



Citation: *AF v Minister of Employment and Social Development*, 2023 SST 1813

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

## Decision

**Appellant:** A. F.  
**Representative:** Sergey Logunov  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated May 11, 2023 (issued by  
Service Canada)

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**Tribunal member:** James Beaton  
**Type of hearing:** Videoconference  
**Hearing date:** December 4, 2023  
**Hearing participants:** Appellant  
Appellant's representative  
**Decision date:** December 6, 2023  
**File number:** GP-23-886

## Decision

[1] The appeal is dismissed.

[2] The Appellant, A. F., 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 27 years old. In December 2017, he was mugged on his way home from work. In August 2019, he attempted to overdose on Tylenol. He hasn't worked since then.<sup>1</sup>

[4] The Appellant applied for a CPP disability pension on June 23, 2022.<sup>2</sup> He based his application on post-traumatic stress disorder (PTSD) from the mugging incident, depression, and anxiety. The Minister of Employment and Social Development refused his application. He appealed to the Social Security Tribunal's General Division.

[5] The Minister says the Appellant hasn't followed medical advice and there are still treatments left to try. The Appellant says he has followed medical advice. In his opinion, whenever he hasn't done something that he was advised to do, he had a good reason.<sup>3</sup>

[6] I find that the Appellant hasn't consistently followed medical advice. Although he is following medical advice now, it is too early to say that his disability is prolonged.

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<sup>1</sup> He testified that he signed up for the Canadian army after August 2019, but he didn't finish the training.

<sup>2</sup> This was the Appellant's second application. He had previously applied on August 11, 2021 (GD2-47). He didn't appeal that application to the Tribunal.

<sup>3</sup> The Minister's submissions are at GD5 and GD8. The Appellant's submissions are at GD1-4; GD2-10, 14, 22, 23, 36, and 37; GD6; and GD9.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2021, and continuously since then. This date is based on his contributions to the CPP.<sup>4</sup>

[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>5</sup>

[10] 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 capable regularly of doing some kind of work that he could earn a living from, then he 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>6</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 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.

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<sup>4</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 at GD5-13.

<sup>5</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability. Section 68.1 of the *Canada Pension Plan Regulations* says a job is “substantially gainful” if it pays a salary or wages equal to or greater than the maximum annual amount a person could get from a disability pension.

<sup>6</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

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

### **I accepted late documents**

[14] The Minister submitted documents after the deadline. The Appellant responded to them before I could tell the parties whether I would be accepting them. So I accepted both the Minister's late documents (GD8) and the Appellant's response (GD9). This did not cause unfairness to either party or delay the resolution of the appeal.<sup>7</sup>

### **Reasons for my decision**

[15] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2021, and continuously since then.

### **Was the Appellant's disability severe?**

[16] The Appellant's disability was severe by May 2021. I reached this finding by considering several factors. I explain these factors below.

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

[17] The Appellant has:

- PTSD or trauma disorder<sup>8</sup>
- depression
- anxiety
- attention deficit hyperactivity disorder (ADHD)

[18] However, I can't focus on the Appellant's diagnoses.<sup>9</sup> Instead, I must focus on whether he has functional limitations that got in the way of him earning.<sup>10</sup> When I do

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<sup>7</sup> Section 42(2) of the *Social Security Tribunal Rules of Procedure* (Rules) sets out what factors I must consider when deciding whether to accept late evidence. Under section 8(5) of the Rules, I can apply these factors to late submissions (arguments) as well, even though these aren't considered evidence. Section 5 of the Rules defines "evidence."

<sup>8</sup> Both diagnoses appear in the medical evidence. See GD2-97 to 100 and 116 to 124; GD4-1; and GD6-2 to 17.

<sup>9</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>10</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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.<sup>11</sup>

[19] I find that the Appellant had functional limitations by May 2021.

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

[20] The Appellant says his medical conditions have resulted in functional limitations that affect his ability to work.<sup>12</sup>

[21] He says he has dealt with depression and anxiety for at least a decade, and PTSD since the mugging incident in 2017. He says he has always had ADHD, although it was only recently diagnosed.

[22] As a result of these medical conditions, he struggles in almost every aspect of his daily life. In his application, he indicated that he has trouble with housekeeping, preparing meals, and maintaining personal hygiene. Until recently, he lived with his mother, who assisted with these tasks. He only leaves the house once per month since he dislikes being in public places or situations. He testified that he often spends all day in bed because he worries that he will hurt someone. He doesn't control his emotions well, which impacts his interactions with other people. He copes poorly with change.

[23] He testified that he has a bad back from an accident that happened when he was a child.

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

[24] The Appellant must provide some medical evidence to support that his functional limitations affect his ability to work.<sup>13</sup>

[25] There is no medical evidence to support functional limitations from a bad back. Otherwise, the medical evidence supports what the Appellant says.

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<sup>11</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>12</sup> I considered both of the Appellant's applications (GD2-32 to 35 and 47 to 50) as well as his testimony.

<sup>13</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

[26] The earliest medical evidence is from August 2019, when Dr. Sorinmade (a psychiatrist) saw the Appellant following his attempt to overdose.<sup>14</sup> A workers' compensation form from September 2019 documents hypervigilance, flashbacks, anxiety, and impaired focus.<sup>15</sup> In May 2020, the Appellant was experiencing panic attacks a couple of times per week.<sup>16</sup>

[27] The Appellant's conditions improved temporarily. By April 2020, the Appellant reported better coping abilities and he stopped taking his medication because he was feeling better.<sup>17</sup> However, the Appellant told Dr. Lawrie (his family doctor) that he was anxious again in May and October 2021.<sup>18</sup>

[28] In April 2022, Dr. Alibhai (a psychiatrist) diagnosed the Appellant with a trauma disorder and borderline personality traits. The Appellant told him that he was irritable, prone to angry outbursts, depressed, emotional, unmotivated, unfocused, hypervigilant, and anxious. He wasn't sleeping well.<sup>19</sup> Dr. Lawrie described the Appellant's diagnosis as "complex."<sup>20</sup>

[29] The medical evidence supports that the Appellant has been dealing with a combination of mental health conditions that have impacted his ability to work since May 2021.

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

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

[31] To receive a disability pension, an appellant must follow medical advice.<sup>21</sup> If an appellant doesn't follow medical advice, then they must have a reasonable explanation

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<sup>14</sup> See GD2-104 to 107.

<sup>15</sup> See GD4-47 and 48.

<sup>16</sup> See GD4-61 and 62.

<sup>17</sup> See GD2-103, and GD4-61 and 62.

<sup>18</sup> See GD4-18 to 23.

<sup>19</sup> See GD2-97 to 100.

<sup>20</sup> See GD2-94 to 96. See also GD4-11 to 14.

<sup>21</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

for not doing so.<sup>22</sup> 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.<sup>23</sup>

[32] Much of the Minister's argument rests on whether the Appellant followed medical advice. I find that the Appellant hasn't consistently followed medical advice. Dr. Lawrie pointed this out to the Appellant several times, and the Appellant acknowledged that he had not done everything he was told to do.<sup>24</sup> But I also find that he is following medical advice now. I will address the issue of treatment compliance by discussing the different types of advice that the Appellant received.

#### – Medication

[33] The Appellant didn't consistently follow advice to take medication until May 2023.

[34] In January 2019, Dr. Sorinmade prescribed sertraline (an antidepressant) but the Appellant didn't fill the prescription because he was worried about side effects. He believes that antidepressants work differently for people with ADHD.<sup>25</sup> It was unreasonable not to at least try sertraline to see if it would cause side effects, or to discuss his concerns about ADHD with Dr. Sorinmade.

[35] In August 2019, he started taking fluoxetine (an antidepressant also prescribed by Dr. Sorinmade) but stopped around April 2020. He told Dr. Sorinmade that he stopped because he thought it was making him angry, and he was feeling better anyway. But he told Dr. Lawrie that he stopped because he only wanted to take it if he could also take Adderall, which Dr. Lawrie would not prescribe.

[36] Dr. Sorinmade and Dr. Lawrie encouraged him to restart fluoxetine. He was given the option of adding risperidone if he noticed becoming angrier. Even after his symptoms worsened again in May 2021, he didn't try fluoxetine again, or start risperidone or any other medication, because (according to him) his sister developed a

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<sup>22</sup> See *Brown v Canada (Attorney General)*, 2022 FCA 104.

<sup>23</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>24</sup> See GD2-93; and GD4-3 to 7 and 14 to 16.

<sup>25</sup> See GD2-104 to 107 and the hearing recording.

brain disorder caused by medication. He told Dr. Allibhai (a psychiatrist) in April 2022 that he still didn't want medication.<sup>26</sup>

[37] It was unreasonable not to restart medications that his healthcare providers recommended, based on the effects of unspecified medications on someone else. Taking medications as prescribed would likely have impacted his disability. Indeed, he reported some benefits from fluoxetine in 2020.<sup>27</sup>

[38] In May 2023, Dr. Lawrie prescribed Vyvanse for ADHD after the Appellant was diagnosed by a specialist earlier that month. In June, another doctor at Dr. Lawrie's clinic added Prazosin to treat PTSD and increased the dosage of Vyvanse. Dr. Lawrie agreed with the recommendation.<sup>28</sup> But the Appellant isn't taking Prazosin. He testified that he thought it was for nightmares, which he doesn't have, and that Dr. Lawrie didn't mention Prazosin at his last appointment. There is no record of his last appointment in the documentary evidence. However, I accept his explanation and find that he has been following advice to take medication since May 2023.

#### – Cannabis use

[39] The Appellant followed medical advice to use less cannabis beginning in May 2023. Dr. Lawrie told the Appellant to decrease his cannabis use in October 2019, September 2020, and October 2021. She warned him that it could worsen his anxiety and lead to psychosis.<sup>29</sup> He decreased his cannabis use in April 2022 before increasing it in September 2022.<sup>30</sup> Dr. Lawrie discussed the Appellant's cannabis use with him again in October 2022, and he decreased his use in May 2023.<sup>31</sup>

[40] He testified that he used cannabis more before because it was the only thing that helped him. I don't accept this as a reasonable explanation, given his refusal to take medications that might have helped.

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<sup>26</sup> See GD2-97 to 100 and 103 to 107; and GD4-24 to 26, 61, and 62.

<sup>27</sup> See GD2-103.

<sup>28</sup> See GD4-1 to 3 and GD6-2 to 17.

<sup>29</sup> See GD4-18, 19, 23, and 30.

<sup>30</sup> See GD2-93 and GD4-9, 10, and 14 to 16.

<sup>31</sup> See GD4-1 to 3, 8, and 9.



– **Psychiatric treatment**

[41] The Appellant's record of pursuing psychiatric treatment isn't perfect, but I believe he ultimately made sufficient efforts in this area.

[42] At his first visit with Dr. Sorinmade in August 2019, he was told to make a follow-up appointment. As of October 2019, he hadn't done that. He finally made an appointment for January 2020. He told Dr. Lawrie that Dr. Sorinmade wasn't there when he went for his appointment in February (his January appointment isn't mentioned in the notes). But a letter from Dr. Sorinmade to Dr. Lawrie dated February 18, 2020, says the Appellant missed appointments in January and February. He then saw Dr. Sorinmade in May and October 2020. He stopped seeing Dr. Sorinmade because he didn't find him helpful.<sup>32</sup> The Appellant made sufficient efforts to see Dr. Sorinmade.

[43] Dr. Lawrie referred the Appellant to another psychiatrist, Dr. Allibhai, for diagnostic clarification in April 2022, and the Appellant attended the assessment.<sup>33</sup> Dr. Lawrie then referred him to a third psychiatrist, Dr. Odubote, for ongoing psychiatric management. According to the Appellant, he could never get hold of Dr. Odubote.<sup>34</sup> He is on a waiting list to see a different psychiatrist.<sup>35</sup>

– **Counselling and therapy**

[44] Similarly, the Appellant's record of pursuing counselling and therapy has been inconsistent. I find that he has only diligently pursued treatment in this area since September 2023.

[45] The Appellant gave very different dates for when he began seeing a counsellor, including September 2019, October 2019, October 2020, and January 2021.<sup>36</sup> He didn't provide any records from any counsellors. This makes it impossible for me to determine when or how often he saw a counsellor.

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<sup>32</sup> See GD2-103 to 107 and GD4-20 to 23, 27 to 30, 55, 61, and 62.

<sup>33</sup> See GD2-97 to 100.

<sup>34</sup> See GD4-7 and 8.

<sup>35</sup> The Appellant said this at the hearing.

<sup>36</sup> See GD2-32 to 35, 47 to 50, and 103; and GD4-30.

[46] After workers' compensation funding reportedly ran out, Dr. Lawrie recommended private counselling, noting that he could afford it.<sup>37</sup> Despite this, there is no evidence that he began attending private counselling or that he tried to find a counsellor until September 2023. He resumed attending counselling through workers' compensation at the same time, after winning an appeal to get more funding.<sup>38</sup> Again, there are no records from any counsellors.

[47] The Appellant's failure to follow recommendations for other forms of therapy reinforces that he didn't do enough to pursue treatment until September 2023.

[48] For example, in August 2019 Dr. Sorinmade recommended a day treatment program through Kamloops Mental Health and Substance Use.<sup>39</sup> The Appellant testified that he only went to one group session because he became emotional and he didn't want to cry in front of other people. At the hearing, he said he didn't think the program was appropriate for him since he isn't addicted to drugs. It isn't clear to me that the program was intended strictly for people with drug addictions.<sup>40</sup>

[49] In April 2022, Dr. Allibhai referred him to an emotional regulation distress tolerance program for dialectical behavioural therapy. Sessions would take place virtually on Zoom in a group format. He didn't participate because he didn't want to attend any group sessions. He told Dr. Lawrie that group therapy would not work.<sup>41</sup>

[50] The Appellant's decision not to participate in group therapy or get private counselling until September 2023 was unreasonable. He had the option of attending free group therapy, or paying for private individual therapy (which he could afford) if he was uncomfortable in a group setting. He chose to do neither until September 2023. Although the Appellant says it was hard to get an appointment with treatment providers

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<sup>37</sup> Dr. Lawrie said there was a financial barrier to paying for a private autism assessment (GD2-124), but not with respect to counselling (GD2-93 to 96 and GD4-11 to 14). The Appellant testified that an autism assessment would cost \$3,000 to \$5,000.

<sup>38</sup> See the hearing recording.

<sup>39</sup> See GD2-104 to 107.

<sup>40</sup> The Appellant mentioned attending one group session of a program in Kelowna. This might have been the same program as the Kamloops program. In any case, his reasons for not attending the whole program were the same.

<sup>41</sup> See GD2-93 and 97 to 100; and GD4-9, 10, and 14 to 16.

generally, especially during the Covid-19 pandemic, there is no evidence that he tried to contact a psychologist until September 2023. Rather, Dr. Lawrie's notes reflect that the Appellant didn't follow up on her recommendation.<sup>42</sup>

[51] His healthcare providers believed that therapy and counselling were an important component of his treatment. They likely would have impacted his disability.

[52] I now have to decide whether the Appellant is regularly able to do other types of work. To be severe, the Appellant's functional limitations must prevent him from earning a living at any type of work, not just his usual job.<sup>43</sup>

**– The Appellant can't 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

[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.<sup>44</sup>

[55] The Appellant is young (currently 27 years old) and fluent in English with a Grade 12 diploma. He has some work experience in cellphone and car sales, and he briefly enrolled in the army.<sup>45</sup> In short, he has the basic ingredients to make him employable in the real world, including an education, some work experience, and many years ahead of him before the standard retirement age of 65.

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<sup>42</sup> See, for example, GD2-94 to 96, GD4-11 to 14

<sup>43</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>44</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>45</sup> See GD2-32, 33, 47, and the hearing recording.

[56] However, his mental health conditions impact him significantly. He is unmotivated even to do daily activities. He doesn't interact well with other people. He can't control his emotions. These functional limitations make it unlikely that he could keep a job.

[57] I find that the Appellant can't work in the real world. He has been unable to work since May 2021. Between approximately April 2020 and May 2021, his conditions improved.

### **Was the Appellant's disability prolonged?**

[58] The Appellant's disability wasn't prolonged.

[59] Although the Appellant has experienced mental health symptoms since at least 2017, it is too early to say that his disability is likely to be indefinite, because he only began consistently following medical advice in September 2023—just a few months ago. His compliance with treatment before that was sporadic and partial. For example, while taking fluoxetine in 2019 and 2020, he was still over-using cannabis, according to Dr. Lawrie. She believed that this was negatively impacting his mental health.

[60] He started taking Vyvanse in May 2023. In June, he reported having more control over his mood and feeling less agitated. His dosage was increased in June (the last clinic note available).<sup>46</sup> He also decreased his cannabis use in May 2023. He started seeing two counsellors in September 2023. He was unable to tell me either of their names. This suggests that he hasn't seen them enough to establish a rapport with them or to make progress in addressing what Dr. Lawrie described as a complex set of mental health conditions.

[61] There is no fixed rule as to how long a disability must last before it can be considered long continued and of indefinite duration.

[62] Dr. Lawrie gave a prognosis of "unknown" in a September 2022 medical report.<sup>47</sup> But that was before the Appellant started following medical advice.

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<sup>46</sup> See GD4-1.

<sup>47</sup> See GD2-116 to 124.

[63] On a Canada Tax Disability Credit form from September 2023, Dr. Parhar of the Adult ADHD Centre wrote that ADHD “is a life long chronic condition which should have been diagnosed when the patient was 5 years old.” He checked “yes” next to: “Has the patient’s impairment in performing mental functions necessary for everyday life lasted, or is it expected to last, for a continuous period of at least 12 months?” He checked “no” next to: “Has the patient’s impairment in performing mental functions necessary for everyday life improved or is it likely to improve to such an extent that they would no longer be impaired?”<sup>48</sup>

[64] I give Dr. Parhar’s prediction little weight because it doesn’t directly answer the question of whether the **severity** of the Appellant’s disability will be indefinite. It isn’t enough for a diagnosis to be lifelong. And a person can be “impaired” without having a severe disability under the *Canada Pension Plan*. The severity of a disability is measured in terms of work capacity. I note that the Appellant testified to being a generally good student in school despite having undiagnosed ADHD. He also worked with ADHD before. This suggests that he could do so again, with appropriate treatment. Furthermore, Dr. Parhar only saw the Appellant once and didn’t supervise his treatment at any point.

## Conclusion

[65] I find that the Appellant isn’t eligible for a CPP disability pension because his disability wasn’t severe and prolonged by December 31, 2021, and continuously since then. It has only been a few months since he began following medical advice by taking medications, decreasing his cannabis use, and attending counselling. It is too early to say that his disability is prolonged.

[66] This means the appeal is dismissed.

James Beaton  
Member, General Division – Income Security Section

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<sup>48</sup> See GD6-2 to 17.