble bending and carrying heavy objects. When the pain is bad (about once per day), he has to sit down and wait for it to pass.

[24] Due to **diabetes**, he has to urinate often.

[25] He testified that all of these medical conditions have gotten worse since December 31, 2015.

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

[26] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2015.¹⁰

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

– **What the medical evidence says about anxiety and depression**

[28] I find that the Appellant didn't have functional limitations from anxiety or depression as of December 31, 2015.

[29] The medical evidence shows that the Appellant had "a long history of decreased mood and anxiety relating to his work situation" (verbal abuse) in January 2011. This

¹⁰ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

resulted in low energy and poor focus. Dr. Thind (a psychiatrist) diagnosed him with a major depressive episode and prescribed Cipralex. Dr. Thind recommended that he look for another job.¹¹

[30] At that point, Dr. Arthur (the Appellant's family doctor) completed short-term disability paperwork for the Appellant. He said he would reassess the Appellant in two months, and that the Appellant might be able to return to work with a different department and supervisor.¹² Unfortunately, the Appellant's employer terminated his employment while he was on short-term disability leave.¹³

[31] After that, there is very little medical evidence about anxiety or depression. On March 21, 2015, Dr. Arthur wrote that the Appellant was sometimes anxious. But on September 20, 2016, he wrote that the Appellant's anxiety was manageable. It wasn't until July 2019 that the Appellant saw another psychiatrist, Dr. Sabesan, who diagnosed him with major depressive disorder and generalized anxiety disorder.¹⁴

[32] Between 2011 and 2019, there is no medical evidence of ongoing issues with anxiety or depression. The evidence suggests that his poor mental health was directly attributable to his employer in 2011. The Appellant says he was taking medications for his mental health from 2011 to 2015, but this doesn't mean he had functional limitations that interfered with his ability to work during that time.

– **What the medical evidence says about sleep apnea and headaches**

[33] The medical evidence supports that the Appellant had sleep apnea by December 31, 2015, and that he was fatigued as a result.¹⁵ It also supports that he developed chronic headaches around 2013, which continued after December 31, 2015. Exposure to light made the headaches worse.¹⁶ But there is no mention of any related treatment in the medical evidence. The Appellant's own evidence is that he treats his headaches

¹¹ See GD6-26 to 29.

¹² See GD2-57.

¹³ The Appellant said this at the hearing.

¹⁴ See GD2-139 to 141 and 211 to 213.

¹⁵ See GD2-20 to 22, 24, 25, 249, and 250; and GD6-26 to 29.

¹⁶ See GD2-74 and 211; and GD6-31, 39, and 40.

with Tylenol, which is a common over-the-counter medication. He wasn't prescribed anything specifically for headaches. This tells me that headaches were not a significant problem for him.

– **What the medical evidence says about asthma**

[34] The medical evidence supports that the Appellant had asthma and borderline lung disease by December 31, 2015, but not that asthma resulted in functional limitations around that time.¹⁷

[35] His asthma and associated shortness of breath date back to 2005 or earlier. In November 2015, the Appellant told Dr. Farquhar (a respirologist) that he would be short of breath for 15 minutes after walking for 5 to 10 minutes or climbing a couple flights of stairs. A Ventolin puffer provided some relief. However, in February 2016, Dr. Farquhar reported that the Appellant's asthma was well-controlled; in fact, he could decrease his puffer dosage. In May 2016, Dr. Farquhar wrote that the Appellant had mild, well-controlled asthma that didn't interfere with his daily activities or ability to exercise.¹⁸

[36] I acknowledge that the Appellant was hospitalized for a flare-up of asthma in September 2018 and April 2019.¹⁹ But these incidents occurred years after 2015.

[37] There is evidence that the Appellant's weight contributed to the effects of his asthma and sleep apnea, but it wasn't a problem on its own.²⁰

– **What the medical evidence says about IBS**

[38] The medical evidence doesn't support that the Appellant had IBS by December 31, 2015. In 2015 and 2016, the medical evidence reflects that the Appellant had regular bowel movements.²¹ The earliest medical evidence of IBS is in July 2019, when

¹⁷ See GD2-26 and 27.

¹⁸ See GD2-26 to 39, 163, and 164.

¹⁹ See GD2-147, 148, and 151 to 153.

²⁰ See GD2-20 to 22, 24 to 39, 138, 139, and 223 to 233.

²¹ See GD2-211 to 213.

the Appellant told his psychiatrist that he used to vomit at work. Dr. Arthur stated in his October 2020 medical report that the Appellant's IBS began "years ago."²²

[39] I prefer the medical evidence that is closer to December 31, 2015. I believe it is a more accurate reflection of what the Appellant was experiencing at that time. That evidence doesn't support that the Appellant had IBS around December 31, 2015.

– **What the medical evidence says about back pain**

[40] The medical evidence shows that the Appellant injured his back in February 2013. This impacted his ability to:

- walk more than 200 metres
- sit more than an hour
- lift more than 5 kilograms
- climb ladders
- bend and twist
- work at or above shoulder height

[41] It did not impact his ability to stand.²³

[42] It is unclear from the medical evidence whether these limitations improved by December 31, 2015. In the absence of medical evidence one way or the other, I accept that these limitations continued—except for working at or above shoulder height. The Appellant's application suggests that this is no longer a limitation for him.²⁴

– **What the medical evidence says about diabetes**

[43] The Appellant wasn't diagnosed with diabetes until around April 2019. He didn't have symptoms of prediabetes until January 2018.²⁵ This was long after December 31, 2015. So I don't accept that the Appellant had related functional limitations by that date.

²² See GD2-139 to 141 and 223 to 233.

²³ See GD2-41 to 49.

²⁴ The Appellant rated his ability to change a light bulb above his head as "good" (GD2-96).

²⁵ See GD2-147, 148, and 154 to 156.

– **Summary of the Appellant’s functional limitations**

[44] I find that the Appellant had the following functional limitations as of December 31, 2015:

- He was fatigued.
- He had mild headaches almost every day, which were worse with light.
- He could not walk more than 200 metres.
- He could not sit more than an hour at a time.
- He could not lift more than 5 kilograms.
- He could not climb ladders.
- He could not bend, twist or carry.

[45] The Appellant’s functional limitations kept him from doing his most-recent job as a pizza delivery person by December 31, 2015. That job involved walking (including walking up flights of stairs) and potentially heavy carrying.

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

– **The Appellant hasn’t followed medical advice**

[47] To receive a disability pension, an appellant must follow medical advice.²⁶ If an appellant doesn’t follow medical advice, then they must have a reasonable explanation for not doing so.²⁷ 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.²⁸

[48] The Appellant hasn’t followed medical advice regarding sleep apnea.

[49] He tried a CPAP machine, but the mask made him claustrophobic. So he saw a surgeon for a consultation about getting a uvuloplasty (a type of surgery). The surgeon, Dr. Namavarian, told him that he could not get surgery unless he lost 30 pounds. While I am not convinced that the Appellant has made sufficient efforts to lose weight, I accept

²⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁷ See *Brown v Canada (Attorney General)*, 2022 FCA 104.

²⁸ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

that there are risks to surgery.²⁹ The Appellant testified that the risks concerned him. I believe it was reasonable for him not to pursue surgery.

[50] At the same time, an oral appliance was recommended to the Appellant. He didn't remember Dr. Namavarian discussing this with him, but there is evidence that Dr. Arthur discussed it with him.³⁰ The Appellant didn't try an oral appliance. He said he would have tried it if it was offered to him, although he also testified that he didn't think it would help based on what he heard from others who had tried oral appliances.

[51] The Appellant might not remember an oral appliance being recommended to him now. But I believe it was recommended to him and that he decided at that time not to try it. Considering how severe the Appellant's sleep apnea is, I find that not trying an oral appliance was unreasonable. I also find that it might have made a difference to his disability; fatigue was one of the functional limitations that contributed to his disability.

[52] However, even if the Appellant had followed all medical advice, I would still find that his disability wasn't severe. I will explain why.

– The Appellant can work in the real world

[53] When I am deciding whether 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
- past work and life experience

²⁹ See GD2-249 and 250. The Appellant was told to lose weight in 2010 (GD2-20 to 22) and 2011 (GD2-24 and 25). However, his diet remained poor (GD2-28 to 39) and he continued to gain weight (GD2-155 and 156). In 2018, Dr. Farquhar "discussed with him the importance of achieving targeted weight reduction through closer dietary discipline and regular exercise, with a graded increase in physical activity" (GD2-138 and 139). As of June 2020, he wasn't following a diet, although he decreased his pop intake in July 2020 (GD6-39).

³⁰ See GD6-37.

[54] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say he can work.³¹

[55] I find that the Appellant was still able to work as of December 31, 2015.

[56] The Appellant's functional limitations at that time involved physical restrictions, fatigue, and mild headaches. I believe that he still had the residual capacity to do sedentary work, at least part-time.

[57] Although he has no related work experience, he was only 43 years old as of December 31, 2015. He was fluent in English. He had a Grade 12 diploma and a business diploma. So he could have retrained for sedentary work.

[58] I acknowledge the fact that the Appellant had an unhappy schooling experience. He was educated mostly in Abu Dhabi, where he was abused in school. As a result, he has trouble getting along with people in authority. He doesn't react well to "unkind bosses" and he struggles to control his emotions when he is frustrated or angry.

[59] However, the Appellant went on to complete high school in Canada. He earned a business diploma through correspondence (learning from home instead of in a classroom). He held a job with one employer for nearly five years (despite the toxic workplace environment). This shows that he can still learn new skills and work in a competitive work environment. Indeed, the Appellant indicated in his application that his ability to focus for 30 minutes at a time was good, as was his ability to learn new things.³²

[60] I don't believe that the Appellant's poor spelling and poor computer skills would be a barrier to retraining either.³³ Both of these issues can be improved. This isn't a case where the appellant's age makes it unreasonable to expect him to upgrade these skills.

³¹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

³² See GD2-93 to 98 and the hearing recording.

³³ See GD2-97. The Appellant described his computer skills at the hearing.

– **The Appellant didn't try to find and keep a suitable job**

[61] If the Appellant can work in the real world, he must show that he tried to find and keep a suitable job. He must also show that his efforts weren't successful because of his medical conditions.³⁴ Finding and keeping a suitable job includes retraining or looking for a job that he can do with his functional limitations.³⁵

[62] The Appellant made efforts to work. But these efforts don't show that his disability got in the way of him earning a living by December 31, 2015.

[63] After being laid off from his job as a laminator and paint mixer in 2011, the Appellant worked part-time doing cleaning maintenance from April 2013 to October 2014. He also tried delivering pizzas for two different employers.³⁶

[64] The Appellant should be commended for his efforts to work. I believe his testimony that he genuinely wishes to support his family financially. Unfortunately, I don't consider the Appellant's work efforts appropriate in light of his functional limitations. He only tried physical jobs.

[65] Therefore, I can't find that the Appellant had a severe disability by December 31, 2015.

Conclusion

[66] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe by December 31, 2015. Because I found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[67] This means the appeal is dismissed.

James Beaton

Member, General Division – Income Security Section

³⁴ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

³⁵ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

³⁶ See GD2-93 to 98 and the hearing recording.