



Citation: *TJ v Minister of Employment and Social Development*, 2023 SST 597

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

Decision

Appellant: T. J.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 21, 2021 (issued
by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Teleconference

Hearing date: May 19, 2023

Hearing participants: Appellant

Decision date: May 25, 2023

File number: GP-21-2576

Decision

[1] The appeal is allowed.

[2] The Appellant, T. J., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of October 2019. This decision explains why I am allowing the appeal.

Overview

[3] On March 15, 2017, the Appellant was unimaginably harmed by the death of her daughter. While attending an outing on X during a school camping trip, her daughter suddenly died. This devastated the Appellant. It resulted in significant psychological impairments including generalized anxiety disorder and major depressive disorder. She stopped working as a manager of a storage facility when her daughter passed away.

[4] The Appellant applied for a CPP disability pension on September 24, 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 wrote that she felt unable to continue working beyond March 15, 2017, due to depression and anger. She was unable to sleep or think properly. She wrote that things had gotten to that point that she could no longer handle her emotions. She had turned to drugs and developed trust and concentration issues.

[6] The Minister initially took the position that the Appellant was not entitled to a CPP disability benefit. This was because, when she applied for a benefit, she did not have a doctor to provide medical information in support of her appeal. However, in October 2021, the Appellant returned to see her former family physician, Dr. Dodds. Dr. Dodds provided medical evidence demonstrating the presence of a severe and prolonged disability.

[7] The Minister changed its position and, in its submission, acknowledged that the Appellant had a severe and prolonged disability on or before December 31, 2021.¹

¹ GD12-48

What the Appellant must prove

[8] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2021. This date is based on her contributions to the CPP.²

[9] The *Canada Pension Plan* defines “severe” and “prolonged.”

[10] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[11] 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.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.⁴

[13] 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.

[14] 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.

² 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 GD2-120-121

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

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

Matters I have to consider first

The Matter proceeded while an investigation was ongoing

[15] After the Minister offered a settlement agreement to the Appellant a question arose as to whether an administrative error had occurred. The Appellant asserted that she had filed an application for benefits prior to September 2020. She asserted that she filed an application in 2018. If this was the case, then the Minister could provide a further period of retroactive benefits. On February 27, 2023, the Minister requested that the matter be placed in abeyance pending the outcome of its investigation of an administrative error.

[16] I advised the Minister that I would not be putting the matter into abeyance. Instead, I advised the Minister that the matter would be set down for a hearing in two months, to allow time for the investigation to take place. On April 3, 2023, the Minister requested a further adjournment of 6-8 months to complete the investigation.

[17] Upon receiving this request from the Minister, I had the navigator on file connect with the Appellant to determine if she would be open to this delay or if she wanted to proceed with an oral hearing.

[18] The Appellant advised that she did not want to wait 6-8 months and as such wanted to move forward with the hearing. I granted this request because it is in keeping with an appellant-centric approach and doing so is also in keeping with the Tribunal's *Rules of Procedure* that require the Tribunal to make sure that the appeal process is as simple and quick as fairness allows.⁵

⁵ Section 8 *Social Security Tribunal Rules of Procedure*

Reasons for my decision

[19] I find that the Appellant had a severe and prolonged disability as of May 2017. 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?

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

The Appellant's functional limitations affect her ability to work

[21] The Appellant has:

- Generalized anxiety disorder;
- Major depressive disorder;
- Post-traumatic stress disorder; and
- Bereavement reaction.

[22] However, I can't focus on the Appellant's diagnoses.⁶ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁷ 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 affected her ability to work.⁸

[23] I find that the Appellant has functional limitations that affected her ability to work.

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

⁷ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

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

What the Appellant says about her functional limitations

[24] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says that after her daughter passed away things broke down for her.

[25] The Appellant told me that when she went to renew her mortgage the process was extremely stressful for her. She was unable to cope with this basic financial exercise. Her house was eventually foreclosed on because she was not able to manage this activity.

[26] She tried to go back to work but this was not achievable. When she went into her workplace, she would just stare at a computer screen and her mind was blank. She was eventually terminated from her employment.

[27] The death of her daughter also caused a falling out with her doctor. She was not able to engage with him properly. She would show up at random times when she did not have an appointment booked. Eventually, her physician had to sever his relationship with the Appellant because of her poor mental health.

[28] The Appellant is not able to eat much and does not sleep well. She has also required assistance with any financial activity she engages in because she is very slow.

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

[29] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2021.⁹

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

[31] On October 31, 2021, Dr. Dodds, provided a medical report in support of the Appellant's application for CPP disability benefits.

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

[32] Dr. Dodds wrote that the Appellant had been his patient since October 2021. He wrote that the Appellant had suffered from depression since 2017. This condition caused her to be greatly limited in her functioning. She had very poor concentration, focus, and cognition. She suffered from appetite and sleep disturbances, and she struggled to complete even simple activities of daily living such as self-care and bathing after the sudden death of her daughter in 2017.¹⁰

[33] Dr. Dodds also wrote that the Appellant suffered from generalized and social anxiety. He wrote that the social anxiety made any work outside home impossible. She was overwhelmed easily and then could not complete tasks. She would become confrontational when challenged and had been fired from several jobs.¹¹

[34] Finally, Dr. Dodds, wrote that the Appellant suffered from Post-Traumatic Stress Disorder. This again was caused by the death of her daughter and left her unable to trust the medical cause of her death and tormented her daily.

[35] Also on October 31, 2021, Dr. Dodds, provided a medical report for a Person with disability designation.¹² He wrote that the Appellant was very reclusive and unable to interact well with anyone outside of her home. This made work impossible. He also noted that her focus and concentration were very poor. When she had tried to work over the past three years, she had been fired for her inability to focus, learn new tasks, and would become agitated and hostile at work.¹³

[36] Dr. Dodds noted that the Appellant's ability to read, write, and speak were all poor. He commented on her daily functioning as being major impacts following her disability. These included emotional impact, impulse control, concentration, executive functioning, memory, motivation, and motor activity.¹⁴

¹⁰ GD1-75

¹¹ GD1-76

¹² A Person with Disability designation is a provincial designation in British Columbia that allows individual to access assistance under the *Employment and Assistance for Persons with Disabilities Act*

¹³ GD1-114

¹⁴ GD1-123

[37] Dr. Dodds also noted that the Appellant suffered from chronic diarrhea, was unable to decide or focus to complete tasks, that she was impulsive, easily agitated, had poor comprehension, and impulse control.¹⁵

[38] On January 10, 2022, the Appellant was approved for a person with disabilities designation by the Province of British Columbia.¹⁶

[39] Dr. Thompson wrote that the Appellant has suffered from bereavement reaction since March 15, 2017.¹⁷ This caused the Appellant to have complicated grief, low mood, poor concentration, and a loss of appetite.

[40] Dr. Thompson indicated that this had a severe impact on the Appellant's cognitive ability. She was noted to have a functional limitation with her ability to concentrate.¹⁸

[41] On February 7, 2019, Dr. Thompson diagnosed the Appellant with generalized anxiety disorder and major depressive disorder.¹⁹

[42] By March 26, 2019, Dr. Thompson was becoming concerned with the Appellant's escalating mental health needs. He further noted that the Appellant was likely suffering from delusional psychosis in addition to her major depressive disorder.²⁰

[43] The medical evidence supports that the Appellant's anxiety, depression, and post-traumatic stress disorder have caused significant functional impairments for the Appellant.

[44] The medical evidence demonstrates that the Appellant is unable to focus, cannot comprehend what is happening, and that she has poor impulse control. She is unable to

¹⁵ GD1-124

¹⁶ GD3-1

¹⁷ GD2-50

¹⁸ GD2-51

¹⁹ GD2-59

²⁰ GD2-60

function in a work setting, becomes hostile and agitated and this quickly results in her being terminated from her employment.

[45] She suffers from delusional psychosis, cannot concentrate, and generally has a bare ability to function.

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

The Appellant has followed medical advice

[47] To receive a disability pension, an appellant must follow medical advice.²¹ 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.²²

[48] The Appellant has followed medical advice.²³ The Minister did not raise the Appellant's failure to follow medical advice as a basis to deny benefits. Further, in my review of the file, I did not see any suggestion that the Appellant has not followed medical advice.

[49] 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.²⁴

The Appellant can't 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

²¹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²² See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

²³ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁴ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

- 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.²⁵

[52] I find that the Appellant can't work in the real world.

[53] When I consider the Appellant within a real-world context, I am satisfied that she cannot work in any capacity. The medical evidence in this file is significant. Dr. Dodds detailed that the Appellant is reclused and unable to interact with anyone outside the home. She cannot focus or concentrate. She has attempted to work since the death of her daughter and each time this resulted in quick terminations because of her actions and behaviours.

[54] Similarly, her abilities to read, learn new tasks, write, and speak were all significantly impaired because of her disability.

[55] When I think about what the Appellant could possibly do for work, I am unable to say she can work in any capacity. Her mental health conditions are a significant impediment to her being able to return to work. Indeed, the Minister agrees with this, having offered to settle the matter through an agreement with the Appellant. While the Appellant has a strong work history, her impairments are too broad for her to overcome. She has a severe disability.

[56] I find that the Appellant's disability was severe as of March 2017 when her daughter passed away.

Was the Appellant's disability prolonged?

[57] The Appellant's disability was prolonged.

²⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[58] The Appellant's conditions began in March 2017. These conditions have continued since then, and they will more than likely continue indefinitely.²⁶

[59] Dr. Dodds opined that the Appellant's conditions would remain the same for greater than one year.²⁷ Moreover, the Appellant first experienced her mental health issues in March 2017. These have continued without abatement since that time. There is no indication of any improvement. Given these facts, I am satisfied that her disability is prolonged.

[60] I find that the Appellant's disability was prolonged as of March 2017.

When payments start

[61] The Appellant had a severe and prolonged disability in March 2017.²⁸

[62] However, the *Canada Pension Plan* says an appellant can't be considered disabled more than 15 months before the Minister receives their disability pension application.²⁹ After that, there is a 4-month waiting period before payments start.³⁰

[63] The Minister received the Appellant's application in September 2020. That means she is considered to have become disabled in June 2019.

[64] Payments of her pension start as of October 2019.³¹

²⁶ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that you have to show a severe and prolonged disability by the end of your minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

²⁷ GD1-75;76

²⁸ I considered in this appeal whether the Appellant could benefit from the incapacity provisions of the CPP set out in Section 60. However, I determined that the Appellant was not incapacitated. She told me that at all times she has made decisions for herself, she was never under a committee of estate by the Public Guardian and Trustee, and she is able to manage the payment of her bills. These facts all evidence capacity.

²⁹ Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

³⁰ Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.

³¹ Section 66(4) of the *Canada Pension Plan* says the Minister can take remedial action if it decides a person was denied a benefit, "as a result of erroneous advice or administrative error in the administration of this Act." Only the Minister has that power. The Tribunal doesn't have any authority over this process.

Conclusion

[65] I find that the Appellant is eligible for a CPP disability pension because her disability was severe and prolonged.

[66] This means the appeal is allowed.

Adam Picotte
Member, General Division – Income Security Section