



Citation: *LG v Minister of Employment and Social Development*, 2024 SST 267

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

## **Decision**

**Appellant:** L. G.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated February 2, 2023 (issued by  
Service Canada)

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**Tribunal member:** Anne S. Clark

**Type of hearing:** Teleconference

**Hearing date:** February 1, 2024

**Hearing participant:** Appellant

**Decision date:** March 14, 2024

**File number:** GP-23-1076

## Decision

[1] The appeal is allowed in part.

[2] The Appellant, L. G., isn't eligible for a *Canada Pension Plan* (CPP) disability pension. She is eligible for a Post-Retirement Disability Benefit (PRDB). Payments start as of September 2021. This decision explains my reasons.

## Overview

[3] The Appellant is 63 years old. She receives a CPP retirement pension. It became payable in January 2021.

[4] The Appellant has always worked as a personal care attendant. After 2013 she worked off and on. She also took a full-time course in 2018. Her time away from work was because of personal circumstances or school. It was not because the Appellant was disabled. She returned to full time work in 2019.

[5] In 2019 or 2020 the Appellant became very sick from an unknown pathogen. She had to take some time off work. When she went back to work it was on reduced hours. The Appellant has had low back pain from work injuries for many years. It got much worse when she went back to work in February 2021. It continued to deteriorate. The Appellant had to stop working completely in May 2021.

[6] The Appellant applied for a CPP disability pension on October 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.

[7] The Appellant says she was not disabled before 2021. She did not mean to claim that she was. She became disabled when pain from nerve entrapment in her low back got so bad she couldn't do her job. That was after she returned to work in early 2021. By May 2021 she couldn't work at all. She had to resign from her job because of pain, fatigue, and reduced mobility.

[8] The Minister says the Appellant is not entitled to a disability pension because she did not prove she had a severe and prolonged disability before her CPP retirement pension began. The Minister said the Appellant doesn't have sufficient contributions to be eligible for a PRDB.

## **What the Appellant must prove**

[9] For the Appellant to succeed, she must prove she meets the eligibility requirements for either the CPP disability pension or the PRDB. For either benefit, her disability has to be **severe** and **prolonged**. In either case she must prove she had a severe and prolonged disability by the end of the relevant qualifying period.

## **The Appellant's qualifying periods**

### **– Before her retirement pension was payable (January 2021)**

[10] To be eligible for a CPP disability pension the Appellant must prove she has a disability that was severe and prolonged by December 31, 2017.<sup>1</sup> In other words, no later than December 31, 2017. This date is based on her CPP contributions.

[11] The Minister submits that the Appellant was not disabled by December 31, 2017. The Appellant's agrees with that statement. She said she was not disabled before 2021. When she did not work it was for other reasons. It was not because she was disabled. The medical evidence is consistent with the Appellant's submission. I find that the Appellant was not disabled before 2021. Therefore she isn't eligible for a CPP disability pension.

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<sup>1</sup> A person's years of contributions to the CPP are used to calculate the "minimum qualifying period". It is usually called the MQP and is often described using the date the period ended. In this case it is December 31, 2017. See subsection 44(2) of the *Canada Pension Plan*. The Appellant's contributions are on pages GD2-103, 104.

– **After her retirement pension was payable (January 2021)**

[12] The law says a person can't get a CPP retirement pension and a CPP disability pension at the same time.<sup>2</sup>

[13] The Appellant had contributions in 2019 and 2020. She also had contributions in 2021 that were below the minimum amount the CPP accepts. In many circumstances, these contributions would let an appellant qualify for a pension if they became disabled between January 2021 and August 2021, and they continue to be disabled.<sup>3</sup> This is called the prorated period.

[14] The prorated period can't extend the Appellant's qualifying period for a CPP disability pension. That is because she began receiving a CPP retirement pension in January 2021. She has to prove she became disabled **before** her retirement pension was payable. For the prorated period to extend the Appellant's qualifying period she would have to prove she became disabled in 2021 by August. That is **after** her retirement pension was payable. That means she can't use the prorated period to qualify for a CPP disability pension.

[15] However, the prorated period can extend the Appellant's qualifying period for the PRDB.

– **What the law says about the qualifying period for a PRDB**

[16] The PRDB was created in January 2019 to give disability protection to retired pensioners who are disabled but haven't reached the age of 65. The wording of the rules about PRDB changed in May 2023.<sup>4</sup> The amendments confirm that the qualifying period for a PRDB should be calculated in the same way as the qualifying period for a CPP disability pension.

[17] The Minister submits that the Appellant does not qualify for a PRDB because of the rules that existed between January 2019 and May 2023. Under those rules she did

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<sup>2</sup> See section 44(1)(b) and subsection 70(3) of the *Canada Pension Plan*.

<sup>3</sup> This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

<sup>4</sup> See section 44(4) of the *Canada Pension Plan*. The change came into effect on May 5, 2023.

not have enough contributions. The Minister submitted that is because the wording of the legislation does not say a contributor can use partial years to establish eligibility. The Minister says the Appellant needs three full years of contributions and she only has two – 2019 and 2020.

[18] As I noted above, the Appellant had contributions in 2021 that were below the minimum amount the CPP accepts. If proration applies, these contributions would let the Appellant qualify for PRDB if she became disabled between January 2021 and August 2021, and she continues to be disabled.<sup>5</sup>

[19] There are explanatory notes when the CPP was amended in May 2023. What is especially relevant to my decision is Parliament's notes about the purpose and intent of the legislation.<sup>6</sup> As I noted above, the Minister argues the rules that allow proration can't help the Appellant because, when she applied, the legislation did not specifically allow the calculation to use calendar years **either wholly or partly** within the Appellant's contributory period.

[20] The Minister is correct that the legislation did not **specifically provide** for proration. But I have to decide if that means it **does not allow** proration. To do that I have to interpret the intended meaning of the law.

– **The rules allow the Appellant to use prorated contributions**

[21] The Tribunal is created by legislation. This means I have to follow the rules set out in the CPP. I have to consider whether decisions in other Tribunal appeals apply to this appeal. I am not required to follow what other Tribunal members decide but I have to consider the approach others take and decide if that approach applies to the case before me. I have to follow the rulings of the courts such as the Federal Court (FC), Federal Court of Appeal (FCA) and the Supreme Court of Canada (SCC).

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<sup>5</sup> This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

<sup>6</sup> See *Canada Gazette*, Part II, Volume 157, Number 11

[22] There are court decisions that say decision-makers must read the words in legislation and give them ordinary meaning. That will ensure the law meets the purpose Parliament intended. This means I must read the CPP using the ordinary meaning for its words. If the language is clear, I must not assume another meaning that is inconsistent with the purpose of the law.

[23] The sense and meaning I give words in the CPP must be consistent with the intended purpose of the CPP. I must consider what Parliament intended the law to address or accomplish. The *Interpretation Act* requires me to interpret the law fairly and broadly to make sure the meaning I give a word or section allows the law to meet its objective.<sup>7</sup>

[24] The Minister referred me to a decision of the Tribunal's Appeal Division (AD) dated February 7, 2020.<sup>8</sup> The Minister says this decision confirms the legislation that was in effect between January 1, 2019, and May 4, 2023, would not allow appellants to use prorated contributions to establish a qualifying period for a PRDB. Therefore, partial years cannot be used for contributors who apply between January 1, 2019, and May 4, 2023.

[25] I have the benefit of explanatory notes for the May 2023 amendments. The purpose of the PRDB as not changed since January 2019. Parliament found it was necessary to amend the legislation about PRDB and clarify the purpose. These were not available for the AD's 2020 decision. They make it very clear eligibility for the PRDB was intended to be the same as for disability benefits with three specific differences. They are:<sup>9</sup>

1. The applicant must be under age 65 and be in receipt of a retirement pension.

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<sup>7</sup> The *Interpretation Act* says this at section 12

<sup>8</sup> See *NL v. Minister of Employment and Social Development*, 2020 SST 742.

<sup>9</sup> See *Canada Gazette*, Part II, Volume 157, Number 11, SI/2023-14 May 24, 2023

2. Any contributions made towards a Post-Retirement Benefit (i.e. while in receipt of a retirement pension) can be used to determine Post-Retirement Disability Benefit eligibility; and
3. The Minimum Qualifying Period must extend into 2019 and beyond.

[26] The notes also clarify that the amendments were intended to avoid other potential interpretations when establishing the qualifying period for a PRDB. This explanation further supports the conclusion that proration should apply to the PRDB because it applies to disability benefits.

[27] The Minister is correct that the provision before May 2023 did not state that a contributor can use contributions that are partially within the contributor's contributory period. But that did not preclude the use of those contributions. I have to interpret the meaning of the law broadly and fairly. The fact the legislation doesn't specifically **include** proration doesn't mean it **cannot**.

[28] If I interpret the rules as the Minister suggests they will have meaning that is contrary to the purpose and intent of the legislation. The purpose of the legislation was to calculate the qualifying period for a PRDB the same as for a disability benefit. There are only three specific differences. The legislation does not intend to create other differences. Therefore, I find the rules that allow proration can be used to establish eligibility for a PRDB.

– **Prorated contributions allow the Appellant to establish eligibility**

[29] The Appellant would be entitled to a PRDB if she receives a CPP retirement pension, is less than 65 years old, is disabled, and **made base contributions for not less than the minimum qualifying period**.<sup>10</sup>

[30] The minimum qualifying period is calculated based on the CPP contributions an appellant made during their contributory period.<sup>11</sup> If they contribute below a certain

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<sup>10</sup> See *Canada Pension Plan* s. 44(1)(h)(i).

<sup>11</sup> See *Canada Pension Plan* s. 44(2).

amount (called the year's basic exemption) their contribution is refunded and no contribution is recorded for that year.

[31] However, contributions can be prorated if an appellant does not contribute an amount equal to the year's basic exemption in the year they became disabled.<sup>12</sup> Proration allows appellants to establish a minimum qualifying period by lowering the amount of the basic exemption in that year.

[32] The Appellant had more than 25 years of contributions. That means she is required to make contributions in three years. She made contributions in 2019, 2020, and 2021. Her contributions in 2021 were less than the year's basic exemption so she cannot use the full year to establish her qualifying period. But using the rules of proration her qualifying period ends on August 31, 2021.

### **What is a severe and prolonged disability?**

[33] The *Canada Pension Plan* defines "severe" and "prolonged."

[34] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>13</sup>

[35] 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 to earn a living, then she isn't entitled to a disability pension.

[36] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>14</sup>

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<sup>12</sup> See *Canada Pension Plan* s. 19.

<sup>13</sup> 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.

<sup>14</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.



[37] 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.

[38] 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.

[39] I find that the Appellant had a severe and prolonged disability as of May 2021. She continues to be disabled. I reached this decision by considering the following issues:

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

### **Was the Appellant's disability severe?**

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

#### **– The Appellant's functional limitations affected her ability to work**

[41] The Appellant has moderate degenerative disc disease in her neck and low back.<sup>15</sup>

[42] However, I can't focus on the Appellant's diagnoses.<sup>16</sup> Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.<sup>17</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 affected her ability to work.<sup>18</sup>

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

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<sup>15</sup> See GD2-119, 121, 126 and 146.

<sup>16</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>17</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>18</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

– **What the Appellant says about her functional limitations**

[44] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says she had an illness in the Fall of 2020. She was off work on medical leave but was able to return to work on reduced hours.

[45] In February 2021 the pain in her back, arms and legs got worse. It is constant. Medication doesn't help. She needs a cane to walk. She can't lift or bend over. Movement causes cramping and increased pain. She is tired because she can't sleep. She worked as long as she could.

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

[46] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work in 2021 by the end of August 2021.<sup>19</sup>

[47] The medical evidence supports what the Appellant says. I acknowledge there is limited medical evidence. The Appellant explained that isn't because her condition improved. She couldn't see or talk to health care providers much in 2020 and 2021 because of the pandemic restrictions. She had to rely on limited access to her nurse practitioner for all of her medical care.

[48] The medical evidence supports that the Appellant's degenerative disc disease causes pain, fatigue, reduced range of motion and decreased strength.<sup>20</sup> She had injuries at work but kept working. Ms. Doyle recommended she stop working in November 2020. The Appellant kept working until May 2021 because she reduced her work hours. Diagnostic imaging confirms the Appellant has low back pain and symptoms in her legs and arms.<sup>21</sup>

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

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<sup>19</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>20</sup> See the report from the Appellant's primary health care provider, Vicki Doyle, NP beginning at page GD2-146.

<sup>21</sup> See GD2-119 to 126.

– **The Appellant followed medical advice**

[50] To receive a disability pension, an appellant must follow medical advice.<sup>22</sup>

[51] The Appellant followed medical advice.<sup>23</sup> She sees the nurse practitioner on a regular basis. She attended physiotherapy and massage therapy when it was recommended and available. She takes medication as prescribed. There is no evidence to suggest the Appellant did not follow medical advice.

[52] 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.<sup>24</sup>

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

[53] 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, and past work and life experience. 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.<sup>25</sup>

[54] I find that the Appellant can't work in the real world. She hasn't been able to work since May 2021.

[55] The Appellant's disability is severe. She has functional limitations that affect her ability to do any type of job. She is 63 years old. The Appellant's work experience and level of education aren't enough to overcome the effect of her medical condition. It isn't realistic to expect her to work in the real world.

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<sup>22</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>23</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>24</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>25</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[56] The Appellant based her application on pain and other physical issues. She told me she can't work because of the limitations from nerve entrapment in her spine. She had other illnesses but recovered from those enough to return to her job.

[57] I accept that the Appellant has had problems with pain and an unknown stomach condition. But she continued to work until May 2021. That was when she finally had to stop. I believe the Appellant would have worked longer if she could. But her condition deteriorated in 2021 and she simply couldn't keep working.

[58] In the real world, the Appellant has no work capacity. Therefore, she doesn't have to show that she tried to work and failed because of her health conditions.<sup>26</sup>

[59] I find that the Appellant's disability was severe as of May 2021 when she had to stop working completely.

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

[60] The Appellant's disability was prolonged.

[61] The Appellant's conditions began in 1986 when she was first injured at work. She has had some pain and limitations since then.<sup>27</sup> She was able to work until 2021 when her pain worsened, and her function decreased. She became disabled in May 2021. That was when she could no longer push herself to work.

[62] The Appellant's back and neck conditions have affected her for many years. She was able to manage but the pain and limitations have worsened. Medication and physical therapy no longer help her function. Her nurse practitioner recommended she stop working in November 2020. The Appellant's conditions continued to deteriorate, and she had to stop as of May 2021.

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<sup>26</sup> The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

<sup>27</sup> 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.

[63] The Appellant's conditions will more than likely continue indefinitely. The injuries happened many years ago and have worsened since then. There is no evidence that her function will improve with time or treatment.

[64] I find that the Appellant's disability was prolonged as of May 2021.

## **When payments start**

[65] The Appellant's disability became severe and prolonged in May 2021.

[66] There is a four-month waiting period before payments start.<sup>28</sup> Payments start as of September 2021.

## **Conclusion**

[67] I find that the Appellant isn't eligible for a CPP disability pension. She is entitled to a PRDB.

[68] This means the appeal is allowed in part.

Anne S. Clark

Member, General Division – Income Security Section

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<sup>28</sup> Section 69 of the *Canada Pension Plan* sets out this rule.