



Citation: *KM v Minister of Employment and Social Development*, 2023 SST 1805

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** K. M.  
**Representative:** Wade Bemister

**Respondent:** Minister of Employment and Social Development  
**Representative:** Érelégna Bernard

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**Decision under appeal:** General Division decision dated December 23, 2022  
(GP-19-832)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Teleconference  
**Hearing date:** November 30, 2023  
**Hearing participants:** Appellant  
Appellant's representative  
Appellant's witness  
Respondent's representative

**Decision date:** December 14, 2023  
**File number:** AD-23-349

## Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension.

## Overview

[2] The Appellant is a 55-year-old former legal secretary and law clerk. In her early 20s, she was diagnosed with medullary sponge kidney, a congenital condition that makes her prone to kidney stones and infections. It appears that her kidney problem led to chronic pain, which in turn led to a dependency on narcotic painkillers.

[3] The Appellant also has a history of anxiety and depression. She says that her mental health worsened around 2005, and her job performance began to suffer. In May 2009, she lost her job at a downtown Toronto law firm. Other than a stint as a self-employed paralegal in 2013–14, she has not worked since.

[4] The Appellant applied for a CPP disability pension in April 2018. She claimed that she could no longer work because of chronic pain due to kidney disease, depression and anxiety, and osteoarthritis in her lower spine.<sup>1</sup>

[5] The Minister of Employment and Social Development refused her application after determining that she did not have a severe and prolonged disability as of December 31, 2013, the last time she had CPP disability coverage.<sup>2</sup>

[6] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by teleconference and dismissed the appeal. It found that, although the Appellant had some physical and psychological impairments, she still had the capacity to perform regular, substantially gainful employment.

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<sup>1</sup> See the Appellant's application for CPP disability benefits dated April 20, 2018, GD2-27 and GD2-76.

<sup>2</sup> See Minister's reconsideration decision letter dated December 13, 2018, GD2-6. The Appellant later asked the Canada Revenue Agency (CRA) to amend her income tax return for 2014. CRA agreed to the amendment, which had the effect of extending the Appellant's CPP disability coverage period to December 31, 2014. That date was used in this proceeding.

[7] The Appellant then applied for permission to appeal to the Appeal Division. Earlier this year, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. Last month, I held a hearing to discuss her disability claim in full.

[8] Now that I have considered submissions from both parties, I have concluded that the Appellant failed to show that she is disabled under the CPP. The evidence shows that the Appellant, while subject to some functional limitations, is not disabled from all forms of regular employment.

## Preliminary Matter

[9] In December 2022, the law governing the appeals to the Social Security Tribunal changed.<sup>3</sup> Under the new law, the Appeal Division, once it has granted permission to proceed, must now hold a *de novo*, or fresh, hearing about the same issues that were before the General Division.<sup>4</sup> As I explained at the outset of the hearing, that meant I would not be bound by any of the General Division's findings. I also made it clear that I would be considering all available evidence, including new evidence, about whether the Appellant became disabled during her coverage period.

## Issue

[10] For the Appellant to succeed, she must prove that, more likely than not, she had a severe and prolonged disability during her coverage period. The parties agreed that the Appellant's coverage ended on December 31, 2014.<sup>5</sup>

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>6</sup> A claimant isn't entitled to a disability

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<sup>3</sup> See section 58.3 of the *Department of Employment and Social Development Act* (DESDA). This appeal is subject to the new law, because the Appellant's application for permission to appeal was filed with the Tribunal on April 12, 2023, after the new law came into force.

<sup>4</sup> The Appeal Division was previously restricted to considering three types of error that the General Division might have made in coming to its decision.

<sup>5</sup> Under section 44(2) of the *Canada Pension Plan*, a "minimum qualifying period" is established by making threshold contributions to the CPP. The Appellant's earnings and contributions are listed on her updated record of earnings at GD37-6.

<sup>6</sup> See section 42(2)(a)(i) of the *Canada Pension Plan*.

pension if they are regularly able to do some kind of work that allows them to earn a living.

- A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>7</sup> The disability must be expected to keep the claimant out of the workforce for a long time.

[11] In this appeal, I had to decide whether the Appellant developed a severe and prolonged disability before December 31, 2014.

## **Analysis**

[12] I have applied the law to the available evidence and concluded that the Appellant did not have a severe and prolonged disability as of December 31, 2014. I am satisfied that the Appellant's medical conditions have not prevented her from regularly pursuing substantially gainful employment.

### **The Appellant did not have severe disability during her coverage period**

[13] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.<sup>8</sup> I have reviewed the record, and I have concluded that the Appellant did not meet that burden according to the test set out in the *Canada Pension Plan*. While the Appellant may suffer from various medical conditions, I couldn't find enough evidence to suggest that they rendered her incapable of work.

[14] In her application for benefits, the Appellant said that she hadn't been able to work since May 2009, when she was terminated with cause from her job as a law clerk with X, a large Toronto law firm. She claimed that she was unable to function in a workplace because of anxiety and depression, as well as the side effects of the drugs that she was taking to relieve her chronic pain. She said that she had undergone surgeries in 2019 and 2021 to remove multiple kidney stones.

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<sup>7</sup> See *Canada Pension Plan*, section 42(2)(a)(ii).

<sup>8</sup> See *Canada Pension Plan*, section 44(1).

[15] In July 2018, the Appellant's family doctor completed a medical questionnaire in support of the Appellant's CPP application. He confirmed her diagnosis of medullary sponge kidney, chronic back pain, and anxiety/depression. He noted that her anxiety and depression limited her ability to function, although he also reported that her condition was stable and that she was receiving symptomatic treatment.<sup>9</sup>

[16] The Appellant testified that she worked at Toronto law firms for nearly 20 years. She started out at Y as a legal secretary, eventually focusing on estates and trusts. She loved her job and was good at it. In 2002, she enrolled in Humber College and became certified as a law clerk.

[17] She said that she had always been prone to depression, going back to her childhood. By 2005, things had started to pile up. Her then-partner was a tyrant. Her children were growing up. Her kidney condition was getting worse. She developed back pain. In 2005, she went on her first stress leave, which wound up lasting 18 months. By the time she returned, her position as an estates law clerk was gone, so she accepted a demotion to legal secretary. In the meantime, she had developed a dependency on narcotic painkillers such as Percocet.

[18] In July 2008, she moved to X, which she said turned out to be a huge mistake. She just felt sick. She was in constant pain, she was depressed, she had no energy. Her performance at work suffered, and she started missing days. She took some time off, but it didn't help. After about a year, she was dismissed with cause.

[19] In 2013, she thought she would try to make a living as a self-employed paralegal. She had some contacts from her law firm days and began incorporating companies on behalf of foreign clients. She said that it only took up maybe 10 percent of her time. She had maybe five or six jobs over the next year and made only a few thousand dollars.<sup>10</sup> Eventually, she felt she couldn't go on.

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<sup>9</sup> See CPP Medical report completed by Dr. Thomas Fung, dated July 5, 2018, GD2-410.

<sup>10</sup> The Appellant's updated record of earnings indicate income of \$7,500 and \$9,200 in 2013 and 2014, respectively — see GD37-6.

[20] The Appellant said that she probably became disabled as long ago as 2005, when she took her first stress leave. She said that she made repeated attempts to get back on track but never managed to do so. However, although the Appellant may feel that she is disabled, I must base my decision on more than just her subjective view of her capacity.<sup>11</sup> In this case, the evidence, looked at as a whole, does not suggest a severe impairment that prevented her from performing suitable work during her coverage period. From what I can see, the Appellant was subject to some limitations at the time, but she was not incapacitated from all forms of work.

[21] I base this conclusion on the following factors:

– **The Appellant’s kidney condition did not prevent her from working as of December 31, 2014**

[22] The Appellant’s medical file contains ample evidence that she suffers from longstanding medical conditions. However, I can’t focus on her diagnoses.<sup>12</sup> Instead, I have to focus on whether she had functional limitations that got in the way of earning a living during her coverage period. Medullary sponge kidney makes you more likely to get kidney infections and kidney stones, but it doesn’t necessarily mean you will be completely debilitated by them.

[23] In February 2011, the Appellant saw a nephrologist about her kidney stones. Dr. Anita Dunn noted that, except for chronic flank pain, the Appellant had been doing well, despite medullary sponge kidney and recurrent calcium oxalate stones.<sup>13</sup> Dr. Dunn reiterated the importance of increasing fluid intake and avoiding oxalate-rich foods.

[24] Imaging of the Appellant’s kidneys show that her condition was stable during the relevant period. In May 2011, a CT scan showed extensive renal calcifications in her

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<sup>11</sup> A claimant has to provide a report of any physical or mental disability, including its nature, extent and prognosis; the findings upon which the diagnosis and prognosis were made; any limitation resulting from the disability, and any other pertinent information. See section 68(1) of the *Canada Pension Plan Regulations*. In *Warren v Canada (Attorney General)*, 2008 FCA 377, the Federal Court of Appeal said there must be some objective medical evidence of a disability. See also *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>12</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>13</sup> See report dated February 10, 2011 by Dr. Anita Dunn, specialist in nephrology and internal medicine, GD2-61.

kidneys, with no change from the previous year.<sup>14</sup> Five years later, in March 2016, an ultrasound showed essentially the same thing: extensive medullary nephrocalcinosis, but otherwise normal-looking kidneys with no new findings.

[25] In the same period, the Appellant had frequent and regular appointments with her family doctor. Dr. Hu's notes indicate that, although the Appellant had kidney problems, they were episodic and amenable to treatment:

- In November 2013, the Appellant told Dr. Hu that her pain was "manageable."<sup>15</sup>
- In July 2014, the Appellant said that she had no complaints and was busy at her partner's motorcycle repair shop.<sup>16</sup>
- In November 2014, the Appellant reported left flank pain and a recent urinary tract infection, for which she had taken ciprofloxacin (an antibiotic).<sup>17</sup>
- In December 2014, the Appellant told Dr. Hu that she was doing well, her pain was manageable, and she had no functional restrictions.<sup>18</sup>
- In January 2015, the Appellant underwent a physical check-up but disclosed "no abdominal pain" or "sore or swollen joints."<sup>19</sup>
- In February 2015, the Appellant told Dr. Hu that she was managing her pain with extended-release Fentanyl patches and had no functional limitations.<sup>20</sup>
- In September 2015, the Appellant reported symptoms from a two-week-old urinary tract infection, for which she was successfully treated with ciprofloxacin.<sup>21</sup> Dr. Hu later advised her to become more active and eat less red meat.<sup>22</sup>

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<sup>14</sup> See CT scan of the abdomen and pelvis dated May 7, 2011, AD7-43.

<sup>15</sup> See Dr. Hu's office note dated November 21, 2013, GD2-140.

<sup>16</sup> See Dr. Hu's office note dated July 16, 2014, GD2-210.

<sup>17</sup> See Dr. Hu's office note dated November 7, 2014, GD2-221.

<sup>18</sup> See Dr. Hu's office note dated December 5, 2014, GD2-225.

<sup>19</sup> See Dr. Hu's office note dated January 12, 2015, GD2-229.

<sup>20</sup> See Dr. Hu's office note dated February 27, 2015, GD2-253.

<sup>21</sup> See Dr. Hu's office note dated September 18, 2015, GD2-264.

<sup>22</sup> See Dr. Hu's office note dated September 30, 2015, GD2-279.

- In November 2015, Dr. Hu recorded that the Appellant had no functional limitations.<sup>23</sup>

[26] These reports suggest that the Appellant's kidney condition did not cause her significant functional limitations around the end of her coverage period. It is true that the Appellant was on powerful transdermal painkiller in 2014–15, but I saw nothing in Dr. Hu's notes to indicate that side effects from her Fentanyl patch impaired her ability to work.

[27] Dr. Fung, who succeeded Dr. Hu as the Appellant's family physician, later wrote that the Appellant's condition was "stable," although subject to flaring up or relapsing and remitting. These terms suggest that the Appellant's condition was not continuous but intermittent. The Appellant later underwent two surgeries to remove kidney stones, but they did not occur until, respectively, 2019 and 2021, well after the end of her coverage period.

– **The Appellant's back condition did not prevent her from working as of December 31, 2014**

[28] The Appellant has cited back pain as a significant contributor to her disability, but I saw little evidence to substantiate that claim. In 2014 and 2015, Dr. Hu's notes periodically mentioned "flank pain," although it was not clear whether its source was her kidney condition or degenerative changes in her spine. Either way, as we have seen, Dr. Hu repeatedly declared in this period that the Appellant displayed no functional restrictions and that her pain was manageable. In September 2016, Dr. Hu noted that the Appellant was reporting "no back pain."<sup>24</sup>

[29] Later, some time after the end of her coverage period, the Appellant's condition may have deteriorated. In June 2017, the Appellant was referred to a clinic for management of neck and flank pain, although it is not clear whether she ever submitted

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<sup>23</sup> See Dr. Hu's office note dated November 18, 2015, GD2-285.

<sup>24</sup> See Dr. Hu's office note dated September 18, 2015, GD2-265.



to nerve block injections, as recommended.<sup>25</sup> At the same time, an X-ray of her cervical and lumbar spine was essentially normal, with only minor facet joint osteoarthritis.<sup>26</sup>

**– The Appellant’s depression and anxiety did not prevent her from working as of December 31, 2014**

[30] At her hearing, the Appellant testified that her anxiety and depression were the main conditions that prevented her from working. However, when I examined her medical history, I saw several signs that it wasn’t as disabling as the Appellant claimed. I also saw little of the kind of intensive treatment that one would expect to see for a person with significant mental health problems.

[31] It appears that some of the Appellant’s depression was situational. She was involved in an abusive relationship when she took extended stress leave from Y, but that relationship later came to an end. There are also indications in Dr. Hu’s notes that, around 2013 and 2014, the Appellant’s partner was in jail and her daughters were involved with drugs. It appears that both crises eventually resolved themselves.

[32] There are only two psychiatric reports on file, and both date from several years before the end of the coverage period. In November 2006, the Appellant saw Dr. Bruce Sutton for an independent psychiatric examination at the request of her long-term disability insurer after she went on her first stress leave. Dr. Sutton diagnosed her with depression following her separation from her husband and other family issues.<sup>27</sup>

[33] Dr. Sutton saw the Appellant again in March 2008 after she experienced a relapse in her depressive symptoms. Dr. Sutton noted that she had returned work but had run into a conflict with her employer — specifically, being pushed into a position that she didn’t want. However, on examination, he observed “no evidence of any cognitive deficiencies... [her] memory and concentration appeared intact over the course of the examination. Her insight and judgment were not impaired. She was able

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<sup>25</sup> See multidisciplinary pain management clinic report dated June 1, 2017 by Dr. Rizwan Muhammad, interventional pain medicine specialist, GD2-359.

<sup>26</sup> See X-ray of the cervical and lumbar spine dated June 2, 2017, GD2-364.

<sup>27</sup> See independent medical examination report dated November 21, 2006 by Dr. Bruce Sutton, psychiatrist, GD6-34.

to communicate well, and her language was fluid, coherent and understandable.” Dr. Sutton declared the Appellant’s depression to be in remission and diagnosed her with an adjustment disorder. He also assigned her a general assessment of functioning score of 65–70, indicating only mild symptoms or some difficulty in social or occupation functioning.<sup>28</sup>

[34] Later, the Appellant was referred to another psychiatrist. Dr. Anil Srivastava reported that the Appellant felt sad and heartbroken at times because her family had broken up. She had previously been tearful, but less so after starting antidepressants. She had little energy and rated her mood as a seven on a scale of 10. She worried about her children and her finances but reported no social anxiety. Dr. Srivastava diagnosed the Appellant with major depressive disorder, single episode, mild. “There is some sense of generalized anxiety, although she reports some difficulty concentrating as a result of other worries and some muscle tension, I did not have a sense of consistent and continual restlessness or fatigue or sleep disturbance or irritability...”<sup>29</sup>

[35] Although Dr. Srivastava’s findings came more than four years before the end of the Appellant’s coverage period, I am still inclined to give them weight. It is striking that the psychiatrist documented relatively mild symptoms of depression and anxiety not long after the Appellant left employment for good — supposedly because she could no longer tolerate the stress of her job. It is possible that the Appellant’s mental health declined between 2010 and 2014, but there was nothing on the record to account for such a decline. In any case, the Appellant stated that she had been disabled by anxiety and depression since 2006.

[36] The Appellant testified that Dr. Srivastava offered her psychotherapy, but she couldn’t make early appointments. Instead, she turned to Dr. Hu who gave her informal counselling over the next several years. However, when I look at Dr. Hu’s notes from the relevant period, I don’t see evidence of a significant loss of functionality:

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<sup>28</sup> See Dr. Sutton’s independent medical examination report dated March 12, 2008, GD6-12.

<sup>29</sup> See report dated June 11, 2010 by Dr. Anil Srivastava, psychiatrist, AD7-21.

- In July 2013, Dr. Hu reported that the Appellant denied further depressive symptoms — her Alprazolam seemed to be working — and she could function normally.<sup>30</sup>
- In November 2013, Dr. Hu wrote that, although her partner was in jail and she was under acute stress, she demonstrated “healthy coping.”<sup>31</sup>
- In August 2014, Dr. Hu said that the Appellant was working in her boyfriend’s motorcycle repair shop and her anxiety symptoms were stable.<sup>32</sup>
- In December 2014, Dr. Hu reported that the Appellant was doing well, her mood was appropriate, and her sleep was okay.<sup>33</sup>
- In January 2015, Dr. Hu relayed that the Appellant had no current concerns: “Her mood was good, and she looked well.”<sup>34</sup>

[37] The Appellant was likely struggling with some sort of psychological impairment at the time, but that did not mean she was regularly incapable of all forms of substantially gainful employment. I don’t doubt that she was under stress in 2013–14, but she appeared to be managing it with medication and coping strategies. In my view, she had enough capacity, at minimum, to attempt alternative employment that might have been better suited to her impairment.

– **The Appellant’s condition, looked at as a whole, did not prevent her from working in the real world**

[38] I find that the Appellant’s psychological and physical conditions, considered as a whole, have left her with at least some ability to work. I am reinforced in this belief when I look at her overall employability.

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<sup>30</sup> See Dr. Hu’s office note dated July 18, 2013, GD2-115.

<sup>31</sup> See Dr. Hu’s office note dated November 21, 2013, GD2-140.

<sup>32</sup> See Dr. Hu’s office note dated August 13, 2014, GD2-211.

<sup>33</sup> See Dr. Hu’s office note dated December 5, 2014, GD2-225.

<sup>34</sup> See Dr. Hu’s office note dated January 12, 2015, GD2-229.

[39] The Appellant was at pains to explain the repeated references in Dr. Hu's notes to her "working" or being "busy" at her boyfriend's motorcycle repair shop.<sup>35</sup> She claimed that Dr. Hu had misunderstood what she told him. She admitted that she was frequently at the shop in 2014 and 2015 but insisted that her boyfriend dragged her there every day just to get her out of the house. She said that she merely sat in the background and didn't actually do any work — paid or unpaid. She theorized that, since he was her boyfriend's family physician as well as her own, Dr. Hu assumed that the two of them "worked" together.

[40] In the end, I was satisfied that Dr. Hu probably got his facts wrong. It seems that Dr. Hu sometimes had joint consultations with the Appellant and her boyfriend, and it is easy to imagine that Dr. Hu, hearing that the Appellant spent time at the shop, assumed that she was working there too. That said, even if the Appellant wasn't working with her boyfriend during her coverage period, it doesn't mean she was disabled at the time either.

[41] The leading case on the interpretation of "severe" is *Villani*, which requires the Tribunal, when assessing disability, to consider a disability claimant as a "whole person" in a real-world context.<sup>36</sup> Employability is not to be assessed in the abstract, but rather in light of all circumstances. Those circumstances fall into two categories:

- The claimant's medical condition — this is a broad inquiry, requiring that the claimant's condition be assessed in its totality;<sup>37</sup> and
- The claimant's background — matters such as "age, education level, language proficiency and past work and life experience" are relevant.

[42] In this case, the Appellant claims that she was disabled by kidney stone pain, back pain, and, most of all, anxiety and depression. There is medical evidence for all three conditions, but a close examination of the Appellant's circumstances in 2013 and

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<sup>35</sup> See for example Dr. Hu's office notes dated July 16, 2014 (GD2-210), August 13, 2014 (GD2-226), and May 29, 2015 (GD2-257).

<sup>36</sup> See *Villani v Canada (Attorney General)* 2001 FCA 248.

<sup>37</sup> *Bungay v Attorney General of Canada*, 2011 FCA 47. This principle was amplified by a case called *Bungay* which said that a claimant's medical condition must be assessed in its totality.

2014 lead me to doubt that she was rendered completely incapable pursuing alternative employment. As we have seen, the Appellant's medical problems were, for the most part, situational, intermittent, manageable, or not as serious as claimed during the relevant period. I don't believe that their combined effect rendered the Appellant completely unemployable.

[43] The Appellant's background and personal characteristics are not barriers to her continued participation in the workforce. The Appellant has longstanding health issues and is certainly prone to stress, but she has several assets that would give her an advantage in a job search. She is a high school graduate and has 20 years of experience working in professional offices. She has shown herself capable of going back to school to upgrade her training. She is fluent in English and, when her coverage period ended, she was only 46 years old — far from the usual age of retirement.

[44] Even with her impairments, the Appellant had residual capacity as of December 31, 2014. As we will see, that capacity imposed on her an obligation.

– **The Appellant did not attempt suitable alternative employment**

[45] A Federal Court of Appeal decision called *Inclima* says that disability claimants must do what they can to find alternative employment that is better suited to their impairments:

Consequently, an applicant who seeks to bring himself within the definition of severe disability must not only show that he (or she) has a serious health problem but where, as here, there is evidence of work capacity, must also show that efforts at obtaining and maintaining employment have been unsuccessful by reason of that health condition.<sup>38</sup>

[46] This passage suggests that, if a claimant retains at least **some** work capacity, the General Division must conduct an analysis to determine (i) whether they attempted to find another job, and (ii) if so, whether their impairments prevented them from getting and keeping that job.

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<sup>38</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

[47] On top of that, disability claimants must make **meaningful** attempts to return to work.<sup>39</sup> They cannot limit their job search to the type of work that they were doing before they became impaired. That is because they must show that they are regularly incapable of pursuing **any** substantially gainful occupation.<sup>40</sup> Claimants who fail to pursue alternative forms of employment may be ineligible for benefits.

[48] In this case, the Appellant had at least some work capacity — enough to trigger the obligation to pursue employment that might have been better suited to her limitations. However, I am not convinced that the Appellant fulfilled that obligation. After leaving X in May 2009, the Appellant never seriously attempted to find alternative employment. She testified that she applied to be a law clerk in 2015 but didn't go to the interview because she realized that she wouldn't be able to handle the job.<sup>41</sup> However, there are many other ways of making a living than as a law clerk, which is a stressful and demanding job at the best of times. The CPP requires claimants to show that they are incapable of **any** substantially gainful occupation, not just the ones they did previously.

[49] It is true that the Appellant had only limited success when she attempted to return to work as self-employed paralegal in 2013–14. However, this failed attempt doesn't tell me much about the Appellant's capacity either. A paralegal is as demanding a job as a law clerk, and venturing out on one's own for the first time, as the Appellant did, presents a range of challenges that would daunt even a healthy individual. The kind of work that the Appellant tried to do involved obtaining clients and meeting their expectations while navigating a complex legal and regulatory environment. Given her history, the Appellant knew, or should have known, that she would be unlikely to succeed at this particular alternative occupation.

[50] In the end, I was unable to properly assess the severity of the Appellant's disability as of December 31, 2014. That's because she didn't make a serious effort to

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<sup>39</sup> See *Tracey v Canada (Attorney General)*, 2015 FC 1300, in which the Federal Court stated that the onus is on claimants to show that they made "sincere" efforts to meet the employment efforts test.

<sup>40</sup> See *Canada (Attorney General) v Ryall*, 2008 FCA 164.

<sup>41</sup> This question came up because Dr. Hu mentioned a job interview in an office note dated December 16, 2015 – see GD2-287.

look for employment that might have been better suited to her functional limitations. If she had attempted a less stressful job, she might have been able to carry on working.

### **I don't have to consider whether the Appellant has a prolonged disability**

[51] A disability must be severe **and** prolonged.<sup>42</sup> Since the Appellant has not proved that her disability is severe, there is no need for me to assess whether it is also prolonged.

### **Conclusion**

[52] There is evidence that the Appellant experienced physical and psychological problems during her coverage period, but I am not convinced that they amounted to a severe disability. She had residual capacity but never tried a job that might have been less mentally and psychologically demanding than the ones she previously had as a legal secretary and law clerk.

[53] The appeal is dismissed.



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Member, Appeal Division

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<sup>42</sup> See *Canada Pension Plan*, section 42(2)(a).