Citation: *PC v Minister of Employment and Social Development*, 2023 SST 1132

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	P. C.
Representative:	Ethel O'Rielly
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated July 12, 2022 (issued by Service Canada)
Tribunal member:	Anne S. Clark
Type of hearing:	Teleconference
Hearing date:	August 3, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	August 15, 2023
File number:	GP-22-1709

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 was 31 years old in 1992. That was when she last contributed to the CPP. As a child she was diagnosed with cerebral palsy. She had surgeries at ages six, thirteen, and fourteen. Since then, she developed arthritis in her hips and back. She had hip replacement surgery in 2017. The Appellant worked in various part time jobs until 2020.

[4] The Appellant applied for a CPP disability pension on October 4, 2021.[1] 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 she has been disabled since she was born. She has not been able to work in any full time job. Pain in her legs and back makes her unable to work more than four to five hours a few days a week. Her part time work has not been enough for her to contribute to the CPP.

[6] The Minister says the Appellant must prove that she became disabled in 1992 by August 31, 1992. There is no evidence about the Appellant's health conditions in 1992. Therefore, the Minister says the Appellant did not prove she has a severe and prolonged disability.

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[1] The Appellant's application begins at page GD2-32. She applied in April 2017 (GD2-84) and January 2020 (GD2-56). The Minister denied those applications and the Appellant did not pursue an appeal.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that **became** severe and prolonged between January 1, 1992, and August 31, 1992. This period is based on her contributions to the CPP.[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 able to regularly do some kind of work to earn a living, 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.

[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.

[2] Service Canada uses an appellant's years of Canada Pension Plan (CPP) contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See sections 19, 44(2), and 44(2.1) of the *Canada Pension Plan*. The Appellant's CPP contributions are at pages GD2-115 and 116.
[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.

Matters I have to consider first

The Appellant asked me to adjourn the hearing

[14] The Appellant asked me to adjourn the hearing (that is, change the hearing date) three times. I allowed the first two requests and refused the third. My reasons for this are below.

[15] The first request was to because the representative had a death in her family. The representative asked for the delay before the hearing. I allowed the request and rescheduled the hearing for one month later.

[16] The Appellant requested the second delay during the hearing. We discussed the fact that the file had no evidence about the Appellant's health in 1992, which is when she has to prove she became disabled. The Appellant and representative thought they might be able to obtain medical evidence about the Appellant's health in 1992. They asked for a delay to do that.

[17] In the interest of fairness, I allowed the Appellant the time she thought she would need to obtain evidence. The Appellant then needed more time to file the information. After she filed her evidence, I rescheduled the hearing for August 3, 2023.

[18] On July 20, 2023, the representative requested another adjournment. This request was because the representative booked the month of August off work for personal time. The representative offered no other information about her request.

[19] I refused the representative's request. There were previous delays in the appeal. In order to allow another adjournment, I had to be satisfied it was necessary to ensure fairness. The Appellant had already given her oral testimony in the previous hearing. The reconvened hearing was to allow the Appellant to address the medical evidence she filed after the hearing. I was not satisfied that another delay was necessary to ensure a fair hearing.

Reasons for my decision

[20] I find that the Appellant hasn't proven she became disabled between January 1, 1992, and August 31, 1992.

Was the Appellant's disability severe?

[21] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

[22] Appellant's representative works for a Senator. She said the Senator supports the Appellant's claim for CPP disability benefits. However, the Senator's opinion isn't relevant. I have to base my decision on the evidence and the law.

[23] The Tribunal is created by legislation. It only has the powers granted to it by its governing statute. This means I have to interpret and apply the provisions as they appear in the CPP and its regulations. I cannot change or waive them, even if they seem unfair in a particular situation.[5]

[24] The Appellant did not provide evidence about her health condition in 1992.

[25] The Appellant's current conditions include:

- cerebral palsy
- painful feet from hallux valgus (bunions)
- arthritis in her hips, knees, neck, and shoulders
- dental "issues" that required surgery.

[26] However, I can't focus on the Appellant's diagnoses.[6] Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.[7] When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main

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[5] For a general discussion on this point see the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22.
[6] See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[7] See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

one) and think about how they affected her ability to work between January 1, 1992, and August 31, 1992.[8]

[27] I find that the evidence doesn't show the Appellant had functional limitations that affected her ability to work in this period.

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

[28] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says she has been disabled from cerebral palsy since birth. She could only work part time hours until 2020. She said her age and painful hips now make her unable to walk without a walker. She said that means she can no longer work in any job.

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

[29] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work between January 1, 1992, and August 31, 1992.[9] If she does not prove that she became disabled in this time, medical evidence about her health after August 1992 is irrelevant.[10]

[30] The Appellant did not submit medical evidence to demonstrate her health conditions during this period. She also had a very hard time remembering what she was doing during that period. The lack of information presents many possible scenarios about the Appellant's ability to work. The Appellant must provide evidence that makes one scenario more likely than the others, and she has not been able to do that. She did not file medical or other evidence about her health in this period. She could not reliably describe her conditions and how they affected her in 1992.

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[8] See *Bungay v Canada (Attorney General)*, 2011 FCA 47.
[9] See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.
[10] The Federal Court said this in *Canada (Attorney General) v. Dean*, 2020 FC 206, citing the Federal Court of Appeal in *Warren v. Canada (Attorney General),* 2008 FCA 377; and the *Canada Pension Plan Regulations.*

[31] There is no medical evidence about the Appellant's health in 1992. There is evidence to confirm the Appellant had cerebral palsy and was treated as a child.[11] The evidence referred to the fact she made great improvement in her independence and self care. There is no other evidence about her functional ability in or before 1992.

[32] There is evidence from 1993. The Appellant consulted a surgeon about bunions in both feet. The doctor recommend she consider surgery but noted she was not comfortable with that option.[12] There is no evidence about how the condition affected her ability to work in 1992.

[33] There is no more evidence about the Appellant's health and her functional abilities until 2012 and later.

[34] The Appellant's family doctor, H. B. Drover, said she had osteoarthritis in 2017 that would have given her severe pain in 2015.[13] Dr. Drover's evidence had no information about the Appellant's condition before 1999.

[35] The Appellant's current family doctor said he had no information from 1991.[14] In 2022 Dr. Hall said the Appellant had been his patient for about seven years. He said her osteoarthritis, degenerative disc disease and cerebral palsy caused regular discomfort and mobility issues.[15] He said these concerns were likely a regular occurrence for a decade.

[36] The evidence about the outcome of her surgeries would indicate she likely had some limitations from cerebral palsy before she had surgery. However, the medical evidence doesn't show that the Appellant had functional limitations that affected her ability to work between January 1, 1992, and August 31, 1992.

[11] GD1-12 to 20.
[12] See the letters and notes in GD9.
[13] Dr. Drover said this in GD2-160.
[14] See Dr. Hall's letters and notes at GD2-215, 229, and 301.
[15] Dr. Hall said this in his letter at GD2-215.

– The Appellant's personal characteristics didn't affect her ability to work

[37] 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

[38] 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.[16]

[39] The Appellant did not say she had any language or learning challenges. She said she took courses and participated in work programs. She said she felt her current age combined with a lack of education affect her ability to work. She did not say she had any personal circumstances in 1992 that affected her ability to work.

[40] The Appellant was 31 years old when she was eligible for a CPP disability benefits. The evidence does not show her age and work history would have been barriers to her pursuing employment or retraining. Given the conflicting evidence about the work and courses she was able to do, it is not possible to say if there were circumstances that could have limited her ability to pursue retraining or suitable work.

[41] The Appellant's personal characteristics did not affect her ability to work between January 1, 1992, and August 31, 1992.

– The Appellant worked after 1992

[42] The Appellant said she took courses through family benefits. She first said she took a two-year course after she moved to St. John's in 1990. She said she took other courses until she had a baby in 1997. She stayed home with the baby until 2014 when

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[16] See *Villani v Canada (Attorney General)*, 2001 FCA 248.

she went back to work. When the hearing reconvened, the Appellant said she couldn't remember many details about the job re-entry program. She couldn't remember the years but thought it was in or around 1991 or later. She took a textile course and maybe others. She said she was in a program where she worked for 10 weeks but couldn't remember the details.

[43] During the first hearing the Appellant told me she worked from 2014 to 2020. Her record of earnings shows she had earnings that were below the year's minimum.[17] I asked her to discuss her work hours. I also asked if she could have worked more than the hours that were assigned. She didn't remember how much she earned but said she had to limit her work hours because she was collecting social assistance benefits and housing. If she earned more, she would lose that amount from her benefits. She was very clear that she had to be careful and work less than the allowed hours.

[44] When we reconvened the hearing, the Appellant said she didn't mean to say that about her work. She said she couldn't work more hours because she is disabled. In her submissions she said her employer wanted her to work more hours. She also said she wasn't entitled to extra hours because the employer had to give all of the extra hours to workers she described as "foreigners".

[45] The Appellant could not explain why her testimony was so different. If her work before 2020 was limited because she was disabled, she would have told me in the first hearing. It isn't reasonable for her to say she didn't mean to say that. The Appellant contradicted herself and denied making earlier statements about limiting her work hours. That means I can't rely on her evidence about this. Therefore, I can't reasonably conclude that she was incapable of substantially gainful work in 1992 and continuously since.

[46] The Appellant contradicted herself and changed her statements from one hearing to the next. She said she couldn't remember when she worked or how her conditions affected her in 1992. Even though she seemed to try to answer my questions, she said

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[17] See GD2-116.

she has a poor memory and can’t remember details. The Appellant believes she has always been unable to work full time because of cerebral palsy. Now her age, arthritis, lack of education, and lack of work experience make her unable to work in any job.

[47] The Appellant didn’t submit medical or other evidence about her functional limitations when she was last eligible for a CPP disability pension. Her health conditions and personal circumstances after 1992 do not have a bearing on whether she became disabled in 1992. This means she hasn’t proven her disability was severe by then.[18]

Conclusion

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

[49] This means the appeal is dismissed.

Anne S. Clark

Member, General Division – Income Security Section

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[18] See *Giannaros v Minister of Social Development*, 2005 FCA 187.