



Citation: *SP v Minister of Employment and Social Development*, 2022 SST 1180

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

## Decision

**Appellant:** S. P.  
**Representative:** N. P.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated June 3, 2021 (issued by  
Service Canada)

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**Tribunal member:** Selena Bateman

**Type of hearing:** Videoconference

**Hearing date:** December 20, 2022

**Hearing participants:** Appellant  
Witness/Representative

**Decision date:** December 28, 2022

**File number:** GP-21-1471

## Decision

[1] The appeal is dismissed.

[2] The Appellant, S. P., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant is 45 years old. He worked as an automotive parts and customer service clerk. He has severe hearing loss and has worn hearing aids since childhood. He also has head pressure, headaches, ringing in the ears, and dizziness. He last worked in May 2020.

[4] The Appellant applied for a CPP disability pension on December 21, 2020. The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that his hearing loss got worse over time. Because of this, he can't understand what people say or answer the phone. His communication is limited. He says there is no treatment for his conditions. His symptoms became overwhelming so he went on sick leave.

[6] The Minister says that the Appellant continued working after he had unsteadiness in 2019. The Minister says that the evidence doesn't support worsening of his long-time symptoms. The Minister argues that the medical evidence doesn't support a finding of severe disability.<sup>1</sup>

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<sup>1</sup> See GD4.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has a disability that is severe and prolonged by the hearing date.<sup>2</sup>

[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.<sup>3</sup>

[10] This means I have to look at all of the Appellant’s medical conditions together to see what effect they have on his ability to work. I also have to look at his background (including his age, level of education, and past work and life experience). This is so I can get a realistic or “real world” picture of whether his disability is severe. If the Appellant is able to regularly do some kind of work that he could earn a living from, then he 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.<sup>4</sup>

[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 he has a severe and prolonged disability. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he is disabled.

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<sup>2</sup> 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 GD5-1 to 2. In this case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether he was disabled by the hearing date.

<sup>3</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

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

## Reasons for my decision

[14] The Appellant's disability is severe. Yet treatment options remain. Because of this, I can't find that it is also prolonged by the hearing date.

### Is the Appellant's disability severe?

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

#### – The Appellant's functional limitations do affect his ability to work

[16] The Appellant has:

- Progressive hearing loss
- Tinnitus

[17] However, I can't focus on the Appellant's diagnosis.<sup>5</sup> Instead, I must focus on whether he has functional limitations that get in the way of him earning a living.<sup>6</sup> 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 his ability to work.<sup>7</sup>

[18] I find that the Appellant has functional limitations that affect his ability to work.

#### – What the Appellant says about his functional limitations

[19] The Appellant says that his medical condition resulted in functional limitations that affect his ability to work. He says:

- Not being able to hear even with hearing aids makes dealing with people very difficult at times. Wearing his hearing aids made his dizziness worse.
- He experiences head pressure a few times a week. Sometimes he needs to lay down, which helps.
- He has balance and dizziness issues. He feels like he's swaying.

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<sup>5</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>6</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>7</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- He has ringing in the ears often. This decreases his ability to hear. He finds this distracting.
- He has a deteriorating disc in his back. He can't lift more than 20 to 30 pounds because of this. His back can be sore.
- He has arthritis in his neck.

[20] I asked the Appellant whether he took any sick time because of his medical conditions before ending work. He said that he rarely called in sick, he just "dealt with it". I then asked the Appellant what led to him stopping work in May 2020. He said that it got overwhelming. He then went on sick leave.

[21] The Appellant's partner, N. P., testified. She attends medical appointments with him. The Appellant struggles with phone appointments because he can't hear. She has observed an increase in hearing loss over the years.

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

[22] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work the hearing date.<sup>8</sup>

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

[24] There is no medical evidence about arthritis in his neck or a deteriorating disc in his back. This is not to say that he doesn't have these conditions, only that the medical evidence hasn't established he has these conditions. The CPP disability application doesn't note these conditions either. Because of this, I can't find that neck or back conditions impacted his ability to work.

[25] The December 2020 medical report by Dr. Sami notes progressive hearing loss and dizziness since June 2018. The Appellant can't hear well with his hearing aids. He has dizziness and headaches all the time. He can't maintain a conversation. Dr. Sami notes that there is "no real treatment" for his condition. Because of his hearing and dizziness difficulties, his usual work in customer service is kind of impossible as is

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<sup>8</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

finding and maintaining a job. Dr. Sami recommended the Appellant stop work in June 2020 and doesn't think he will return to any type of work.<sup>9</sup>

[26] Dr. Sami wrote a follow up letter in March 2021. Dr. Sami wrote that he "was consulted to ENT specialist, nothing else can be done to fix his hearing impairment". He wrote that dizziness and nausea over five years was resistant to treatment.<sup>10</sup>

[27] I didn't give Dr. Sami's 2021 letter much weight for three reasons. First, Dr. Sami didn't explain what treatments were recommended or attempted. Also, in the medical report, there is no list of medications or other forms of treatment tried or proposed.<sup>11</sup>

[28] Second, there is no other note of the Appellant experiencing nausea in the medial records, including in the medical report by Dr. Sami. It isn't clear when this condition started, the frequency, and how serious it is.

[29] Third, while there is no suggestion that the Appellant's hearing can be improved, two ENT specialist did make treatment recommendations. Dr. Sami didn't comment on whether the Appellant followed these suggestions, and what the outcome was:

- The Appellant saw Dr. Poirier, otolaryngologist, in April 2019. His MRI didn't show problems in the inner ear or brain. When he doesn't wear his hearing aids his headaches seem to improve. Dr Poirier recommended a follow up with the audiologist to adjust the hearing aids as it may be causing pressure or headaches.<sup>12</sup>
- In July 2020 the Appellant was seen by Dr. Kalombo, otolaryngologist. He had headaches, ear pressure, tinnitus, hearing loss and loss of balance. Dr. Kalombo recommended a hearing aid assessment and to see the balance clinic.<sup>13</sup>

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<sup>9</sup> See GD2-96 and 99.

<sup>10</sup> See GD1-8. I understand "ENT" to mean ear nose and throat doctor, or otolaryngologist.

<sup>11</sup> See GD2-96.

<sup>12</sup> See GD2-82.

<sup>13</sup> See GD2-84 to 86.

[30] The Minister says that there isn't medical evidence of his symptoms worsening that would prevent him from working.<sup>14</sup> I partially agree with the Minister. The Appellant's head pressure and dizziness were documented in the medical evidence by 2018 and 2019. The Appellant's hearing loss is described as "progressive" by Dr. Sami. While the appeal file doesn't contain medical evidence of the loss in hearing over time, I accept that his hearing is worsening.

[31] The medical evidence supports that the Appellant's progressive hearing loss, headaches, ringing in the ears, and dizziness prevented him from doing his usual work by the hearing date.

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

– **The Appellant followed medical advice**

[33] To receive a disability pension, an appellant must follow medical advice.<sup>15</sup> If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so. I must also consider what effect, if any, the medical advice might have had on the appellant's disability.<sup>16</sup>

[34] The Appellant has followed medical advice.<sup>17</sup> The Minister didn't raise an argument otherwise. I don't see any concerns from the medical evidence of a failure to comply with medical advice.

[35] The Appellant saw neurologists in 2018 and 2020 for balance and head pressure issues.<sup>18</sup>

[36] The Appellant testified that he saw an audiologist about a year ago.<sup>19</sup> The report wasn't available in the appeal file.

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<sup>14</sup> See GD4-5.

<sup>15</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>16</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>17</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>18</sup> See GD2-77 to 78 and GD2-79.

<sup>19</sup> There is reference to an audiology appointment in 2021. See GD2-66.

[37] 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 him from earning a living at any type of work, not just his usual job.<sup>20</sup>

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

[38] When I am deciding whether the Appellant can work, I can't just look at his medical conditions and how they what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[39] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that he can work.<sup>21</sup>

[40] I find that the Appellant can't work in the real world as of the hearing date.

[41] The Appellant is now 45 years old. He has high school level education and a certificate in heavy equipment repair. He has a barrier to communicating in English. Being hearing impaired is a serious limitation that has progressively impacted the Appellant over time. This is an isolating condition. He hasn't been able to lip read due to masking requirements during the COVID pandemic. He isn't able to communicate on the phone. This limits his employment options, but doesn't rule them all out.

[42] The Appellant's work experience is in automotive parts and customer service. He has very limited computer experience. He has some transferable skills, such as for light physical work.

[43] The Appellant isn't employable in the competitive marketplace with the addition of his other symptoms. For example, when he has head pressure, he needs to lay down

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<sup>20</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>21</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.



and rest. The ringing in the ears decreases the little he can hear and distracts him. These symptoms impact his ability to predictably work.

[44] I find that the Appellant's disability was severe as of May 2020, when the Appellant last worked.

### **Is the Appellant's disability prolonged?**

[45] The Appellant's disability isn't prolonged. I can't find that his limitations are long continued. This is because treatment options so far remain available to address the limitations that regularly impact his ability to work.

[46] Issues with his current hearing aids may be related to his symptoms of dizziness, and head pressure, which both affect his ability to work regularly. At the hearing the Appellant said wearing his current old hearing aids make his dizziness worse. In 2019, Dr. Poirier thought that the hearing aids he had may be causing pressure, leading to headaches. In 2020, Dr. Kaombo also thought a hearing aid assessment was needed.

[47] The Appellant testified that he is in the process of getting new hearing aids "sooner or later". He recalls the audiologist telling him that his current hearing aids are old and not up to date. He doesn't know when he would get them. He expects a slight improvement in his hearing. The Appellant explained that there are general challenges with receiving medical care in his province. This may have caused a delay in receiving services.

[48] The cost of the hearing aids hasn't yet been determined. Because of this, it is too soon to tell if he can afford them. The Appellant wasn't sure how much the new hearing aids would cost, but thinks it could be around \$4000. There is a program for financial coverage. He's not sure if he meets the financial eligibility criteria because his partner is employed. If he doesn't meet the criteria for financial assistance, he can't afford the cost of the hearing aids.

[49] Another treatment may be possible, but hasn't yet been explored. The Appellant recalled that the audiologist about a year ago also mentioning a cochlear implant. He

hasn't had any further discussions about this. He doesn't know if he would be eligible, and said he would need further consultation before making a decision.

[50] Because treatment options remain, I can't find that the Appellant's limitations that affect his ability to work are prolonged.

## **Conclusion**

[51] I find that the Appellant isn't eligible for a CPP disability pension because his disability isn't prolonged.

[52] This means the appeal is dismissed.

Selena Bateman  
Member, General Division – Income Security Section