



Citation: *JC v Minister of Employment and Social Development*, 2023 SST 606

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: J. C.
Witness: P. C. (Appellant's husband)
Representative: Allison Schmidt, Chantelle Yang
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 11, 2021 (issued by
Service Canada)

Tribunal member: Carol Wilton
Type of hearing: Teleconference
Hearing date: May 24, 2023
Hearing participants: Appellant
Appellant's representative
Witness 1
Decision date: May 26, 2023
File number: GP-22-131

Decision

[1] The appeal is allowed.

[2] The Appellant, J. C., is eligible for a *Canada Pension Plan* (CPP) disability pension. Payments start as of March 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant was 49 years old in December 2020 when she applied for a CPP disability pension. Her most recent job was as director for several daycares. She stated that she had been unable to work since November 2020 because of depression and anxiety. Her other conditions included fainting spells and neck pain.

[4] The Minister refused the Appellant's application initially and on reconsideration. The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[5] The Minister stated that the Appellant is not entitled to a CPP disability pension. Her mental health was likely to improve with medication changes and counselling. Her fainting episodes were less frequent than before. They would not regularly affect her ability to work.

What the Appellant must prove

[6] For the Appellant to succeed, she must prove that it is more likely than not that she has a disability that was severe and prolonged by December 31, 2020.¹

¹ 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 CPP. The Appellant's contributions are on page GD02-5-6.

[7] The Appellant had CPP contributions in 2021 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if she became disabled between January and August 2021.²

[8] The *CPP* defines “severe” and “prolonged.”

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³ If the Appellant can do some kind of work that she could earn a living from, then she isn’t entitled to a disability pension.

[10] A disability is **prolonged** if it is likely to be long continued and of indefinite duration.⁴ The disability must be expected to keep the Appellant out of the workforce for a long time.

Issues

[11] Did the Appellant’s health conditions result in her having a severe disability, so that she was incapable regularly of pursuing any substantially gainful occupation by August 31, 2021?

[12] If so, was her disability long continued and of indefinite duration?

Reasons for my decision

[13] The Appellant’s diagnoses include:

- Depression and anxiety
- Fainting spells⁵
- Chronic pain
- Insomnia
- Type 2 diabetes, and
- Gastroesophageal reflux disease (GERD).

² This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*. The Appellant testified that her 2021 income was a severance package. The Appellant had no quarrel with the MQP date that the Minister selected.

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

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

⁵ GD02-77. In October 2020, Dr. Juan Guzman Orduz, internal medicine, diagnosed vasovagal syncope. The Appellant had earlier received an alternate diagnosis of postural orthostatic tachycardia syndrome (POTS). That is a condition where the heart rate increases on changing posture. Dr. Orduz didn’t think the Appellant had POTS.

[14] 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 her medical conditions (not just the main one) and think about how they affected her ability to work.⁸

[15] The Appellant explained that she injured her neck in a fall in 2011 or 2012. She has never been pain-free since. In addition, she has suffered from depression all her adult life. However, in about 2019 she became suicidal.⁹ At that point, her mental health became the more important health condition.

- **Mental health**

[16] In her December 2020 CPP disability application, the Appellant stated that insomnia, pain, and fainting spells affected her behavioural and emotional abilities. She had trouble managing her anxiety and being in public places. Her fainting spells affected her short-term memory. They increased her feelings of worthlessness and depression. They also triggered panic attacks.¹⁰

[17] Paul Castonguay, the Appellant's husband, testified that the Appellant used to be "the life of the party." This began to change about ten years ago. She became more emotional. She no longer organized social occasions. By 2020, she was unable to work. She found this depressing – in the past she had held down multiple jobs at the same time. In addition, she got the "winter blues" - her mental health was noticeably worse in the winter than the summer.

[18] The medical evidence supports the Appellant's account of her mental health difficulties.¹¹

[19] In December 2020, Dr. Rachel Maisonneuve, family doctor, stated that the Appellant had decreased concentration and memory, especially after fainting. She had weakness,

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.

⁹ See GD06-89

¹⁰ GD02-36-27

¹¹ The Appellant must provide medical evidence showing that her functional limitations affected her ability to work by August 31, 2021. See *Warren v. Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v. Dean*, 2020 FC 206.

dissociation, and difficulty expressing herself. In addition, she had trouble making conversation, acquiring new skills, focussing her attention, and thinking logically.¹² The Appellant also had anxiety due to her several health conditions.¹³

[20] In April 2021, Dr. Olusola Awoniyi, psychiatrist, reported that the Appellant had persistent depression with generalized anxiety. She had yet to come to terms with not working.¹⁴ In May 2021, Dr. Awoniyi stated that she had increased the Appellant's antidepressant (duloxetine). The Appellant's anxiety had improved and she no longer had panic attacks or mood swings.¹⁵

[21] In July 2021, Dr. Awoniyi reported that the Appellant's mood continued to be good.¹⁶ In October 2021, Dr. Awoniyi reported no significant change, except that the Appellant had more trouble with her mood as winter approached.¹⁷

[22] The Minister relied on Dr. Awoniyi's 2021 assessments in determining that the Appellant's mental health would continue to improve. However, in October 2021, Dr. Maisonneuve reported that the Appellant had depression, post-traumatic stress disorder, and seasonal affective disorder (severe). She had social anxiety and a fear of meeting people. Her childhood had been difficult. She had been responsible for her siblings at an early age.¹⁸ This account is significantly more negative about the Appellant's condition than that of Dr. Awoniyi.

[23] I prefer Dr. Maisonneuve's account for the following reasons:

- She has been treating the Appellant since at least 2011.¹⁹
- The Appellant's mood is always better in the summer than in the period from September to May because of her seasonal affective disorder.
- The Appellant's physical health issues continued to trouble her despite any temporary improvement in her mental health.

¹² GD02-90

¹³ GD02-85

¹⁴ GD02-24

¹⁵ GD06-53

¹⁶ GD06-55

¹⁷ GD06-72

¹⁸ GD06-64

¹⁹ GD02-84

- In December 2021, Dr. Awoniyi stated that the Appellant's mood had deteriorated significantly. She still had trouble with fainting, concentrating, and poor energy levels.²⁰

[24] The Appellant has continued with psychiatric and psychological treatment since December 2021.

- Physical health

[25] In addition to her mental health problems, the Appellant has several physical difficulties.

[26] In her December 2020 application for CPP disability, the Appellant reported that she couldn't remain on her feet for 20 minutes, go up and down 12-15 steps, kneel, or bend down to pick up coins from the floor.²¹

[27] The Appellant had pain in her upper body after her 2011 fall. Her husband testified that she had pain from her neck radiating down her arms. She also had pain in her upper back and shoulders. Sometimes she also had pain in her legs. In September 2021, Dr. Maisonneuve raised the possibility that she had fibromyalgia.²²

[28] At the hearing, the Appellant's husband testified that the two of them used to have a traditional division of household duties. The Appellant did most of the chores. By August 2021, however, he was doing most of them.

[29] In December 2020, Dr. Maisonneuve stated that the Appellant had weak spells, presyncope (light-headedness), and falls. No treatment was available. In addition, if her blood sugar was too high or too low, she developed weakness and fatigue.²³

[30] Dr. Maisonneuve also reported that the Appellant had trouble with the following activities:

- Changing and maintaining body positions
- Walking
- Climbing, and
- Using transportation as a passenger.²⁴

²⁰ GD06-84. This was their last appointment as Dr. Awoniyi was leaving outpatient service.

²¹ GD02-35

²² GD06-56. The Appellant testified that the pain improved somewhat three or four years ago when she started seeing an osteopath and taking CBD capsules.

²³ GD02-88

²⁴ GD02-90

[31] In April 2021, Dr. Maisonneuve diagnosed the Appellant with chronic pain syndrome.²⁵ There is no authoritative definition of chronic pain. It is, however, generally considered to be pain that persists beyond the normal healing time for the underlying injury or is disproportionate to such injury. Further, its existence is not supported by objective findings at the site of the injury under current medical techniques. Despite this lack of objective findings, there is no doubt that chronic pain patients are suffering and in distress, and that the disability they experience is real.²⁶

The Appellant has generally followed medical advice

[32] To receive a disability pension, an appellant must make reasonable efforts to follow medical advice.²⁷ If they don't, then they must have a reasonable explanation for not doing so.²⁸

[33] Since 2021, the Appellant has received treatment from three psychiatrists. She also attended the Bounceback program from July to December 2022.²⁹

[34] In December 2020 and December 2022, Dr. Maisonneuve stated that the Appellant had followed all treatment recommendations. This included osteopathy and physiotherapy.³⁰ The Appellant also took medication for depression, diabetes, headaches, pain, and GERD.³¹

[35] In September 2021, just after her MQP, Dr. Maisonneuve commented that the Appellant had refused an antidepressant.³² At the hearing, the Appellant testified that her diabetes medication was being adjusted at the time. By November 2021, she was back on an antidepressant.³³

[36] I find that the Appellant made reasonable efforts to follow medical advice.

²⁵ GD06-47

²⁶ *Nova Scotia (Worker's Compensation Board) v. Martin*, 2003 SCC 54. In February 2020, an MRI of the Appellant's cervical spine showed only a small disc at one level minimally indenting the thecal sac (sheath around the spine): GD02-70.

²⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

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

²⁹ Bounceback is a program of the Canadian Mental Health Association designed to help people manage depression and anxiety.

³⁰ GD02-85, 88; GD06-158.

³¹ As of November 2022, she was on Jardiance instead of Diamicon: GD06-5. GD02-6, 85, 88; GD06-158.

³² GD06-56

³³ GD06-74, 90. A full list of her medications in July 2022 is at GD06-121

The Appellant cannot realistically earn a living because of her disability

[37] In deciding whether the Appellant's condition was severe, I must take a "real world" approach. This means I must consider factors such as her age, level of education, language abilities, and past work and life experience.³⁴ I must think about how these matters realistically affected the Appellant's ability to earn a living.

[38] In August 2021, the Appellant was 49 years old. Her age would not be an advantage in the job market where she would be competing for jobs with younger people. She does have characteristics that would help her find work. She is bilingual in French and English. She has a diploma in early childhood education. She worked for the same business for most of the period from 2007 to 2020. Her bilingualism, education, and steady work record would serve her well in the competitive marketplace.

[39] In July 2017, Dr. Maisonneuve took the Appellant off work because of depression and anxiety. In November 2019, the Appellant started a gradual return to work. The most she could work was 20 hours a week. In November 2020, she was crying almost every day. She also fainted two or three times a week. She had horrible mood swings. She couldn't concentrate and her short-term memory caused her problems.³⁵

[40] In November 2020, Dr. Maisonneuve stated that the Appellant was unable to return to work indefinitely for medical reasons.³⁶ She testified that she has not worked since. In January 2021, Dr. Maisonneuve recommended that the Appellant stop work completely.³⁷

[41] The Appellant has twice suffered from serious health conditions. Both times she returned to work. In 2011, she had cancer in her uterus. She went back to work after four months.³⁸ But because of her health condition, she was no longer able to work one-on-one with special needs children. She testified that this was too physically demanding. Instead, she was doing supervisory and office work.³⁹

³⁴ *Villani v. Canada (A.G.)*, 2001 FCA 248

³⁵ GD02-20-21

³⁶ GD06-13.

³⁷ GD02-21

³⁸ GD02-20

³⁹ See GD02-40 for her duties.

[42] I find that the Appellant was unable to earn a living at any occupation by August 2021. She had been doing a sedentary job when she left work. She was unable to continue because of depression, anxiety, fainting spells, and other conditions. She had given up a more physically active position in 2011 because of her health conditions. The Appellant was unable to do either physical or sedentary work.

[43] When an appellant does not have any work capacity, they do not have to find alternate employment.⁴⁰

[44] I find that it is more likely than not that by August 31, 2021, the Appellant's disability was severe.

Was the Appellant's disability prolonged?

[45] The Appellant's disability was prolonged.

[46] In December 2021, the Appellant started massage therapy and began using a walker. She also started using a TENS machine for severe neck pain.⁴¹

[47] In March 2022, Dr. Chinyere Nwogbunyama, psychiatrist, stated that light therapy had improved the Appellant's mood. However, she had insomnia frequently and was easily fatigued. Her depression and anxiety were in the moderate to severe range.⁴²

[48] In June 2022, Maria Blackwell, MSW, RSW, reported that the Appellant's levels of depression and anxiety were severe.⁴³

[49] In November 2022, the Appellant stated that she could sit and stand for a maximum of 15 minutes. Then she had to get up and move around. She had a walker and a cane. She had trouble lifting. She drove a car, but stopped on the roadside to stretch. She had three good days a week, and four bad days. She couldn't predict when she'd have a bad day. On the bad days, she took it easy.⁴⁴

⁴⁰ See *Inclima v. Canada (Attorney General)*, 2003 FCA 117, and *Balkanyi v. Canada (Attorney General)*, 2021 FCA 164.

⁴¹ GD06-85

⁴² GD06-89-91

⁴³ GD06-105

⁴⁴ GD06-8-9

[50] In November 2022, the Appellant stated that she had dizzy spells at least two or three times a day. She fainted two or three times a month.⁴⁵

[51] In March 2022, the Appellant reported that her fainting spells led to spontaneous spasms as well as pain and cognitive deterioration. Word finding difficulty also followed fainting spells.

[52] In December 2022, Dr. Maisonneuve stated that since December 2020, the Appellant's health conditions had prevented her from returning to any gainful occupation.⁴⁶

When payments start

[53] The Appellant had a severe and prolonged disability in November 2020, when Dr. Maisonneuve said she would be unable to return to work indefinitely for medical reasons.

[54] There is a four-month waiting period before payments start.⁴⁷ This means that payments start as of March 2021.

Conclusion

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

[56] This means the appeal is allowed.

Carol Wilton
Member, General Division – Income Security Section

⁴⁵ GD02-7

⁴⁶ GD06-158

⁴⁷ Section 69 of the *Canada Pension Plan* sets out this rule.