



Citation: *PC v Minister of Employment and Social Development*, 2023 SST 1826

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: P. C.
Representative: Meggie Laurin

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 3, 2022 (issued by
Service Canada)

Tribunal member: Selena Bateman

Type of hearing: Videoconference

Hearing date: December 14, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: December 22, 2023

File number: GP-22-1773

Decision

[1] The appeal is dismissed.

[2] The Appellant, P. C., 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 38 years old. He worked as a lube technician. He says he has a disease that affects his brain.¹ He also has a paralyzed arm, severe arthritis in his knees, weak back membrane, anxiety, and migraines.

[4] The Appellant applied for a CPP disability pension on June 29, 2020. The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says he couldn't work because of his medical conditions in March 2012. He doesn't think he would be a reliable employee. His chronic pain, migraines, anxiety, and osteoarthritis would sometimes prevent him from leaving his house. He feels his conditions are worsening over time.²

[6] The Minister says that the evidence doesn't support a finding of disability. The Minister says that the Appellant's conditions improved with treatment and his specialists says he doesn't have demyelinating disease. The Minister also says that retraining is a reasonable possibility in the real world.³

¹ Diaphoretic demyelinating disease.

² See GD2-46 and GD5.

³ See GD6.

What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2018. This date is based on his CPP contributions.⁴ He must also prove that he continues to be disabled.⁵

[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.⁶

[10] I must 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 capable regularly of doing some kind of work that he could earn a living from, then he 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.⁷ 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.

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

⁴ 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 GD6-8.

⁵ In *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that the appellant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2001 FCA 318.

⁶ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability. Section 68.1 of the *Canada Pension Plan Regulations* says a job is “substantially gainful” if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

⁷ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[13] I find that the Appellant hasn't proven he had a severe and prolonged disability by December 31, 2018. 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?

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

– The Appellant's functional limitations affected his ability to work

[15] The Appellant has:

- Meniscus tear in his right knee
- Migraines
- Left median neuropathy at and left ulnar neuropathy

[16] However, I can't focus on the Appellant's diagnoses.⁸ Instead, I must focus on whether he has functional limitations that got in the way of him earning a living.⁹ 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.¹⁰

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

⁸ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹⁰ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

– **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. He says:

- He currently has 10% nerve damage in his left arm. His left thumb locks. This is from a 2016 procedure when a nerve was cut.
- He says he has diaphoretic demyelinating disease in the brain. He understands this condition to be like multiple sclerosis. He says this is the cause of his migraines.
- His migraines happened three times per week in 2018. He has temporary blindness. On bad days, he can't move.
- He gets a burning sensation in his back. In 2018, on most days he had a lot of back pain.
- The arthritis in his knees limits his ability to walk for more than one block. He can't lift heavy weight. He has difficulty with prolonged standing.
- He has anxiety which he says triggers seizures. He feels uncomfortable in crowds. Half of the days per week his anxiety is bad and can't "accomplish anything."

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

[19] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work no later than December 31, 2018.¹¹

[20] The medical evidence supports **some of** what the Appellant says.

[21] The medical evidence doesn't support that the Appellant has **diaphoric demyelinating disease in the brain**. In December 2019 and February 2020, the Appellant's neurologist reported that it is unlikely he has this condition.¹² The Appellant didn't provide any further evidence that changed his care providers' opinion on whether

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

¹² See GD2-107 to 108 and 116.

he has this condition. Because of that, I can't find that he has any limitations caused by this condition.

[22] In October 2017, Dr. Cheung (family doctor) wrote that the Appellant has **osteoarthritis** in his knees. In September 2018, Dr. Cheung wrote that he only had right knee osteoarthritis.¹³ There is no imaging on file to support this diagnosis. In 2016, 2018, and 2019, he had x-rays of his knees that showed no osseous or soft tissue abnormality and no joint effusions. The bones, joints, and soft tissues were unremarkable. There was no joint space narrowing.¹⁴ This doesn't support that the Appellant has osteoarthritis in either knee.

[23] The medical evidence doesn't support that the Appellant had **anxiety** before the end of 2018. The medical records and reports before the end of 2018 don't show that he required assessment or treatment for this condition. There is no evidence of a diagnosis at this point.¹⁵ There is also no evidence that anxiety caused him to have seizures.

[24] Anxiety first appears in the available medical evidence in 2019.¹⁶ In the 2020 medical report, Dr. Cheung wrote that the Appellant had anxiety since 2007. He reported limitations to concentration and focus.¹⁷

[25] I prefer the chronological over retrospective records. Dr. Cheung wasn't the Appellant's family doctor at that point.¹⁸ It is unclear how Dr. Cheung determined that his anxiety began in 2007. Yet, if he had anxiety in 2007, he was able to work despite any limitations for over a decade.

[26] The medical evidence supports that the Appellant had a **medial meniscus tear of his right knee** in August 2016. It was hard for him to walk long distances without

¹³ See GD2-123 to 124.

¹⁴ See GD2-125, 130, 132, and 195.

¹⁵ See the Appellant's ODSP application in GD2-135 to 153. Anxiety is not listed as one of his medical conditions. Also see GD2-123.

¹⁶ See GD2-107 to 108, 113, 115, and 116.

¹⁷ See GD2-100.

¹⁸ At the hearing, the Appellant told me that Dr. Hill was his previous family doctor. Dr. Hill retired around 2012.

taking breaks.¹⁹ I accept that he needed breaks with prolonged walking and had knee pain by December 2018.

[27] The medical evidence supports that the Appellant had weakness and numbness in his **left arm**. In September 2016, he was sick with pneumonia. He went to the hospital multiple times and had a procedure done which initially limited his left hand and arm movements. His arm weakness improved. In July 2017, he reported that he was able to workout, but his arm fatigued with prolonged use. He had cramping in his palm.²⁰

[28] The medical evidence supports that the Appellant had a history of **headaches**. When he had a migraine, it made it hard for him to concentrate at work. In March 2019, he reported having headaches for over ten years. He said he had about five or six per month at that time.²¹ I accept that the Appellant's headaches caused concentration problems, however he was able to maintain employment despite this.

[29] The medical evidence supports that the Appellant had back pain that started after the end of 2018. He was assessed for low back pain in May 2019. He had a normal back range of motion, no weakness, and normal gait.²² It is possible that he had back pain before this time, however medical evidence of a condition is required.

– **Dr. Cheung's position on the Appellant's disability**

[30] Dr. Cheung's position is that the Appellant is disabled.

[31] In November 2017, Dr. Cheung completed an application for provincial disability income support. Dr. Cheung listed the Appellant's conditions as knee arthritis, migraines, and left arm neuropathy with weakness. He wrote that the Appellant has limitations to heavy lifting, stamina, standing, prolonged walking, and operating machinery. His prognosis was fair.²³

¹⁹ See GD2-122 and 191.

²⁰ See GD2-122, 123 and 154.

²¹ See GD2-122 and 127 to 128.

²² See GD2-102. Some of Dr. Cheung's writing on this page is illegible. Also see GD2-118.

²³ See GD2-135 to 153.

[32] I accept that the Appellant has these limitations. In this analysis, the question is whether his disability prevents him from earning a living at any job. I must also consider other factors that impact his ability to work.

[33] In June 2020, Dr. Cheung completed a medical report for the Appellant's CPP disability application. Dr. Cheung listed his conditions as migraines, anxiety, knee osteoarthritis, and back pain. Dr. Cheung recommended that he stop work in 2016 and didn't expect him to return to any kind of work.²⁴

[34] There isn't sufficient objective medical evidence to support that the Appellant was disabled before the end of 2018.

– **The Appellant followed medical advice**

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

[36] The Appellant followed medical advice.²⁶

– **The Appellant's condition wasn't severe by 2018**

[37] The Appellant was referred to physiotherapy in October 2017 for his knees.²⁷

[38] In September 2018, the Appellant was referred to a neurologist to assess his migraines and left arm weakness/numbness.²⁸ There is no previous evidence of specialist involvement for these conditions.

[39] The medical evidence supports that in 2018 the Appellant's only treatment for his conditions was marijuana. He took marijuana for knee pain starting in 2017. There is reference to him trying "different prescription medication", but the file doesn't have any

²⁴ See GD2-95 to 104.

²⁵ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²⁷ See GD2-124.

²⁸ See GD2-123.

further information on this.²⁹ He also took marijuana for headaches in 2017. He previously tried an unspecified medication, which didn't help.³⁰

– **The Appellant's condition worsened after 2018**

[40] The medical evidence supports that the Appellant's condition worsened after 2018. After 2018, the Appellant's dose of marijuana was increased.³¹

[41] The Appellant began other treatments after 2018:

- In 2019, he began using a cane.³²
- In October 2019, he tried medication for anxiety. He started lorazepam. He asked for medication to take as needed, rather than a daily medication. In January 2020, he started clonazepam.³³
- In March 2019, he started Statex for knee and back pain.³⁴

[42] In March 2019, the Appellant saw a neurologist for a history of headaches. The neurologist made no treatment suggestions. The Appellant said he managed this condition quite well with marijuana.³⁵

– **The Appellant could work in the real world**

[43] When I am deciding whether the Appellant could work, I can't just look at his medical conditions and how they affect what he could do.

²⁹ See GD2-124 and 150.

³⁰ See GD2-124.

³¹ See GD2-118.

³² See GD2-49.

³³ See GD2-95 to 104, 112 to 113 and 116.

³⁴ See GD2-101 to 102.

³⁵ See GD2-127.

[44] I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[45] These factors help me decide whether the Appellant could work in the real world—in other words, whether it is realistic to say that he could work.³⁶ To be severe, his functional limitations must prevent him from earning a living at any type of work, not just his usual job.³⁷

[46] I find that the Appellant could work in the real world by December 31, 2018.

[47] Overall, the Appellant's personal characteristics have reasonable odds that support employability. He has many years left before the standard age of retirement. This supports the ability to retrain. He speaks English.

[48] The Appellant completed high school. He also has college education in applied arts and technology as well as forklift training. He has a working memory disorder that he says he found out about while in college. He didn't argue that his learning disability prevented him from being able to learn, whether in school or in the workforce.³⁸ He has transferable skills from working as a lube technician and parts manager.

[49] The Appellant was able to obtain and maintain employment despite his learning disability, medical conditions, and treatment for the conditions. He is best suited to entry level positions in sedentary or light physical work.

[50] I also considered whether the impact of the Appellant's treatment may impact his employability. I find that it didn't.

³⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

³⁷ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

³⁸ See GD2-55.

[51] At the hearing, the Appellant told me that he used marijuana to treat his conditions by 2018. If he wasn't going out of the house, he would use marijuana during the day. If he needed to leave the house, he would use marijuana at night to avoid being intoxicated out of the home.

[52] This tells me that he was able to hold off using marijuana until the evening when he needed to leave his home. There is no evidence to suggest that the severity of his conditions required him to use marijuana during the day.

– **The Appellant had work capacity in December 2018**

[53] On a balance of probabilities, the Appellant had work capacity by the end of December 2018. Sedentary work remained a possibility. His knee pain, and some left arm weakness limited his ability to do heavy physical work. His concentration would be impacted when he got headaches.

[54] The Appellant said that between 2019 to 2022, he acted as a caregiver for his spouse and her child. He helped his spouse shower. He did physical transfers. This tells me that he reliably retained the ability to do physical tasks and take care of not just himself, but others.

– **The Appellant made some efforts to find work**

[55] If the Appellant could work in the real world, he must show that he tried to find and keep a suitable job. He must also show his efforts weren't successful because of his medical condition.³⁹ Finding and keeping a suitable job includes retraining or looking for a job he can do with his functional limitations.⁴⁰

[56] At the hearing, the Appellant said that he did some contracting work for his family around 2017 or 2018. He earned \$500 for working one month. He said he was lifting weight and felt over-exerted, which led to anxiety and a panic attack.

³⁹ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

⁴⁰ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

[57] This work attempt wasn't suitable given his established limitations. It doesn't tell me whether the Appellant could work alternate jobs in the real world.

[58] At the hearing, the Appellant said that he looked for sedentary work in 2022. He applied for a desk job in two mining companies.

[59] I was not satisfied with the extent of the Appellant's efforts to find work. However, the work itself would likely be suitable to his limitations. His work efforts suggest that at least by 2022, the Appellant thought he may be able to do sedentary work. This doesn't support that the Appellant had a continuously severe disability.

[60] The Appellant's attempts to pursue work weren't sufficient to show that no real world employer would hire him. The attempts didn't persuade me that his disability got in the way of him earning a living. Because of that, I can't find that he has nothing left to offer the commercial marketplace given the limited work efforts he made.

[61] I can't find he had a severe disability by December 31, 2018.

Conclusion

[62] I find that the Appellant isn't eligible for a CPP disability pension because his disability wasn't severe. Because I have found that his disability wasn't severe, I didn't have to consider whether it was prolonged.

[63] This means the appeal is dismissed.

Selena Bateman
Member, General Division – Income Security Section