



Citation: *CH v Minister of Employment and Social Development*, 2023 SST 587

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

# **Decision**

**Appellant:** C. H.

**Respondent:** Minister of Employment and Social Development

---

**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated October 15, 2021 (issued by Service Canada)

---

**Tribunal member:** James Beaton

**Type of hearing:** Teleconference

**Hearing date:** May 15, 2023

**Hearing participant:** Appellant

**Decision date:** May 19, 2023

**File number:** GP-22-372

## Decision

[1] The appeal is dismissed.

[2] The Appellant, C. H., 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 55 years old. She stopped working as an educational assistant in October 2017.<sup>1</sup> Although she had medical conditions at the time, notes from her family doctor, occupational therapist, and psychiatrist all suggest that conflict with coworkers was a significant factor in her decision to stop working and stay off work.<sup>2</sup>

[4] The Appellant applied for a CPP disability pension on July 23, 2020. The Minister of Employment and Social Development refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Minister argues that many of the Appellant's reported limitations have resolved or aren't supported by medical evidence. She hasn't followed medical advice. She could still work, but she hasn't tried.

[6] The Appellant emphasized that she has many medical conditions. She says she has never refused any recommended treatments and she can't work at all.

## 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, 2020. This date is based on her contributions to the CPP.<sup>3</sup>

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

---

<sup>1</sup> See GD2-24.

<sup>2</sup> See GD2-186 to 188, 196, 197, and 208.

<sup>3</sup> See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are at GD2-43 and 44.

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>4</sup>

[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.<sup>5</sup>

[12] 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.

## **Reasons for my decision**

[13] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2020.

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

[14] The Appellant's disability wasn't severe by December 31, 2020. I reached this finding by considering several factors. I explain these factors below.

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

[15] The Appellant says she has many medical conditions. However, I can't focus on the Appellant's diagnoses.<sup>6</sup> Instead, I must focus on whether she has functional limitations that got in the way of her earning a living by December 31, 2020.<sup>7</sup> When I do

---

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

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

<sup>6</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>7</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 her ability to work.<sup>8</sup> The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2020.<sup>9</sup>

[16] I find that the Appellant had functional limitations by December 31, 2020. To explain how I came to this conclusion, I will discuss:

- medical conditions that arose **after** December 31, 2020
- medical conditions that **are not** supported by medical evidence
- medical conditions that **are** supported by medical evidence but which **do not** cause functional limitations
- medical conditions that **are** supported by medical evidence and which **did** cause functional limitations by December 31, 2020

[17] At the hearing, the Appellant confirmed that the following is a complete list of her relevant medical conditions.

– **Medical conditions that arose after December 31, 2020**

[18] The following medical conditions didn't affect the Appellant's ability to work by December 31, 2020, because they arose after that date:

- **Dupuytren's contracture** (the inability to fully straighten one's fingers)<sup>10</sup>
- **high blood sugar**<sup>11</sup>
- **pain, numbness, and tingling in her hands**<sup>12</sup>

---

<sup>8</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

<sup>10</sup> The Appellant testified that this issue began in summer 2021. She also described what sounded like excess muscle or scar tissue in her hands.

<sup>11</sup> The Appellant testified that this issue began in April 2023.

<sup>12</sup> See GD2-102 to 104.

– **Medical conditions that are not supported by medical evidence**

[19] The medical evidence doesn't support that the Appellant had the following medical conditions before or after December 31, 2020:

- **attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD)**—Dr. Alexiadis (the Appellant's family doctor at the time) listed ADD on an insurance form for the Appellant in 2018. However, Dr. Luczak (a psychiatrist) could not find evidence in the Appellant's medical history to support that diagnosis. Dr. Rasic (another psychiatrist) concluded in July 2019 that a diagnosis of ADHD wasn't supported.<sup>13</sup>
- **heel pain**—There is no medical evidence about this issue.
- **tingling in her arms**—The Appellant complained of left arm tingling in September 2020 but there are no objective observations recorded and no further subjective complaints noted in the medical evidence. There was no treatment prescribed or investigative follow-up arranged.<sup>14</sup>

– **Medical conditions that are supported, but without functional limitations**

[20] The medical evidence supports that the Appellant had the following medical conditions, but that they don't cause functional limitations:

- **gastroesophageal reflux disease (GERD)**—The Appellant's GERD (also known as heartburn) improved in December 2020. She had a cough and a sore throat, which were likely related.<sup>15</sup> The Appellant didn't explain how GERD (or a cough or sore throat) might affect her ability to work.
- **headaches**—The Appellant told Dr. Wentzel (her latest family doctor) in January 2021 that her headaches were under control. Dr. Wentzel confirmed that there were no "red flags" or migraine symptoms, although the Appellant could see a neurologist anyway. In February 2021, the Appellant told

---

<sup>13</sup> See GD2-163 to 166, 196, 197, and 255 to 274.

<sup>14</sup> See GD2-74 and 75. At the hearing, the Appellant said both her arms tingled, not just her left arm.

<sup>15</sup> See GD2-104, 105, 115, and 116.

Dr. Wentzel that she thought pantoprazole was causing her headaches, so she stopped taking it. There is no medical evidence of headaches after that.<sup>16</sup>

- **heart issues**, including palpitations, shortness of breath, and chest pain—In 2020, Dr. Koilpillai (a cardiologist) found that the Appellant’s cardiomyopathy was stable, palpitations weren’t a problem, and a March 2019 stress test was normal—there was no chest pain or evidence of exertional limitations. He didn’t list any activity restrictions.<sup>17</sup> The Appellant says her cardiomyopathy isn’t stable and that Dr. Koilpillai told her to only do what she was comfortable doing. With respect, I prefer Dr. Koilpillai’s professional opinion. I believe that if there had been any medical reason to restrict the Appellant’s activities, Dr. Koilpillai would have said this in his report.
- **high cholesterol**—The Appellant didn’t explain how high cholesterol impacts her ability to work.
- **sinus issues**—The Appellant had surgery for a deviated septum. Since then, she says she has had frequent sinus infections. A CT scan from October 2019 showed potentially inflamed sinuses. In December 2020, she was given a nasal steroid for a “bit of sinus congestion.” This appears to have been a temporary problem, though. In August 2021, Dr. Smith (an ear, nose, and throat specialist) did a sinoscopy, which was normal.<sup>18</sup>
- **tinnitus**—The Appellant had tinnitus in November and December 2020, which improved in February 2021. In May 2021, she reported that it was intermittent. She had a hearing test in July 2021, which found mild hearing loss at high frequencies; everything else was normal. On examination, Dr. Smith found nothing to explain the Appellant’s tinnitus.<sup>19</sup>
- **vertigo**, including dizziness, balance issues, and nausea—The Appellant went to the emergency department for an episode of vertigo in December

---

<sup>16</sup> See GD2-100 to 104.

<sup>17</sup> See GD2-67 to 69, 72, 74, and 75.

<sup>18</sup> See GD2-65, 66, 78, and 109.

<sup>19</sup> See GD2-65, 66, 98 to 102, 104, and 105.

2020, which resolved. As of May 2021, she had not had any recent episodes. Dr. Smith reported in August 2021 that the Appellant's vertigo was resolved.<sup>20</sup>

– **Medical conditions that are supported, with functional limitations**

[21] The medical evidence supports that the Appellant has the following medical conditions, which have caused functional limitations since at least December 31, 2020:

- **anxiety and depression**—The medical evidence supports that the Appellant is anxious and depressed. This impacts her motivation and memory, as well as her ability to stay organized, multitask, make decisions, and think of the right words to say in conversations. She fears being judged in social settings. The medical evidence also supports that she has trouble focusing.<sup>21</sup> This is more important than the lack of a formal diagnosis of ADD or ADHD.
- **back, neck, shoulder, and jaw pain**—The medical evidence shows that the Appellant developed pain after a car accident in 2016,<sup>22</sup> although Dr. Alexiadis thought the pain might be caused by anxiety.<sup>23</sup> The Appellant thinks she has osteoarthritis, presumably based on diagnostic imaging of her spine.<sup>24</sup> What matters, though, is how pain affects the Appellant. In July 2020,<sup>25</sup> the Appellant wrote that she would be in pain by the end of her work shift from sitting too long—so prolonged sitting is a functional limitation. She had to take breaks when doing housework—so her stamina is limited. In addition, she estimated that she could only stand for 20 minutes at a time.
- **insomnia and fatigue**—The medical evidence supports that the Appellant has trouble sleeping, which makes her tired during the day.<sup>26</sup>

---

<sup>20</sup> See GD2-65, 66, 99, 100, 104, and 105.

<sup>21</sup> See GD2-106, 107, 163 to 166, 196, 197, 229, 230, and 255 to 274.

<sup>22</sup> See GD2-205. See also GD2-65, 66, 106, and 107.

<sup>23</sup> See GD2-164.

<sup>24</sup> See GD2-94 and 95, and GD5-2.

<sup>25</sup> See GD2-16 to 25 and 35 to 42. I prefer this evidence over what the Appellant says her functional limitations are now (that is, what she wrote in February 2022 at GD1-7 to 13 and what she said at the hearing). The documentary evidence from July 2020 is closer to December 2020 and is more likely to reflect her condition at that time.

<sup>26</sup> See, for example, GD2-99, 100, 163 to 166, 229, and 230.

[22] The medical evidence supports that the Appellant's functional limitations impacted her ability to do her usual job by December 31, 2020. In particular, she had trouble focusing at work.<sup>27</sup>

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

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

[24] To receive a disability pension, an appellant must follow medical advice.<sup>28</sup> If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so.<sup>29</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>30</sup>

[25] The Appellant didn't follow medical advice for anxiety, depression, and insomnia. She didn't give a reasonable explanation for not following the advice.

– **The Appellant unreasonably refused medication for anxiety and depression**

[26] In July 2019, Dr. Rasic found that the Appellant's treatment for her mental health conditions was neither optimal nor evidence-based. The medication she was taking (Wellbutrin) and still takes isn't proven to be effective for anxiety. He recommended that she try sertraline or pregabalin instead.<sup>31</sup> Dr. Wentzel relayed these recommendations to the Appellant in October 2019, but the Appellant refused to follow them. Dr. Wentzel made the recommendations again in May 2020, and the Appellant refused again.

[27] The Appellant says she didn't try sertraline or pregabalin because she has tried a dozen similar medications before and they make her nauseous. But the medical evidence, which dates back to 2017, doesn't show that she tried sertraline or pregabalin before, or that she tried many medications in general. Sertraline and pregabalin might not have made her nauseous. It was unreasonable not to at least try them.

---

<sup>27</sup> See GD2-186 to 188.

<sup>28</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>29</sup> See *Brown v Canada (Attorney General)*, 2022 FCA 104.

<sup>30</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>31</sup> See GD2-118 to 121, 255 to 274, and 277.



[28] The Appellant added that she didn't want to take medications until her heart testing was completed, in case they might affect her heart. That explanation is also unreasonable. Dr. Wentzel reassured her that these medications would not interfere with testing.<sup>32</sup> Furthermore, the Appellant didn't try them even after testing was complete. She said Dr. Wentzel didn't mention the medications again after testing.<sup>33</sup> By that point, Dr. Wentzel had already made the recommendation twice. The Appellant can't be excused from the duty to pursue medical treatment because her family doctor failed to make the same recommendation to her three times.

– **The Appellant unreasonably stopped taking medication for trouble focusing**

[29] Although I have found that the Appellant doesn't have ADD or ADHD, I accept that she has trouble focusing. She previously took Adderall for this. She stopped because she was worried that it was causing heart palpitations. But her cardiologist specifically told her that she could keep taking it.<sup>34</sup> So her decision was unreasonable.

[30] This also means the Appellant likely could have tried other medications or perhaps a higher dose of Adderall to help her focus if her then-current dose of Adderall didn't give her enough symptom relief.

[31] The Appellant asked Dr. Wentzel about trying other medications that would "not interact with her heart." Dr. Wentzel said that "if she was worried and symptomatic" on a low dose of Adderall, "then it would be no different on other agents."<sup>35</sup> I find it important that Dr. Wentzel didn't tell the Appellant she should not take medication. She only said that taking another medication wasn't the solution to the Appellant's self-reported heart issues—something the Appellant's cardiologist had already told her wasn't an issue.

– **The Appellant unreasonably refused to restart medication for insomnia**

[32] For insomnia, the Appellant took Trazadone but stopped because she could not afford it. Later, she regained insurance coverage and Dr. Wentzel encouraged her to

---

<sup>32</sup> See GD2-120, 121, and 277.

<sup>33</sup> The Appellant said this at the hearing.

<sup>34</sup> See GD2-204.

<sup>35</sup> See GD2-120 and 121.

resume taking Trazadone.<sup>36</sup> She testified that she doesn't take Trazadone because it made her feel "like a zombie." She told Dr. Wentzel the same thing in February 2019.<sup>37</sup> But **after** that, in July 2020, she told Dr. Wentzel that in fact it had been very helpful for her. That was why Dr. Wentzel recommended she start taking it again.<sup>38</sup> Dr. Rasic made the same recommendation in July 2019.<sup>39</sup>

[33] The Appellant's decision not to take a medication that she had coverage for and that had proven to help her sleep in the past was unreasonable.

– **The Appellant unreasonably failed to pursue therapy**

[34] Dr. Rasic recommended 15 to 20 sessions of cognitive behavioural therapy.<sup>40</sup> Dr. Wentzel discussed this with the Appellant on October 8, 2019.

[35] The Appellant declined to attend therapy because she didn't think she would have time to also go to physiotherapy and massage therapy. In response, Dr. Wentzel told her that "it is important to learn coping mechanisms."<sup>41</sup> In a letter to the Appellant's private disability benefits insurer dated the same day, Dr. Wentzel wrote: "She is going to reconnect with mental health. I have encouraged her to attend psychotherapy 2 times per week. She is unsure she will be able to do so, from a financial and time management perspective."<sup>42</sup>

[36] Financial concerns aren't reflected in Dr. Wentzel's clinic notes and the Appellant didn't mention financial concerns when I asked her why she wasn't attending therapy. Instead, she repeated that she was busy with physiotherapy appointments—the same reason she gave Dr. Wentzel. She also explained that she **had** started going to therapy but it was cancelled because of covid restrictions. She called the therapist about restarting therapy and they didn't respond.<sup>43</sup>

---

<sup>36</sup> See GD2-114 and 115.

<sup>37</sup> See GD2-226.

<sup>38</sup> See GD2-114 and 115.

<sup>39</sup> See GD2-255 to 274.

<sup>40</sup> See GD2-255 to 274.

<sup>41</sup> See GD2-120 and 121.

<sup>42</sup> See GD2-277.

<sup>43</sup> See the hearing recording from approximately 1:17:00 to 1:19:00.

[37] Later in the hearing, she said she “definitely would like to” do therapy again. I asked if she had told her family doctor this. She said she had but that nothing came of that conversation and she wasn’t sure who was responsible for arranging therapy.

[38] I find that the Appellant hasn’t made reasonable efforts to pursue therapy.

[39] The evidence suggests that the Appellant never attended the recommended amount of therapy. Dr. Wentzel’s clinic notes never mention the Appellant doing therapy. Rather, in May 2020 (after covid restrictions were introduced), Dr. Wentzel was still “encourag[ing] regular psychology.”<sup>44</sup>

[40] I am not convinced that the Appellant has made reasonable efforts to pursue therapy since covid restrictions were lifted either. She said she talked to her doctor but nothing came of the conversation and she wasn’t sure who was responsible for arranging therapy.<sup>45</sup> There is no evidence about when this conversation took place. In any case, she hasn’t followed up with her doctor.

[41] I must now consider whether following medical advice might have affected the Appellant’s disability.

– **Following medical advice might have affected the Appellant’s disability**

[42] I find that following medical advice might have made a difference to the Appellant’s disability. I am satisfied that the Appellant’s healthcare providers would not have made their recommendations unless they thought they might help her anxiety, depression, and insomnia.

[43] Her remaining limitations are related to pain in her neck, back, shoulders, and jaw, and would not have kept her from working. Her duties as an educational assistant had already been modified so that she didn’t have to work with children with physical disabilities. (She was unable to lift them.)<sup>46</sup> There is no evidence that she or her employer considered this to be an unreasonable or unsustainable accommodation. She

---

<sup>44</sup> See GD2-118 and 119. It is common knowledge that covid restrictions were introduced in March 2020.

<sup>45</sup> See the hearing recording.

<sup>46</sup> See GD2-25.

had been working full days as an educational assistant until interpersonal conflicts led her to stop working.

[44] She might have had to reduce her hours due to pain with prolonged sitting, but she was still regularly able to do substantially gainful work. If she worked half her usual hours in 2017, she would have earned \$16,436.<sup>47</sup> A substantially gainful income in 2017 was \$15,764.<sup>48</sup> I also note that she gets pain relief from massage and chiropractic treatments.<sup>49</sup>

[45] When I consider the Appellant's personal characteristics, I reach the same conclusion about her work capacity.<sup>50</sup> She was only 52 years old as of December 30, 2020. She had over a decade left before the standard retirement age of 65. She is fluent in English. She has a high school diploma and a degree in psychology and child studies. After working at a few fast-food restaurants, she worked as an educational assistant from 1990 to 2017.<sup>51</sup> She has an advanced education and a long work history doing skilled work. These factors all favour employability.

[46] In conclusion, the Appellant didn't follow medical advice that might have affected her disability. This means her disability wasn't severe.

## Conclusion

[47] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe by December 31, 2020. Because I found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[48] This means the appeal is dismissed.

James Beaton  
Member, General Division – Income Security Section

---

<sup>47</sup> See GD2-44.

<sup>48</sup> See section 68.1 of the *Canada Pension Plan Regulations*.

<sup>49</sup> See GD2-205.

<sup>50</sup> I must consider factors like the Appellant's age, level of education, language abilities, and work and life experience. See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>51</sup> See GD2-24 and 25, and the hearing recording.