



Citation: *MJ v Minister of Employment and Social Development*, 2023 SST 611

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

Decision

Appellant: M. J.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 25, 2021 (issued
by Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: Teleconference

Hearing date: May 18, 2023

Hearing participant: Appellant

Decision date: May 25, 2023

File number: GP-22-634

Decision

[1] The appeal is allowed.

[1] The Appellant, M. 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

[2] The Appellant is 55 years old. He has chronic depression and anxiety. He has been treated for more than 15 years by a psychiatrist for “significant mental health problems he has suffered throughout his life.”¹

[3] The Appellant applied for a CPP disability pension on September 10, 2020. The Minister of Employment and Social Development (Minister) refused his application. He asked the Minister to reconsider its decision but the Minister upheld its refusal. The Appellant appealed the Minister’s decision to the Social Security Tribunal’s General Division.

[4] The Minister now agrees that the Appellant has a disability that has been severe and prolonged since November 2017.

What the Appellant must prove

[5] For the Appellant to succeed, he must prove he had a disability that was severe and prolonged by December 31, 2019. This date is based on his contributions to the CPP.²

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

¹ See GD3-2 and GD3-3.

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 at GD2-4 to GD2-6.

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

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

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

[10] 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.

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

Reasons for my decision

[12] I find that the Appellant had a severe and prolonged disability as of November 1, 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?

[13] The Appellant's disability was severe.

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.

[14] The Minister agrees that the Appellant's disability has been severe since November 2017.⁵ I have reviewed the medical evidence and I agree.

– **The Appellant's functional limitations do affect his ability to work**

[15] The Appellant has been diagnosed with major depression and generalized anxiety disorder.⁶

[16] However, I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether he had functional limitations that got in the way of him earning a living.⁸ 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 his ability to work.⁹

[17] I find that the Appellant has functional limitations that affected his ability to work.

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

[18] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. The Minister and I agree.

[19] Because of his medical conditions, the Appellant has "an inability to focus, make decisions and multi-task, as well as a moderate degree of psychological impairment."¹⁰

[20] Before he stopped working for the last time in November 2017, the Appellant struggled to do his job as a hydrologist. In 2014 he took a medical leave for about a year and a half. During that leave, specifically in November and December 2014, he attended a residential treatment centre for mental health conditions called Homewood.

[21] When the Appellant returned to work after that leave, he couldn't and didn't do as much as he was before. Specifically, he only updated nautical charts, whereas before he went on leave, he was:

⁵ See GD6.

⁶ See GD2-95 to GD2-97.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

¹⁰ See GD2-95 to GD2-97.

- making full charts including collecting and processing data
- working with the internal auditing team
- the head of the Health and Safety Committee
- ran the quality management system including working with auditors

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

[22] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work by December 31, 2019.¹¹

[23] The medical evidence supports what the Appellant says. Several medical reports document the fact that his functional limitations affected his ability to work prior to and after December 31, 2019.¹²

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

– **The Appellant has followed medical advice**

[25] To receive a disability pension, an appellant must follow medical advice.¹³ 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.¹⁴

[26] The Appellant has followed medical advice.¹⁵

[27] The Appellant has been treated for his medical conditions for many years. He takes all the medications that have been prescribed to him over the years. The medications have not improved his conditions.¹⁶ Sometimes, they have negatively impacted his ability to work.¹⁷

¹¹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹² See GD2-93 to GD2-127, GD2-134 to GD2-156 and GD3-36 to GD3-38.

¹³ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁴ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁵ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁶ See GD2-143 to GD2-144.

¹⁷ See GD2-36 to GD2-38.

[28] The Appellant goes to psychotherapy. At the hearing he said he recently cut back on psychotherapy treatment because he couldn't afford to do as much as he did.

[29] The Appellant also underwent transcranial magnetic stimulation, which didn't help, and electroconvulsive therapy which worsened his memory and impacted his daily functioning.¹⁸

[30] I must now decide whether the Appellant can regularly 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.¹⁹

– **The Appellant can't work in the real world**

[31] 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

[32] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.²⁰

[33] I find that the Appellant can't work in the real world. His personal characteristics don't negatively affect his ability to work: he is relatively young, well-educated and has years of experience working in a senior position in a technical or highly-skilled profession. But all of these factors are outweighed by his functional limitations, which prevent him from doing any type of job, even one much less demanding than what he was doing.

¹⁸ See GD2-143 and GD2-144 and GD3-36 to GD3-38.

¹⁹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

²⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[34] Because of his anxiety, the Appellant struggles to leave his house, meet timelines and multi-task. At the hearing he said that his anxiety is worse now than it was before.

[35] I find that the Appellant's disability was severe as of November 2017.

[36] In his application the Appellant said he felt that he was unable to work because of his medical condition as of August 2017. I asked him about this at the hearing. He said that he "felt" that way even before August 2017.

[37] He explained that by November 2017 he had used up all his sick time. Starting on November 1, 2017, and with his employer's agreement, he went on short-term disability leave and then long-term disability leave. He went on medical retirement starting in June 2020.

Was the Appellant's disability prolonged?

[38] The Appellant's disability was prolonged.

[39] The Appellant has had mental health problems throughout his life. These conditions have continued since then, and they will more than likely continue indefinitely.²¹

[40] As I have said, he has been treated for his conditions for many years. Treatments have not improved his condition. On the contrary, his condition has consistently deteriorated.

[41] I should note that in some reports his doctors expressed an opinion that he might be able to return to work.²² **However**, medical reports also consistently indicated that at the time they were written he was unable to work.²³ These reports go back to **before**

²¹ 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.

²² See GD2-130 and GD2-131.

²³ See GD2-130 and GD2-131.

November 2017. One of his doctors now says that he will **never** be able to return to work.²⁴

[42] I find that the Appellant's disability was prolonged as of November 2017. This is the date he went on short-term and then long-term disability.

When payments start

[43] The Appellant had a severe and prolonged disability in November 2017.

[44] 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.²⁵ After that, there is a 4-month waiting period before payments start.²⁶

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

[46] Payments of his pension start as of October 2019.

Conclusion

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

[48] This means the appeal is allowed.

Wayne van der Meide
Member, General Division – Income Security Section

²⁴ See GD2-155 and GD2-156.

²⁵ Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

²⁶ 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.