



Citation: *CP v Minister of Employment and Social Development*, 2023 SST 1796

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: C. P.
Representative: Paul Sacco

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 22, 2022 (issued
by Service Canada)

Tribunal member: Anita Nathan

Type of hearing: Teleconference

Hearing date: July 4, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: September 18, 2023

File number: GP-23-22

Decision

[1] The appeal is allowed.

[2] The Appellant, C. P., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of April 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 46 years old. She has a high school diploma. She also completed a mutual funds securities course and the Canadian securities course. She worked as a small business financial advisor from July 1995 to October 2012. After she had her second child in October 2012, the Appellant didn't return to work because of severe abdominal pain that was later diagnosed as ovarian cysts and endometriosis. As well, the Appellant says she had depression and anxiety before she had children, but it got worse between 2016 and 2017.

[4] The Appellant applied for a CPP disability pension on March 28, 2022. 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 can't work because of both the endometriosis and her mental health. The abdominal pain gets very severe and limits her ability to sit, stand, and walk. As well, she struggles with concentration, memory, and interactions with people.

[6] The Minister recognizes that the Appellant has some limitations, but it says those limitations don't preclude all types of work. With respect to the Appellant's abdominal pain, the Minister also says that the Appellant has not explored all treatment options, and she is waiting for a full hysterectomy with a good prognosis for recovery. With respect to the Appellant's mental health, the Minister says that the Appellant

psychologist expects her to return to work after treatment, therefore she does not meet the prolonged criteria.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2020. This date is based on her contributions to the CPP.¹

[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.²

[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.³

[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.

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 GD2-18.

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

³ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Matters I have to consider first

I accepted the documents sent in after the hearing

[14] At the hearing, I requested the Appellant file a psychological assessment report referred to during the hearing. The Appellant filed the report after the hearing,⁴ which I accepted having considered several factors.⁵ First, the record is relevant as it speaks to the Appellant's mental health condition, recommended treatment, and her prognosis. The evidence is new. Accepting the record didn't cause any delay as it was filed less than a week after the hearing. The Minister was also given an opportunity to respond to the document and did file additional submissions.⁶

Reasons for my decision

[15] I find that the Appellant had a severe and prolonged disability by November 2013. 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?

[16] The Appellant has ovarian cysts, endometriosis, degenerative changes in her back, depression, and anxiety. However, I can't focus on the Appellant's diagnoses.⁷ Instead, I must focus on whether she had functional limitations that got in the way of her 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 affect her ability to work.⁹

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

⁴ See GD6.

⁵ See s. 42(2) of the *Social Security Rules of Procedure*.

⁶ See GD7.

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

⁸ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

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

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

[18] The Appellant says that her medical condition has resulted in functional limitations that affect her ability to work.¹⁰ She went on parental leave on October 15, 2012. While on parental leave, she developed abdominal pain, so she never went back to work. She went on disability leave on November 4, 2013. Due to the endometriosis, and degenerative changes in her back, the Appellant says she has severe pain in her abdomen and back which results in the following functional limitations:

- difficulty sitting and standing for more than 10 to 15 minutes
- difficulty walking more than 10 minutes
- inability to lift or carry anything over 5 pounds
- difficulty driving for more than 15 minutes
- difficulty reaching and bending
- disturbed sleep; she only sleeps 4 to 5 hours a night
- frequent bladder release

[19] Due to a combination of her pain, post-partum depression, and other familial issues, the Appellant says she has had anxiety and depression for years, but it got worse in 2016 or 2017. Her symptoms include frequent crying, low mood, self-isolation, and irritability. As a result, she attempted suicide in October 2018. The Appellant says she has the following functional limitations:

- poor focus
- poor memory

¹⁰ The Appellant's account of her functional limitations can be found at (in chronological order) GD2-516 to GD2-523, GD2-82, GD2-28 to GD2-46, and her oral testimony at the hearing.

- confusion
- difficulty understanding something she has read
- difficulty communicating with people
- inability to manage her finances

[20] The Appellant said her conditions have made it difficult to do her day-to-day household tasks of cooking and cleaning. She hired a cleaner before the pandemic, and her husband and parents do the bulk of the household tasks and contribute to taking care of the two kids.

[21] The Appellant said her previous job involved a lot of sitting, standing, meeting individuals, and making financial plans. The pain prevents her from prolonged sitting, standing, and driving. She says she also doesn't have the focus and concentration necessary to do her old job.

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

[22] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2020.¹¹

[23] The medical evidence supports what the Appellant says.¹²

[24] The medical evidence supports that the Appellant's functional limitations affected her ability to work as a financial advisor.

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

¹² Listed chronologically regarding ovarian cysts and endometriosis see GD2-182, GD2-424 to GD2-425, GD2-426, GD2-179 to GD2-181, GD2-196 to GD2-197, GD2-201 to GD2-202, GD2-143 to GD2-144, GD2-201 to GD2-203, GD2-145, GD2-391 to GD2-393, GD2-472 to GD2-473, GD2-183 to GD2-184, GD2-161 to GD2-162, GD2-151 to GD2-152, GD2-137 to GD2-138, GD2-247 to GD2-255, GD2-135 to GD2-136, GD2-139 to GD2-142, GD2-263 to GD2-265, and GD2-232 to GD2-240. Listed chronologically regarding anxiety and depression see GD2-153 to GD2-162, GD2-334 to GD2-337, GD2-298 to GD2-299, GD2-271 to GD2-273, GD2-257 to GD2-258, GD2-263 to GD2-265, GD3-13 to GD3-23, GD3-5, GD2-232 to GD2-240, GD3-3, and GD6.

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

– **The Appellant has followed medical advice**

[26] To receive a disability pension, an appellant must follow medical advice.¹³ If an appellant doesn't follow medical advice, then she must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on her disability.¹⁴

[27] The Appellant has followed medical advice.¹⁵

[28] In terms of her physical condition, the Appellant has tried various medications. Some gave her side effects, so she didn't continue taking them, which is reasonable. The Appellant is currently taking naproxen and Tylenol for pain relief. The Appellant also tried physiotherapy, nerve block injections, she has lost weight, and had a partial hysterectomy.

[29] The Minister argued that the Appellant didn't attend a multidisciplinary pain management program so her condition isn't severe. In fact, the Appellant attended the Wasser Pain Management Centre, a multidisciplinary pain management clinic at Mount Sinai Hospital. There are various medical reports confirming the Appellant's attendance and her visits with multiple doctors at the clinic.¹⁶

[30] 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.¹⁷

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 For example, see GD2-161 to GD2-162, GD2-183 to GD2-184 and GD2-391 to GD2-393.

¹⁷ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

– **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 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

[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 she can work.¹⁸

[33] I find that the Appellant can't work in the real world. I will assess the various factors that lead to this conclusion.

[34] The Appellant's personal circumstances are neutral in terms of her ability to re-enter the workforce. She is quite young at 46 years old and is fluent in English. The Appellant has a high school education and took some courses related to finance. But because she has not been working for ten years, her financial advisor licence expired. She also has about 17 years of experience as a financial advisor, but her experience is out of date as she stopped working in 2012.

[35] The Appellant's functional limitations prevent her from getting her licence again. The Appellant testified that to become licenced she had to study for six to nine months and then write two exams. She couldn't do this again because of both her physical pain and her mental health. She couldn't sit at a desk for long periods due to the abdominal pain. She also doesn't have the focus or memory to be able to study for so many months.

[36] The Appellant couldn't do any type of work or retrain for a new job. The Appellant's inability to sit or stand for over 10 to 15 minutes prevents her from retraining

¹⁸ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

for any job or doing any type of work. This includes sedentary work. The Appellant also doesn't have the focus and concentration necessary to do any job.

[37] Dr. Gordon of the Wasser Pain Management Clinic found that due to her pain, it would be difficult for the Appellant to do an equivalent or even a less active job than her previous role.¹⁹

[38] In June 2019, following a work conditioning assessment by a physiotherapist, kinesiologist, and an occupational therapist, it was determined that return to work was not a realistic goal for the Appellant at the time due to, among other things, her physical symptoms and cognitive challenges like memory, attention, and planning.²⁰

[39] Due to the Appellant's functional limitations and her personal circumstances the Appellant doesn't have any work capacity.

[40] I find that the Appellant's disability was severe by November 2013, when she went on disability leave, as her condition didn't improve after she stopped working.

Was the Appellant's disability prolonged?

[41] The Appellant's disability was prolonged.

[42] The Appellant's physical condition began in 2012. Her mental health condition began before 2012 and worsened in 2016 or 2017. These conditions have continued since then, and they will more than likely continue indefinitely.²¹

[43] The Appellant has experienced very severe abdominal pain since 2012. No treatment has improved her condition by anything more than a marginal amount.

[44] The medical evidence does not say that the remaining treatment will improve the Appellant's abdominal pain. The Appellant has had a partial hysterectomy, with no

¹⁹ See GD2-183 to GD2-184.

²⁰ See GD2-247 to GD2-255.

²¹ In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an 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)*, 2011 FCA 318.

improvement in her symptoms. She testified that she is supposed to have a full hysterectomy either this year or next year. The Minister argues that since the Appellant is waiting for more treatment with a good prognosis for recovery, she doesn't meet the test for disability benefits. In May 2021, after the partial hysterectomy, Dr. Pham wrote that the Appellant is waiting for surgery which will include laser removal of endometriosis and the removal of the right ovary. Dr. Pham concluded by saying, "Expect good recovery."²²

[45] It is not clear to me what Dr. Pham is saying. It appears she is saying that the Appellant is expected to recover well from the surgery. This is different from an opinion that the surgery is expected to improve the Appellant's abdominal pain. Although the Appellant is hopeful her pain will get better after the full hysterectomy, there is in fact nothing in the medical evidence that indicates the outcome of the surgery or the chances of it improving the Appellant's condition. In fact, several doctors at the Wasser Pain Management Centre said that a hysterectomy will not resolve the Appellant's condition.²³

[46] In addition, the Appellant's pain is not only caused by endometriosis but also degenerative disc disease,²⁴ which will not be resolved by a full hysterectomy.

[47] In terms of the Appellant's mental health, her condition has existed for over a decade and has not improved with medication.

[48] I place little weight on a psychologist's report that the Appellant can return to work after treatment. A January 2023 report by psychologist Deborah Comeau, commissioned by the Appellant's insurance company, concluded that with the recommended nine months of treatment, there was a good likelihood she would be able to re-enter the workforce.²⁵ The Minister argues that this proves the Appellant's condition is not prolonged. Ms. Comeau's report is out of line with other medical evidence about the Appellant's mental health around the time she last qualified for

²² See GD2-263 to GD2-265.

²³ See GD2-161 to GD2-162.

²⁴ See GD2-391 to GD2-393.

²⁵ See GD6.

disability benefits. In February 2019, Dr. Grossman determined that the Appellant's condition had deteriorated, she was not able to work, and her recovery timeline was unknown.²⁶ In January 2021, Dr. Grossman again determined that the Appellant's response to treatment was limited, her recovery date was unknown and her prognosis was guarded.²⁷ The Appellant also testified that although she had done about three months of treatment, her condition was not improving. For these reasons, I place less weight on Ms. Comeau's report and more weight on Dr. Grossman's opinion.

[49] I find that the Appellant's disability was prolonged by November 2013.

When payments start

[50] The Appellant had a severe and prolonged disability in November 2013.

[51] 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.²⁸ After that, there is a four-month waiting period before payments start.²⁹

[52] The Minister received the Appellant's application in March 2022. That means she is considered to have become disabled in December 2020.

[53] Payment of her pension starts as of April 2021.

Conclusion

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

[55] This means the appeal is allowed.

Anita Nathan
Member, General Division – Income Security Section

²⁶ See GD2-298 to GD2-299.

²⁷ See GD2-271 to GD2-273.

²⁸ See s. 42(2)(b) of the *Canada Pension Plan*.

²⁹ 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.