



Citation: *AH v Minister of Employment and Social Development*, 2024 SST 33

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: A. H.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 28, 2022 (issued
by Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: Teleconference

Hearing date: January 3, 2024

Hearing participant: Appellant

Decision date: January 5, 2024

File number: GP-23-272

Decision

[1] The appeal is allowed.

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

Overview

[3] The Appellant is 50 years old. Her only paying jobs have been as a labourer in factories. In 2006 she started to develop pain in her shoulders, wrists, hand, right hip, knees, ankles, and feet. As a result, she stopped working for periods of time. In 2016 she was diagnosed with active rheumatoid arthritis. Again, she took time off as needed. Her last job was as a “Merchandise Handler” (or packer) for a clothing company. She had that job from September 2016 to June 2020, when she left the job because of pain and other limitations. She says she hasn’t been able to work since because of the limitations caused by rheumatoid arthritis.

[4] The Appellant applied for a CPP disability pension on October 26, 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 rheumatoid arthritis flare up has continued since June 2020. She says because of that, she cannot work in any job and often struggles to take care of her own personal needs. She said she doesn’t like not working and would go back to work if her symptoms improved.

[6] The Minister says that the Appellant’s disability isn’t severe because she is capable regularly of some work. The Minister also says that her specialist thinks her rheumatoid arthritis will settle into remission “thus allowing her to return to work.”

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, 2023. In other words, no later than December 31, 2023. This date is based on her CPP contributions.¹ She must also prove that she continues to be disabled.²

[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.³

[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 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.⁴

[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.

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 *Canada Pension Plan*. The Appellant’s CPP contributions are on GD2-6.

² 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.

³ 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.

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

[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 she has to show it is more likely than not that she is disabled.

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of June 2020. She continues to be disabled. 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?

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

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

[16] The Appellant has active rheumatoid arthritis. She has other conditions I will talk about more later. However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁶ 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 her ability to work.⁷

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

– What the Appellant says about her functional limitations

[18] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[19] I believe what the Appellant says about her functional limitations and that if she could work, she would. The medical evidence shows that the Appellant worked for many years after her symptoms started. Before she stopped working completely in June 2020, she had periods of flare-ups of pain, swelling and numbness in her joints. She also had periods of remission or milder flare-ups. The periods she worked and didn't work match with the description of her condition and symptoms in the medical evidence.

[20] The Appellant says that since she stopped working in June 2020, her rheumatoid arthritis flares up regularly and because of that:⁸

- Sometimes she cannot get out of bed.
- Her right-hand hurts so much and so often that sometimes she cannot clean herself without help.
- Sometimes, her younger kids who are 12, cannot go to school because they have to stay home and take care of her.
- She has chronic pain, swelling and/or numbness in her shoulders, arms, right hand, neck, ankles, knees.

[21] At the hearing the Appellant said some symptoms have gotten worse since she stopped working in June 2020. She says that before, her right hand gave her problems. No, she has trouble with both hands because of carpal tunnel syndrome **and** rheumatoid arthritis. She has to wear hand-splints at night. She says she cannot open her pill bottles.

[22] The Appellant also said that if she walks too much, her right ankle swells and for a couple days after she cannot stand or walk and has to rest.

[23] The Appellant has tendonitis in her shoulders and a disc in her neck swells periodically because of the rheumatoid arthritis. If she uses her right shoulder too much, the next day she cannot use her right arm and has to use her left only.

⁸ See GD1, GD2-17 and GD2-144

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

[24] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work no later than December 31, 2023.⁹ As I mentioned earlier, the medical evidence supports what the Appellant says. I will not set out the details of the medical evidence.

[25] In June 2016 an ultrasound of her left shoulder showed that she had supraspinatus and subscapularis tendinosis.¹⁰

[26] In July 2016 she had her first visit with a rheumatologist. He noted that her joint pain started in 2006 and had been severe for the past month. He also said that starting in November 2015 she developed recurrent pain in her shoulders, wrists, hands, right hip, knees, ankles, and feet. He said she would get episodes of severe pain weekly that lasted 2 to 3 days. He also said that symptoms got worse with overactivity. He said she likely had seropositive rheumatoid arthritis and started her on medications.¹¹

[27] Between 2016 and 2020, the Appellant worked because her rheumatoid arthritis went into periods of remission or she only had mild flare-ups.¹² She took time off when she needed. However, in January 2020 her rheumatoid arthritis became active again with inflammation in her right hand, neck, knees, ankles and occasionally her elbows. She was stiff for up to an hour in the morning.¹³

[28] Since January 2020, her symptoms have been consistently bad.¹⁴ The medical report form completed by her family doctor says that as a result of her impairments from rheumatoid arthritis she cannot walk or stand for prolonged periods and has difficulty with bathing and dressing.¹⁵

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

¹⁰ See GD2-137.

¹¹ See GD2-106 and GD2-107.

¹² See GD2-98 to GD2-102.

¹³ See GD2-96 and GD2-97.

¹⁴ See GD2-69 to GD2-71, GD2-75 to GD2-78, GD2-109 to GD2-113, GD3 and GD4-4.

¹⁵ See GD2-79 to GD2-87.

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

– **The Appellant followed medical advice**

[30] To receive a disability pension, an appellant must follow medical advice.¹⁶ The Appellant followed medical advice.¹⁷ The Minister doesn't argue otherwise, and the evidence is clear that she has followed medical advice.

[31] 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.¹⁸

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

[32] 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

[33] 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.¹⁹ I find that the Appellant can't work in the real world. The Appellant hasn't been able to work since June 2020.

[34] The Appellant is 50 and therefore has several years before the standard age of retirement. She speaks English fluently. She also has a college diploma as a dental assistant in 1994, but she never worked in a paying job in that field. She said that she

¹⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁸ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹⁹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

tried to get volunteer experience as a dental assistant, but she had problems with her hands doing that job.

[35] The Appellant's only paying work experience has been in factories. She has never had an office job. I find that she isn't even physically capable of retraining and getting an office job. Her limitations are too severe and frequent to make her regularly capable of doing office work or retraining. She regularly cannot get out of bed, dress, and handle her daily hygiene without help. Because of the pain and swelling in her hands, due to rheumatoid arthritis and now carpal tunnel syndrome, she couldn't use a computer.

[36] I find that the Appellant's disability was severe as of June 2020.

Was the Appellant's disability prolonged?

[37] The Appellant's disability was prolonged.

[38] The Appellant's primary condition, rheumatoid arthritis, was first diagnosed in July 2016 but symptoms started, to varying degrees, before that. Since being diagnosed there were periods of remission or milder flare-ups when she was able to work. However, since she stopped working in June 2020, she hasn't been able to work. This is clear from the medical evidence and what the Appellant says. It has therefore been over three years since she has been continuously disabled.

[39] The Minister says that with ongoing optimal treatment her rheumatologist felt her condition would settle into remission once again. The medical evidence does not support what the Minister says.

[40] The Appellant *may* go into some degree of partial or substantial remission. That doesn't mean her disability will get better enough so she is regularly capable of working. It also isn't something that is likely to happen in the foreseeable future. Her disability is long continued and of indefinite duration.

[41] I find that the Appellant's disability was prolonged as of June 2020.

When payments start

[42] The Appellant had a severe and prolonged disability in June 2020.

[43] However, the *Canada Pension Plan* says a person can't be considered disabled more than 15 months before the Minister receives their disability pension application.²⁰ After that, there is a 4-month waiting period before payments start.²¹

[44] The Minister received the Appellant's application in October 2021. That means she is considered to have become disabled in July 2020.

[45] Her pension payments start as of November 2020.

Conclusion

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

[47] This means the appeal is allowed.

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

²⁰ Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

²¹ 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.