



Citation: *TM v Minister of Employment and Social Development*, 2023 SST 1947

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: T. M.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 15, 2022 (issued by
Service Canada)

Tribunal member: Shannon Russell
Type of hearing: Videoconference
Hearing date: November 15, 2023
Decision date: December 4, 2023
File number: GP-22-1017

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. M., stopped being disabled as of May 2018. She isn't eligible for the disability benefits she received after the end of April 2018.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant is a 57-year-old woman who was diagnosed with diabetes Type II in 2005.¹ She applied for disability benefits in March 2006.² The Minister approved her application and awarded benefits effective January 2006.³ This was four months after the Appellant stopped working as a general cafeteria helper.⁴

[5] In 2013, the Appellant began working part-time. She continued working every year after that until she was laid off during the pandemic.

[6] In July 2020, the Minister wrote to the Appellant and told her that the Minister was reviewing her disability file. This was because the Minister had received information from the Canada Revenue Agency (CRA) showing that the Appellant received income other than disability benefits. The Minister needed to know if the Appellant was working. So the Minister asked the Appellant to provide information about her earnings.⁵

[7] In August 2021, the Minister wrote to the Appellant and told her that she was not eligible for any of the disability benefits she received after April 2018. This was because the Appellant was working at a job that was substantially gainful. The Minister explained that even though the Appellant had returned to work before April 2018, the Minister had

¹ Page GD2-196

² The Appellant's application for disability benefits is at page GD2-87.

³ Page GD2-4

⁴ Page GD2-207

⁵ The Minister's letter of July 2020 is at pages GD2-54 to GD2-55.

allowed a 3-month work trial from February 2018 to April 2018. This meant the Appellant needed to repay the disability benefits she received after April 2018.⁶

[8] The Appellant asked the Minister to reconsider its decision. The Minister reconsidered, but decided to maintain its decision to stop the Appellant's disability benefits as of May 2018.

[9] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[10] The Appellant says she is still disabled. She also says her disability has only gotten worse. She believes she correctly reported her work activity because she declared her income on her income tax returns.

[11] The Minister says the evidence shows the Appellant's disability stopped being severe as of May 2018. The evidence shows she had the capacity to perform work suited to her limitations. Her earnings in 2018 and 2019 were substantially gainful, and she stopped working for reasons other than disability. Also, one of the Appellant's employers reported that her attendance was good.

What I have to decide

[12] I have to decide if the Appellant stopped being disabled. A person stops being disabled when their disability is no longer severe and prolonged.

[13] The words "severe" and "prolonged" are defined in the CPP legislation.

[14] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁷

[15] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁸

⁶ The Minister's letter is at pages GD2-26 to GD2-27.

⁷ The definition of "severe" is set out in subparagraph 42(2)(a)(i) of the CPP.

⁸ The definition of "prolonged" is set out in subparagraph 42(2)(a)(ii) of the CPP.

[16] The Minister must prove that the Appellant stopped being disabled. The Minister must prove this on a balance of probabilities. This means the Minister must show it is more likely than not that the Appellant stopped being disabled.⁹

Procedural Matters

The Appellant wasn't at the hearing

[17] This appeal was scheduled to be heard on October 24, 2023. The Appellant didn't attend the hearing. Efforts to reach her were unsuccessful.

[18] On October 25, 2023, the Appellant wrote to the Tribunal and said she had called and cancelled her appeal many times. She also said she was sick the day of the hearing and couldn't return the Tribunal's calls.¹⁰

[19] On November 8, 2023, I wrote to the Appellant and asked her to clarify her intentions with the appeal. I noted that she had previously contacted the Tribunal and suggested that she may withdraw her appeal. However, I pointed out that she had never clearly indicated her intention to withdraw the appeal.¹¹

[20] The Appellant replied by asking for another hearing.¹²

[21] Given the Appellant's illness the date of the hearing, I agreed to reschedule the hearing. I rescheduled the hearing for November 15, 2023.

[22] The Appellant didn't attend the hearing on November 15, 2023. Efforts to reach her were again not successful.

[23] On November 16, 2023 (the day after the rescheduled hearing), a new document was uploaded to the Appellant's file. It was an email from the Appellant written the morning of November 15, 2023. In the email, she said she had asked last week to

⁹ *Atkinson v. Canada (Attorney General)*, 2014 FCA 187.

¹⁰ Page GD10-1

¹¹ My letter of November 8, 2023 is at GD11.

¹² The Appellant's reply is at GD12.

reschedule her hearing because she had a doctor's appointment booked. She also said "I give permission for you to do it without me".¹³

[24] I decided to go ahead and make my decision in this matter. Here's why:

- I can proceed with a hearing in a party's absence if I am satisfied that the Appellant got the notice of hearing.¹⁴ I decided that the Appellant got the notice of hearing. It was sent to her by email on November 9, 2023. The *Social Security Tribunal Rules of Procedure* say that when the Tribunal sends a document to a party by email, the document is considered received on the next business day.¹⁵ Also, when the Appellant sent her email of November 15, 2023, she sent it in reply to an email she received from the Tribunal reminding her about her hearing scheduled for November 15, 2023.
- There is no record of the Appellant contacting the Tribunal before November 15, 2023 to say she had a doctor's appointment scheduled for November 15, 2023.
- The Appellant said in her email of November 15, 2023 that the hearing could go ahead without her.

Reasons for my decision

[25] The Appellant's disability was no longer severe by May 2018. The Appellant's work activity shows she was capable regularly of pursuing a substantially gainful occupation.

– The Appellant's disability didn't just go away

[26] Before I turn to the Appellant's work activity, I will acknowledge that the Appellant's disability didn't completely resolve by May 2018. In other words, the Appellant's disability didn't just go away.

¹³ The Appellant's email of November 15, 2023 is at GD13

¹⁴ Section 12 of the 2013 version of the *Social Security Tribunal Regulations*.

¹⁵ Subsection 22(3) of the *Social Security Tribunal Rules of Procedure*.

[27] I note, for example, that in April 2021, Dr. Persaud wrote that since 2010 the Appellant has seen specialists for severe diabetes, severe gastrointestinal concerns, severe diabetic neuropathy, severe chronic pain, and recurrent bacterial and fungal infections.¹⁶

[28] However, a disability doesn't need to completely resolve in order for a person to regain work capacity. In this case, the evidence shows that the Appellant likely regained the capacity regularly to pursue a substantially gainful occupation.

– **The Appellant's work history**

[29] Even though the Appellant has been working since 2013, I only need to decide if she stopped being disabled in or after May 2018. In other words, I can't look at whether the Appellant stopped being disabled before May 2018.

[30] That said, the Appellant's work activity from 2013 is still relevant because it shows how the Appellant's work efforts may have changed over the years.

[31] The Appellant's work activity since 2013 is not as clear as it could be. There are a couple of reasons for this. First, the Appellant filled out some Return To Work Reports in August 2020, but she left portions of the reports blank, such as the dates of her work activity.¹⁷ Second, the Appellant didn't attend the hearing so I wasn't able to clarify things with her at the hearing.

[32] Here is a summary of what I know about the Appellant's work activity.

- From May 25, 2013 to 2014, she worked as a general kitchen helper at X.¹⁸

¹⁶ Page GD2-122

¹⁷ Pages GD2-180 to GD2-182

¹⁸ Pages GD2-56 and GD2-182

- From October 29, 2015, to December 7, 2018, she worked as a general kitchen helper for a numbered company in Ontario, referred to as X.¹⁹ She stopped working because of a “shortage of work / end of contract or season”.²⁰
- From December 12, 2018, to April 2020, she worked as a general helper for X Canada. The job ended due to a lay-off during the pandemic. She worked 37.5 hours a week and earned \$15.25 an hour.²¹
- From 2013 to 2019, she earned the following income:²²

Year	Appellant's Earnings
2013	\$5033.00
2014	\$5,503.00
2015	\$1,866.00
2016	\$12,159.00
2017	\$11,868.00
2018	\$15,598 + \$944 = \$16,542
2019	\$29,842.00

– **The Appellant's earnings in 2018 and 2019 were substantially gainful**

[33] A substantially gainful occupation is one that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.²³

¹⁹ The company is identified as X (page GD2-56).

²⁰ Pages GD2-16, GD2-46 and GD2-181

²¹ Pages GD2-14 and GD2-114

²² Pages GD2-92 and GD2-94

²³ Subsection 68.1(1) of the *Canada Pension Plan Regulations*.

[34] The Appellant's earnings in 2018 and 2019 were more than the substantially gainful threshold.

[35] In 2018, the most a person could receive in CPP disability benefits was \$16,029.96. The Appellant earned \$16,542. In 2019, the most a person could receive in CPP disability benefits was \$16,347.60. The Appellant earned \$29,842.

– **The Appellant's attendance at work was good**

[36] I considered whether the Appellant was capable **regularly of** pursuing any substantially gainful occupation. She was.

[37] First, the Appellant worked for a significant length of time. She also worked continuously. This is not a case, for example, involving sporadic or intermittent periods of work attempts.

[38] Second, the Appellant's employer at X described the Appellant's attendance as "good".²⁴ The employer explained that from December 2018 to April 6, 2020, the Appellant had a total of 8 sick days.²⁵ That is not a lot of absences. The Appellant's other employer (X) didn't reply to the questionnaire the Minister sent them.

[39] I know the Appellant doesn't agree that her attendance was good. She has written, for example, that when she worked for X she had "lots of sick days".²⁶ However, she hasn't provided any evidence, such as attendance records, to support her position. She also hasn't provided any specifics as to what "lots of sick days" means. Without more, I prefer the evidence from the Appellant's employer.

– **The Appellant didn't have a benevolent employer**

[40] If an appellant had a benevolent employer, then it could mean she was not actually capable of pursuing a substantially gainful occupation, despite what her income shows.

²⁴ Page GD2-115

²⁵ Page GD2-115

²⁶ Page GD2-180

[41] The Appellant didn't say she had a benevolent employer. However, I considered it anyway.

[42] A benevolent employer is one who will change the working conditions and lower the expectations of an employee who has limitations. A benevolent employer expects significantly less from the disabled employee than from other employees. A benevolent employer accepts that the employee can't work at a competitive level.²⁷

[43] The evidence doesn't show the Appellant had a benevolent employer.

[44] First, I don't have anything from the Appellant's previous employers that shows they changed the Appellant's working conditions and lowered their expectations of the Appellant.

[45] Second, the information the Appellant provided is too vague for me to find she had benevolent employment. For example, the Appellant wrote that when she worked at X she didn't have to do a lot of walking and she could sit when needed.²⁸ I don't know how much walking the Appellant's job required. I also don't know what "a lot of walking" means. Without more, it appears the Appellant was accommodated rather than benevolently employed.

– **The Appellant didn't stop working because of her disability**

[46] As I said earlier, the Appellant stopped working in April 2020 because she was laid off during the pandemic. She didn't stop working because of her disability.

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

[47] When I am deciding if the Appellant can work, I need to consider more than just her medical condition. I need to consider factors such as her age, level of education, language abilities, and past work and life experience. These factors help me decide if

²⁷ This is explained in *Atkinson v. Canada (Attorney General)*, 2014 FCA 187.

²⁸ Page GD2-181

the Appellant can work in the real world – in other words, whether it is realistic to say she can work.²⁹

[48] The Appellant was clearly employable in the real world because she was in fact working. In May 2018, she was only 51 years of age, and so she had several years ahead of her before the average age of retirement. She also has a reasonable level of education in that she finished high school.³⁰ She is proficient in English and has years of experience within the food service sector.

Conclusion

[49] I find that the Appellant stopped being disabled as of May 2018. She therefore wasn't eligible for the disability benefits she received after April 2018.

[50] This means the appeal is dismissed.

Shannon Russell
Member, General Division – Income Security Section

²⁹ *Villani v. Canada (Attorney General)*, 2001 FCA 248

³⁰ Page GD2-207