Citation: *MC v Minister of Employment and Social Development*, 2023 SST 1964

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	M. C.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated November 21, 2022 (issued by Service Canada)

Tribunal member:	Pierre Vanderhout
Type of hearing:	Teleconference
Hearing date:	July 20, 2023
Hearing participant:	Appellant
Decision date:	July 24, 2023
File number:	GP-23-169

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. 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 is 58 years old. She worked as a farm hand until January 2022. Her current medical conditions are back pain and myofascial pain in the shoulders, neck, and arms.[1] She has had back issues since at least 2005. Besides the pain, she has tingling, numbness, fatigue, blurred vision, and trouble with walking.[2] She also has trouble sleeping at night. She sometimes cannot get out of bed in the morning.

[4] The Appellant applied for a CPP disability pension on February 3, 2022. The Minister of Employment and Social Development ("Minister") refused her application. The Appellant appealed the Minister's decision to the Tribunal's General Division.

[5] The Appellant says she did farm work from 2008 to 2022, but her employers did not make CPP contributions on her behalf. She believes this is unfair, because it means she must prove she was disabled by the end of 2010. She said she stopped being able to work before she finally retired in January 2022, but pushed herself to keep working through the pain. She said she can no longer do any job. In fact, she is greatly limited in her activities of daily living. She can hardly prepare a meal now. She has a hard time getting up from using the washroom. She cannot drive, sit, or stand without pain and numbness.[3] She must constantly shift positions.[4]

[6] The Minister says the Appellant demonstrated work capacity long after 2010 and is therefore not eligible for a CPP disability pension. The Minister notes she worked as a

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[1] See GD2-206 and GD2-208.
[2] See GD2-48.
[3] See GD1-3.
[4] See GD1-8.

farm hand from 2017 to 2022. The Minister says her employer was satisfied with her work. The Minister also notes that the Appellant said she could no longer work by November 2020. This would also preclude her from qualifying for a disability pension, as it is nearly ten years after her last eligibility date of December 31, 2010.

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, 2010. This date is based on her CPP contributions.[5]

[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.[6]

[10] This means I must look at all the Appellant's medical conditions together to see what effect they had on her ability to work. I must also look at her background (including her age, 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 she can regularly do some type of work from which she could 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.[7] This means the Appellant's disability can't have an expected recovery date. The disability must be expected to keep her out of the workforce for a long time.

[12] The Appellant must prove she has a severe and prolonged disability. She must prove this on a balance of probabilities. This means she must show it is more likely than not that she is disabled.

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[5] Service Canada uses a person's years of CPP contributions to calculate her coverage period, or "minimum qualifying period" ("MQP"). The end of the coverage period is called the MQP date. See s. 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on page GD4-11.
[6] S. 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.
[7] S. 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[13] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2010.

Was the Appellant's disability severe?

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

– The Appellant's functional limitations did affect her ability to work

[15] The Appellant has spinal stenosis and foraminal stenosis. She also has myofascial pain in the shoulders, neck, and arms.[8]

[16] However, I can't focus on the Appellant's diagnoses.[9] Instead, I must focus on whether she had functional limitations that interfered with earning a living.[10] When I do this, I must look at **all** of her medical conditions (not just the main one) and think about how they affected her ability to work.[11]

[17] I find that the Appellant has functional limitations that affected her ability to work.

– What the Appellant says about her functional limitations

[18] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says:[12]

- She has tingling, numbness and pain daily.
- Activity makes her pain worse.
- She finds it difficult to walk normally.
- Her ability to climb steps, kneel, bend, reach above her head, and sit for at least 20 minutes is poor.
- Her ability to ask for help from co-workers, deal with strangers, manage her anxiety, be in public places, and acting when stressed is poor.
- Her ability to find words and keep track of what she's doing is poor.
- Her ability to dress, answer the phone, and use public transportation is poor.

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[8] See GD2-199, GD2-207 and GD2-208. See also GD1-8.
[9] See *Ferreira v. Canada (Attorney General)*, 2013 FCA 81.
[10] See *Klabouch v. Canada (Social Development)*, 2008 FCA 33.
[11] See *Bungay v. Canada (Attorney General)*, 2011 FCA 47.
[12] See GD2-48 and GD2-51 to GD2-54.

[19] The Appellant says these limitations are caused by fatigue, vision problems, and muscle and nerve damage.[13] Her written evidence about her functional limitations focuses on the recent past. However, at the hearing, she said she had back problems before her 2005 back surgery.

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

[20] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work by December 31, 2010.[14]

[21] The medical evidence supports some of what the Appellant says. The most supportive evidence is for the functional limitations directly connected to her back pain and leg symptoms.

[22] Dr. Yen (Orthopedic Surgeon) operated on the Appellant's back in 2005. His operative report says the Appellant had disabling left sciatica despite maximum non-operative measures. She had a left L5-S1 disc herniation. Before the surgery, he told her the surgery would help her leg symptoms but would not cure them. He said the surgery was not meant to deal with her back pain. I see no reference to anxiety.[15]

[23] Nearly two months after the surgery, Dr. Yen said the Appellant's leg symptoms had improved. He said she could wean herself back into activities as tolerated.[16]

[24] In January 2008, Dr. Islam (Radiologist) said the Appellant had moderate degenerative disc disease ("DDD") at L5-S1 and mild DDD at L3-4 and L4-5.[17]

[25] In June 2012, Dr. Danforth (Family Doctor) said the Appellant had a herniated disc and recurrent back problems. However, Dr. Danforth did not provide information

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[13] See GD2-48,
[14] See *Warren v. Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v. Dean*, 2020 FC 206.
[15] See GD2-216.
[16] See
[17] See GD2-214.

about the timing of those back problems. The Appellant only became his patient in June 2012. He also noted a history of anxiety, but again did not provide any dates.[18]

[26] This medical evidence supports that the Appellant has longstanding issues with her back and spine. As the 2005 surgery was only meant to help her leg symptoms, it is reasonable to say her back issues continued after the surgery and beyond 2010.[19] However, I can't say the anxiety and related issues were a factor by the end of 2010.

[27] The medical evidence supports that, by the end of 2010, the Appellant's sciatica and disc issues could have precluded the most challenging aspects of physical labour.

[28] I now have to decide whether the Appellant could regularly have done other types of work. To be severe, her functional limitations must have prevented her from earning a living at any type of work, not just her usual job.[20]

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

[29] When I am deciding whether the Appellant could have worked, I can't just look at her medical conditions and how they affected what she could do. I must also consider factors such as her:

- age,
- level of education,
- language ability, and
- past work and life experience.

[30] 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.[21]

[31] I find that the Appellant can work in the real world.

[32] The Appellant was 46 years old at the end of 2010. She finished high school. She speaks English fluently. She has worked in many different roles. She cleaned

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[18] See GD2-102.
[19] See GD2-215.
[20] See *Klabouch v. Canada (Social Development)*, 2008 FCA 33.
[21] See *Villani v. Canada (Attorney General)*, 2001 FCA 248.

cottages. She worked for about 15 years in a shoe factory, where she used a knife to cut the shoe lining. She was a construction worker: this mostly involved tying steel together before pouring concrete. She also appears to have done some bookkeeping.[22]

[33] Most recently, however, the Appellant worked for many years as a farm hand. This was heavy physical labour. She had to lift, shovel, and clean. She scraped manure. She milked and bedded cows. She fed calves. She pushed feed.[23] She said she did this type of work at three different farms. She thought she started farm work in 2014. Her last position was at X from April 2018 to January 2022.[24]

[34] Without considering her medical conditions, the Appellant would have been capable of doing general and specialized heavy labour. She could also do semi-skilled assembly work and cleaning. Given her high school diploma and her apparent bookkeeping experience, she could likely have done some clerical work as well.

[35] However, even when I consider the Appellant's medical conditions, I find that she could have done any of those roles in the real world for at least 10 years after the end of 2010. I base this finding primarily on her work history after 2010.

[36] The Appellant worked as a farm hand from at least 2014 to January 2022. She might have done more, as in 2022 she said she did "10 years or more" of farm work.[25] In 2014, she was still engaged in active pursuits such as hockey.[26] In June 2012, she was working with steel. She also worked as a bookkeeper around that time.[27]

– **The Appellant found and kept suitable jobs**

[37] If the Appellant can work in the real world, she must show that she tried to find and keep a job. She must also show her efforts weren't successful because of her medical conditions.[28]

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[22] Many of these jobs are set out at GD2-102.
[23] See GD2-56, GD2-196, and GD2-198.
[24] See GD2-196.
[25] See GD2-38.
[26] See GD2-126 and GD2-138.
[27] See GD2-102.
[28] See *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

[38] The Appellant made efforts to work. But these efforts don't show that her disability got in the way of earning a living.

[39] The most persuasive evidence is the Appellant's full-time and year-round farm work from at least 2014 to January 2022. It is hard to conceive of any more demanding work. Her doctors often commented on how tough that work was.[29] While her employers made no CPP contributions, she confirmed she was working full-time throughout this time. During the hearing, she even described some of this work as "full-time plus". Her earnings had increased to about $17.00 per hour by 2022.

[40] At an hourly wage of $17.00, the Appellant would have earned $30,000.00 or more per year. She didn't always earn that much money. She said she only earned $12.00 per hour as a farm hand before working at X. Even then, however, her annual earnings would likely have been more than $20,000.00.

[41] These annual earnings are important because of the meaning of "substantially gainful". Since 2014, "substantially gainful" has meant the maximum amount a person could receive as a disability pension.[30] In 2014, that amount was $14,836.20. By 2021, that amount had increased to $16,964.00. This means the Appellant's annual earnings were well above the "substantially gainful" threshold during her career as a farmhand.

[42] I therefore conclude that the Appellant was capable regularly of pursuing a substantially gainful occupation for more than 7 years starting in 2014. This means I cannot find that she had a severe disability continuously since December 31, 2010.

[43] While I don't need to consider her pre-farm work, she was also working with steel and as a bookkeeper in 2012. Once again, however, she had no CPP contributions during this time. It is therefore likely that she was also capable regularly of pursuing a substantially occupation at other times after 2010.

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[29] See, for example, GD2-182, GD2-210, GD2-228, GD2-234, and GD2-238.
[30] See s. 68.1(1) of the *Canada Pension Plan Regulations*.

[44] I will now briefly address two notable factors in this case: the Appellant's determination to work and the lack of CPP deductions by her recent employers.

– **The Appellant's determination to work**

[45] The Appellant was determined to work. She worked hard at a physically demanding job. In September 2021, Dr. Danforth said she was "quite stoic" and had put up with her progressive symptoms for a number of years.[31]

[46] The Appellant said she loved farm work. She also said she pushed herself to work through the pain. She said she hid her pain from her employers.

[47] I see no reason to doubt the Appellant's evidence on this point. I also accept the evidence of Dr. Danforth. I find it likely that the Appellant pushed herself harder than the average person. However, the fact is that she was still earning a significant income well past the end of 2010.

[48] I also note that her last employer, X, wasn't aware of any limitations until the Appellant stopped working.[32] Her attendance was good. The quality of her work was satisfactory and she didn't need any special services, equipment, or arrangements.[33]

– **The failure of her employers to make CPP deductions**

[49] The Appellant stressed that her most recent employers did not make any CPP deductions. This appears to be a common practice in the farm sector.[34] If she had CPP contributions from her farming years, this appeal's outcome might have been different.

[50] I have sympathy for this argument. The Appellant stopped working because her medical conditions had progressed. A disability pension would seem to be appropriate. However, not every disabled person is entitled to a CPP disability pension.

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[31] See GD2-233.
[32] See GD2-198.
[33] See GD2-197.
[34] See, for example, GD2-14 and GD2-38.

[51] The CPP is not a general welfare scheme.[35] It is more like an insurance policy, where coverage exists as long as you pay premiums. Applying that to the Appellant's case, she did not pay "premiums" after 2008. This means that her coverage expired long before she could have been considered disabled.

[52] The Tribunal must apply the law. I cannot bend the requirements of the CPP, even though a person may seem to deserve some form of compensation.[36]

Conclusion

[53] I find that the Appellant isn't eligible for a CPP disability pension. Her disability wasn't severe by the end of 2010 and continuously afterward. Because I found that her disability wasn't severe, I don't have to consider whether it was prolonged.

[54] This means the appeal is dismissed.

Pierre Vanderhout
Member, General Division – Income Security Section

[35] See *Micelli-Riggins v. Canada (Attorney General)*, 2013 FCA 158.
[36] See *Miter v. Canada (Attorney General)*, 2017 FC 262.