



Citation: *MA v Minister of Employment and Social Development*, 2024 SST 232

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: M. A.
Representative: Lora Won
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 30, 2022 (issued by
Service Canada)

Tribunal member: Brianne Shalland-Bennett
Type of hearing: Videoconference
Hearing date: February 26, 2024
Hearing participants: Appellant
Appellant's representative
Decision date: March 7, 2024
File number: GP-22-1225

Decision

[1] The appeal is allowed.

[2] The Appellant, M. A., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of December 2020. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 53 years old. She started a university program in 2019. She worked as a watch repairperson for many years. She stopped working at that job in November 2019 because of her limitations from carpal tunnel syndrome. She currently works as a part-time sales consultant and receptionist. She started working at that job in August 2020.

[4] The Appellant applied for a CPP disability pension on August 4, 2021. 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 struggles to work and attend school because of her fibromyalgia, carpal tunnel syndrome, and cervical facet syndrome.

[6] The Minister says the Appellant has work capacity because she is able to go to school part-time and work part-time, although with accommodations.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by the hearing date. In other words, no later than February 26, 2024.¹

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

[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 capable regularly of doing 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 she has to show it is more likely than not that she is disabled.

Reasons for my decision

[14] I find the Appellant had a severe and prolonged disability as of November 2019. She continues to be disabled. I reached this decision by considering:

- Was the Appellant’s disability severe?
- Was the Appellant’s disability prolonged?

section 44(2) of the *Canada Pension Plan*. The Appellant’s CPP contributions are on GD11. In this case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

² Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability. Section 68.1 of the *Canada Pension Plan Regulations* says a job is “substantially gainful” if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

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

Was the Appellant's disability severe?

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

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

[16] The Appellant has:

- cervical facet syndrome
- fibromyalgia
- carpal tunnel syndrome
- irritable bowel syndrome (IBS)

[17] However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁵ 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 affected her ability to work.⁶

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

– What the Appellant says about her functional limitations

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[20] The Appellant says her IBS is "more or less okay" as long as she can get to the bathroom. If she can't, then she gets soreness in her stomach and has painful bloating.

[21] The Appellant says she has widespread body pain because of her fibromyalgia. She has daily and constant chronic neck, back, and shoulder pain because of her cervical facet syndrome. She feels a shooting, burning, and throbbing pain from her neck to the tips of her fingers because of her carpal tunnel syndrome.

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[22] The Appellant says she has “flare-ups.” When this happens she has pain, fatigue, and extreme weakness. This happens one to two times a week. These symptoms usually last for one to three days. When they happen, she cuts back on things. She doesn’t do any type of housework or cook during a flare up.

[23] The Appellant says her conditions affect her cognitively, emotionally, and physically. She says:

- She has brain fog and a poor ability to focus.
- She had to quit the gym and can only do stretches and light exercises.
- She struggles to sit, stand, and walk for prolonged periods.
- She has poor grip and pinch strength.
- She can’t lift heavy items.
- She has to do things at her own pace. For example, not folding more than three pieces of laundry at a time.
- She can only do 20 to 40 minutes of physical tasks. Then she has to rest.

[24] The Appellant says the pain she feels wakes her in the middle of the night. When she wakes, she has trouble falling back asleep. Her poor sleep adds to her daily exhaustion, and she feels more physically drained.

[25] The Appellant says she has a hard time maintaining social relationships. She sees her friends about every six months. It is exhausting to be around people, especially when she is fatigued.

[26] The Appellant says it takes her longer to accomplish tasks—at home or at work. Her daughter and her parents help her with harder tasks and the cooking.

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

[27] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work no later than the hearing date.⁷

[28] The medical evidence shows the Appellant feels constant pain throughout her body. This includes her arms, hands, neck, back, and lower extremities.⁸

[29] The medical evidence shows the Appellant has physical limitations. It shows:⁹

- She has fatigue and poor sleep.
- She is exhausted and has very low energy.
- She can't sit or stand for over 20 minutes.
- She can't walk for more than 10 minutes.
- She can't type for more than 10 minutes.
- She has difficulty with her fine motor skills.
- She can't lift heavy items.

[30] The medical evidence shows the Appellant has emotional and cognitive limitations. It shows:¹⁰

- She has a severe limitation with her ability to handle stress.
- She has a poor ability to leave her residence.
- She has a poor ability to maintain a work schedule.
- She has a poor ability to deal with other people (like customers and clients).
- She has moderate limitations with her focus and memory.

[31] The medical evidence shows the Appellant has frequent diarrhea or constipation about three times a week. She has extreme pain if she can't have a bowel movement at

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁸ See GD2-5 to 26, GD10-5, GD10-23, GD10-27 to 28, and GD10-37.

⁹ See GD2-111 to 112, GD2-117, and GD10-4 to 5.

¹⁰ See GD10-4 and GD10-38.

the appropriate time. She needs to be able to use the bathroom multiple times a day. Medication helps, but it doesn't resolve her symptoms.¹¹

[32] The medical evidence shows that after working a seven-hour day, she needs a full day to recover from her pain and fatigue. After work, she can't do housework or make food. She can't work more than two shifts a week.¹²

[33] The medical evidence supports that the Appellant has functional limitations that affect her ability to work. She can't work full time.

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

– **The Appellant followed medical advice**

[35] To receive a disability pension, an appellant must follow medical advice.

[36] The Appellant followed medical advice.¹³ She went to a pain clinic. She has tried all the medications recommended to her but has had adverse reactions to most. She takes Tylenol to help manage her symptoms, but it only gives her 10 to 20% relief.

[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 her from earning a living at any type of work, not just her usual job.¹⁴

– **The Appellant can't do substantially gainful work**

[38] The Minister argues the Appellant's ability to work part-time, ability to attend school part-time, and the time she spends doing school work show she has the capacity to do substantially gainful work.¹⁵

¹¹ See GD10-6.

¹² See GD2-113 and GD10-6 to 7.

¹³ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁴ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹⁵ See GD9, GD14, and GD16.

[39] The Appellant's representative disagrees. She says although the Appellant currently works, she has modified duties. And, despite the Appellant's best efforts and medical conditions, at her current pace, the program will take eight years instead of four.

[40] I find the Appellant can't do substantially gainful work as of November 2019. She can't do substantially gainful work now.

[41] 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

[42] 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.¹⁶

[43] The Appellant has positive personal characteristics that suggest she might be able to do suitable work. Here is what I considered:

- She is 53 years old and has 12 years until the standard age of retirement.
- She doesn't have a language barrier—she speaks English fluently.
- She is currently in the process of upgrading her education.
- She can't do her old job as a watch repairperson, but she does have transferable skills from her current job as a sales consultant and receptionist.

[44] The Appellant likely can't do a very physically demanding job because of her limitations. Her personal characteristics show she might be able to do a light-duty or sedentary job, like her current job.

¹⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[45] The Appellant currently works as a receptionist and sales consultant. She works 8 to 15 hours a week. I accept her testimony that this is all she can manage with her limitations. She works seven- to eight-hour shifts. She can't work back-to-back shifts. She struggles to get to work on time because of her fatigue. However, she doesn't miss days of work, even if she is unwell, because of her finances.

[46] The Appellant says she gets a half an hour break during each shift. However, she has to alternate between sitting and standing to manage her pain. She also has accommodations at work. She only types to schedule appointments. She doesn't type documents because of her pain. She got a special chair to help with her symptoms.

[47] The Appellant also goes to school part-time. When she started in 2019, she didn't have accommodations. As of June 2023, she has a note taker, she got approved to record lectures, she has extra time for assignments, and she takes breaks as needed.

[48] The Appellant attends classes two days a week. She spends about 2 hours and 40 minutes in her in-person class. She usually takes two to three breaks for 10 to 15 minutes each. She spends two hours at her online class, but she is able to work at her own pace. She misses a class every couple of months because of her medical conditions. She spends approximately three hours on school work per week. She does the schoolwork at her own pace.

[49] The Appellant isn't doing substantially gainful work. A substantially gainful job pays a salary or wages equal to more than the maximum annual amount a person could get as a disability pension.¹⁷

[50] The Appellant did substantially gainful work in 2019. She earned \$19,493.00. The maximum amount of a CPP disability pension in that year was \$16,353.54.

¹⁷ See section 68.1 of the *Canada Pension Plan Regulations*.

[51] The Appellant didn't do substantially gainful work from 2020 to 2023. I have broken down her earnings versus the maximum amount a person could get with a disability pension in those years below:¹⁸

Year	The Appellant's earnings	Maximum disability benefit
2020	\$7,045.00	\$16,677.26
2021	\$11,848.00	\$17,025.22
2022	\$12,891.00	\$17,610.06

[52] The Appellant's experiences with school and work don't support she can do substantially gainful work.

[53] The Appellant's participation in school doesn't amount to work capacity. She attends one class in person a week. She doesn't take her own notes and instead records her lectures or has someone do it for her.

[54] When the Appellant does schoolwork or her class from home, she does it at her own pace. She can take as much, or as little time as needed based on her conditions. And she doesn't do her online or at-home work on the same day or consecutive days. This is because of her fatigue and her pain.

[55] The Appellant has tried to work for almost three years since 2019. Since then, she hasn't been able to do substantially gainful work because of her limitations. Her hours are minimal. She only works as much as her limitations allow. And, when she does, she spends days after feeling pain, exhausted, and unable to function in her personal life.

[56] I find the Appellant's disability was severe as of November 2019.

¹⁸ See GD11 for the Appellant's earnings. See also [Canada Pension Plan \(CPP\) Maximum Monthly Amounts of New Benefits](#).

Was the Appellant's disability prolonged?

[57] The Appellant's disability was prolonged.

[58] The Appellant's conditions stopped her from working at her job as a watch repairperson in November 2019. They stopped her from having substantially gainful earnings in 2020. They have continued since then.¹⁹ They will more than likely continue indefinitely.

[59] The medical evidence supports the Appellant's limitations are prolonged. The medical evidence shows her conditions have been ongoing for the past 10 years. It shows her conditions are permanent and are likely to continue.²⁰

[60] It has been almost four years since the Appellant has had substantially gainful earnings. Since she stopped working as a watch repairperson, her limitations have only gotten worse. She has cut down on her hours of work at her sedentary job. She hasn't been able to earn near the substantially gainful benchmark during that time.

[61] I accept the Appellant's oral testimony that she continues to get worse. This is also demonstrated through her participation at school. Though she is enrolled in a four-year university program, she has had to reduce the number of classes she takes and gets accommodations of her limitations. She expects to finish her degree in eight years, but she's unsure given her poor health.

[62] I find the Appellant's disability was prolonged as of November 2019.

When payments start

[63] The Appellant had a severe and prolonged disability in November 2019.

¹⁹ 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 no later than the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

²⁰ See GD10-4 to 37 and GD10-44.

[64] However, the *Canada Pension Plan* says a person can't be considered disabled more than 15 months before the Minister receives their disability pension application.²¹ After that, there is a 4-month waiting period before payments start.²²

[65] The Minister received the Appellant's application in August 2021. That means she is considered to have become disabled in May 2020.

[66] Her pension payments start as of September 2020.

Conclusion

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

[68] This means the appeal is allowed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section

²¹ Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

²² 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.