



Citation: *NP v Minister of Employment and Social Development*, 2023 SST 1061

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

## Decision

**Appellant:** N. P.  
**Representative:** Allison Schmidt

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated February 25, 2022 (issued  
by Service Canada)

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**Tribunal member:** Selena Bateman

**Type of hearing:** Teleconference

**Hearing date:** July 20, 2023

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** July 28, 2023

**File number:** GP-22-883

## Decision

[1] The appeal is allowed.

[2] The Appellant, N. P., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of April 2020. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant is 59 years old. She worked as a teaching assistant and with children's services. In January 2014 she injured her left ankle which led to surgery. She has chronic pain and mobility issues. She also has depression, diabetes, and back pain that impact her ability to work.

[4] The Appellant applied for a CPP disability pension on March 22, 2021. 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 says that her disability prevents her from working at any job. She wouldn't be a productive employee and couldn't work predictably. She can't sit or stand for more than 10 minutes. She has mild cognitive challenges and is often drowsy because of her medication.

[6] The Minister says that the evidence supports that her limitations to walking improved over time. The Minister also says that there is little mental health medical evidence to support a severe disability. The Minister says that in the real world, the Appellant's personal characteristics are assets to finding other work.<sup>1</sup>

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<sup>11</sup> See GD4.

## What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that is severe and prolonged by the hearing date.<sup>2</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>3</sup>

[10] 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.

[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>4</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 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.

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<sup>2</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 on GD4-9. In this case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

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

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

## Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of January 2014. I reached this decision by considering the following issues:

- Is the Appellant's disability severe?
- Is the Appellant's disability prolonged?

### Is the Appellant's disability severe?

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

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

[16] The Appellant has:

- Chronic regional pain syndrome
- Depression
- Diabetes

[17] However, I can't focus on the Appellant's diagnoses.<sup>5</sup> Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.<sup>6</sup> 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 affect her ability to work.<sup>7</sup>

[18] I find that the Appellant has functional limitations that affect her ability to work.

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[19] The Appellant says that her medical conditions has resulted in functional limitations that affect her ability to work. She says:

- She is unstable on her feet because of her ankle injury and peripheral neuropathy caused by diabetes.
- Her back pain limits her mobility. She can walk, stand, and sit for about 10 minutes. She can lift up to five pounds. She can't bend or reach.
- She has chronic pain which impacts her ability to concentrate and stay on task. She sleeps for two to three hours at night. She has to nap during the day.
- Depression causes her challenges with maintaining adequate personal hygiene and keeping a tidy home. She has low motivation to leave her home.
- Depression causes her to struggle with concentration and deadlines. She is "mentally unfit."
- Her medication makes her feel "foggy" and drowsy. This causes her to have poor memory.<sup>8</sup>

[20] The Appellant's testimony was candid. What she said was consistent with the medical evidence. I believe what she told me about the severity and frequency of her limitations. I considered her testimony in conjunction with the medical evidence.

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

[21] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by the hearing date.<sup>9</sup>

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

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<sup>8</sup> See GD2-28.

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

[23] The medical evidence supports that the Appellant has **chronic regional pain syndrome** (CPRS). This condition began after she had left leg trauma in January 2014. She has left foot arch and ankle movement abnormalities.<sup>10</sup>

[24] The Representative for the Appellant argues that the issue of pain is subjective by nature and comes down to credibility.<sup>11</sup> I found the Appellant a credible witness. I accept what she said she can and cannot do because of how her pain impacts her abilities.

[25] The Minister argues that the Appellant's limitation to walking has improved over time. She is able to walk 10,000 steps daily.<sup>12</sup> The Representative for the Appellant says that the Minister misconstrued the medical evidence. The Appellant says that this was a one-time event where she was feeling wonderful. She says she walks 2,000 steps per day.

[26] I prefer the Appellant's argument. There are no other such reports of her walking this distance in the medical evidence. Dr. Azer had a five-minute phone call with the Appellant and recorded this figure. His record is brief. In my view, the overall medical records don't support a dramatic improvement in her limitation to walking ability.<sup>13</sup>

[27] The medical evidence supports that the Appellant has **diabetes**. She has mild peripheral neuropathy.<sup>14</sup> This supports that she has issues with balancing, standing, and walking.

[28] The medical evidence supports that the Appellant has **back pain**. This limits her ability to bend and lift. She needs to alternate between sitting and standing. She has degenerative disc disease.<sup>15</sup>

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<sup>10</sup> See GD2-205.

<sup>11</sup> The Representative for the Appellant also referenced teachings from a chronic pain case called *Martin*. See *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, 2003 SCC 54.

<sup>12</sup> See GD4-6. The Minister is referring to her step count in GD3-76.

<sup>13</sup> See GD3-76.

<sup>14</sup> See GD2-265 to 274.

<sup>15</sup> See GD3-16, 47, 62 and 81 to 83.

– **Medical evidence of mental health limitations**

[29] The medical evidence supports that the Appellant has **depression** and **anxiety** symptoms. There is charting that supports this in 2020 and early 2021.<sup>16</sup>

[30] The Appellant claims that she is “mentally unfit” because of depression.

[31] The Minister pointed out that only one mental health assessment is in the appeal file. The assessment was done in October 2020. The Minister argues that the medical evidence doesn’t support limitations from mental health conditions that would prevent her from working any job.<sup>17</sup>

[32] At the hearing I asked the Appellant about the mental health services she received. The Appellant says that she was treated by her family doctor and four other therapists briefly, including one occupational therapist. The therapists left their positions, which caused an issue for her continuity of care. She didn’t know where her mental health records were.

[33] The Representative for the Appellant argues that it would be asking too much of the medical evidence to list all functional limitations related to her mental health condition.<sup>18</sup>

[34] I agree that the medical evidence doesn’t need to show every limitation to prove an appellant is incapable regularly of any substantially gainful job. An appellant can show that they are eligible through a combination of medical documents and their own testimony about their functional limitations.

[35] At the same time, an appellant needs to support a claim of disability. There needs to be some medical evidence that outlines the nature, extent, and prognosis of the disability.<sup>19</sup> This can include observations, clinical symptoms, and established

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<sup>16</sup> See GD3-36.

<sup>17</sup> See The Minister’s argument in GD4-5, referencing GD2-137-142.

<sup>18</sup> The Representative for the Appellant referenced an Appeal Division decision, *N.S. v. Minister of Employment and Social Development*, 2022 SST 96. In this file, the Appellant had depression, body pain, poor sleep, fatigue, and chronic pain.

<sup>19</sup> See the *Regulations* s 68(1).

functional limitations made by a health professional.<sup>20</sup> Medical evidence close to the minimum qualifying period is helpful in understanding the Appellant's limitations around that time.

[36] In 2020 the Appellant was referred to a social worker for stress and anxiety since her workplace injury. She reported having decreased concentration, low mood, and an inability to complete tasks. The mental health care charting ends in January 2021, although there is reference to her being provided mental health care at that point in time.<sup>21</sup>

[37] Dr. Azer's charting since this time is unhelpful in understanding the severity and prognosis of her mental health condition. Dr. Azer's charting mostly includes brief notes of the Appellant feeling bad, OK, or good. But it is unclear what condition this subjective report relates to, or if it is her overall subjective well-being. Most of the appointments last only a few minutes.<sup>22</sup>

[38] The medical report of February 2021 wasn't helpful in understanding the Appellant's mental health condition or limitations. Dr. Azer didn't list any mental health conditions.<sup>23</sup> This doesn't mean that she didn't have any. Simply that Dr. Azer didn't record them.

[39] I find that the Appellant has low mood and poor concentration. However, I am not satisfied that she is "mentally unfit", after considering both her testimony and the medical evidence.

[40] The medical evidence supports that the Appellant's poor mobility and limitations from back pain prevented her from doing her usual job. Since then, she developed decreased concentration and a low mood.

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<sup>20</sup> See *Minister of Employment and Social Development v. L.F.*, 2018 SST 164. While not binding, this decision is persuasive.

<sup>21</sup> See GD3-16 to 35.

<sup>22</sup> For example, see the most recent charting on file. In GD3-74, the phone call appointment lasted four minutes. In GD3-76 the appointment lasted for five minutes.

<sup>23</sup> See GD2-265 to 274.



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

– **The Appellant has followed medical advice**

[42] To receive a disability pension, an appellant must follow medical advice.<sup>24</sup> 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.<sup>25</sup>

[43] The Appellant has followed medical advice. The Minister didn't argue otherwise. In my review, I saw no concerns of treatment adherence.

[44] 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.<sup>26</sup>

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

[45] 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
- language abilities
- past work and life experience

[46] 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.<sup>27</sup>

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

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<sup>24</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>25</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>26</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>27</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[48] The Appellant is less than two years away from the usual age of retirement. She has college education. She doesn't have a language barrier. She has work experience as a teacher's assistant and in community services, taking children for parental visitation.

[49] The Minister argues that the Appellant has positive characteristics for real world employment or retraining.<sup>28</sup> I disagree that retraining and entering the workforce before the age of retirement is likely. Her age doesn't account for that. While the Appellant has positive characteristics for employment, the Minister didn't adequately consider how her limitations impact her employability.

[50] The Appellant doesn't have residual work capacity. When I factor in the Appellant's limitations, it is unlikely that she is suitable for either physical or sedentary work. She isn't able to sit or stand for long and would require frequent breaks.

[51] The Appellant wouldn't likely be a productive employee. Her pain impacts her concentration and energy levels. She sleeps for two to three hours at night and needs to nap during the day.

[52] Because I found that the Appellant doesn't have any work capacity, she doesn't need to show that she wasn't able to find and keep a job because of her health limitations.

[53] I find that the Appellant's disability was severe as of January 2014, when she last worked.

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

[54] The Appellant's disability is prolonged.

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<sup>28</sup> See GD4-5.

[55] The Appellant's conditions began in 2014. These conditions have continued since then, and they will more than likely continue indefinitely.<sup>29</sup>

[56] The Appellant hasn't worked for almost ten years. She has complied with treatment. Her condition hasn't improved.

[57] The evidence doesn't support that any return-to-work attempts are realistic.

[58] I find that the Appellant's disability was prolonged as of January 2014.

### **When payments start**

[59] The Appellant had a severe and prolonged disability in January 2014.

[60] 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.<sup>30</sup> After that, there is a 4-month waiting period before payments start.<sup>31</sup>

[61] The Minister received the Appellant's application in March 2021. That means she is considered to have become disabled in December 2019.

[62] Payments of her pension start as of April 2020.

### **Conclusion**

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

[64] This means the appeal is allowed.

Selena Bateman

Member, General Division – Income Security Section

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<sup>29</sup> 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.

<sup>30</sup> Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

<sup>31</sup> 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.