



Citation: *JC v Minister of Employment and Social Development*, 2024 SST 264

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: J. C.

Respondent: Minister of Employment and Social Development

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

Tribunal member: Connie Dyck

Type of hearing: Teleconference

Hearing date: March 5, 2024

Hearing participant: Appellant

Decision date: March 8, 2024

File number: GP-23-953

Decision

[1] The appeal of J. C. (Appellant) is allowed.

[2] The Minister of Employment and Social Development (Minister) was not entitled to stop payment of the Appellant's Canada Pension Plan (CPP) disability pension between September 1, 2022, and March 31, 2023.

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

Overview

[4] The Appellant is appealing the Minister's decision to stop his CPP disability pension effective September 1, 2022, to March 31, 2023.

[5] The Appellant was 27 years old when he applied for a CPP disability pension in December 2016.¹ His main disabling conditions were autism spectrum disorder, paranoid personality traits and dyslexia.

[6] The Minister granted the Appellant's application, and the date of onset was July 2016. This is when the Appellant stopped working as a childcare provider because of his medical conditions.²

[7] The Appellant continued to work as a childcare provider in 2017, 2018, 2019, and 2021.³ The Minister reviewed the Appellant's file several times; twice in 2018 and once in 2019. At all three of these times, the Minister found the Appellant continued to be disabled, despite his employment as a childcare provider.⁴

[8] A fourth review happened in October 2021.⁵ The Minister decided the Appellant was no longer disabled. But the Appellant asked the Minister to reconsider its decision.

¹ GD2-134.

² GD2-180.

³ GD2-46 to 47.

⁴ GD2-116 to 121.

⁵ GD2-108 to 110.

The Minister reversed its decision and on September 6, 2022,⁶ said the Appellant continued to be disabled.

[9] One week later, on September 13, 2022,⁷ the Minister said the Appellant ceased to be disabled as of the end of August 2022, after a three-month work trial. This was effective September 1, 2022.

The Appellant appealed this decision to the Social Security Tribunal – General Division.

What I have to decide

[10] I must decide if the Appellant stopped being disabled between September 1, 2022, and March 31, 2023. If so, I must decide when.

[11] In order to stop paying a CPP disability pension, the Minister must show that it is more likely than not that the Appellant ceased being disabled under the *Canada Pension Plan*.⁸

[12] A disability ceases to be payable for the month in which an Appellant ceases to be disabled.⁹

[13] To be disabled under the *Canada Pension Plan*, the disability must be severe and prolonged. A disability is severe if it causes a person to be incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration.¹⁰

The Minister hasn't shown the Appellant stopped being disabled as of August 31, 2022

[14] The Minister found the Appellant's disability was severe and prolonged when it allowed the disability pension effective July 2016. This remained their decision in 2018,

⁶ GD2-61 to 62.

⁷ GD2-51 to 53.

⁸ See *Atkinson v Canada (A.G.)*, 2014 FCA 187.

⁹ See paragraph 70(1)(a) of the CPP.

¹⁰ See paragraph 42(2)(a) of the CPP.

2019 and on September 6, 2022. The Minister must show the Appellant's condition has changed since its last decision and that he was no longer disabled.¹¹

The Minister has provided no new medical evidence

[15] In May 2017, the Minister decided the Appellant was disabled. The date of onset was July 2016. The Minister based this decision on the following:¹²

- The Appellant said he had symptoms of autism, paranoid personality and dyslexia. These conditions prevented him from working. He also had problems due to his behaviour which was perceived as strange, confusion with work instructions, and difficulties adapting to new situations.
- Dr. Roman (family doctor) made a diagnosis of autism spectrum disorder.¹³ He said the Appellant displayed inappropriate social behaviour, was unable to hold down a job and was inflexible in terms of a work schedule.
- A psychological assessment completed by Dr. Dew (psychologist) in November 2016, said the Appellant had difficulties holding a job, was often fired, and had numerous complaints against him for acting strange.¹⁴ The Appellant had a history of deficits in social, emotional behaviour, verbal and nonverbal language and developing and sustaining relationships. The assessment also noted the Appellant was inflexible in terms of a work schedule as he was confused by change.

[16] The Minister provided no new medical evidence. It hasn't shown there was any change in the Appellant's medical conditions or functional abilities since they approved his disability application in May 2017.

¹¹ See *Boudreau v MHRD*, 2000 CP 11626 (PAB). Although this decision is not binding on me, I found it persuasive.

¹² GD2-180.

¹³ GD2-268 to GD2-271.

¹⁴ GD2-272 to GD2-276.

[17] In its decision of September 6, 2022, the Minister said for the period November 1, 2021, to September 6, 2022, the Appellant continued to be disabled in part because of his poor insight, which is indicative of his condition. The Minister also said, “As his medical condition is a permanent condition and there have been no significant changes since his date of application, the client has not demonstrated that he is capable of regular and gainful employment.”¹⁵

[18] However, this remains the case today. The Appellant’s condition is still permanent and there has been no significant change since the date of his application.

[19] The medical evidence of Dr. Painchaud (family physician) in September 2023, shows the same diagnosis and functional limitations that the Minister relied on when it found the Appellant disabled as of July 2016. Dr. Painchaud said that as a result of autism spectrum disorder, the Appellant had increased difficulty with communication in all forms. He also had difficulty building and maintaining relationships. Dr. Painchaud noted these deficits have made it exceptionally difficult for the Appellant to obtain and maintain a regular job despite his best efforts. Dr. Painchaud expected these deficits to be lifelong for the Appellant.¹⁶

[20] The Minister has provided no evidence that the Appellant’s medical condition changed between July 2016 to the present day.

The Appellant’s income from work

[21] The Minister’s position is that the Appellant no longer met the severe and prolonged criteria within the meaning of the *Canada Pension Plan* from the end of August 2022 through to April 1, 2023, the date his reinstatement was effective.

[22] The *Canada Pension Plan Regulations* define a substantially gainful income. An appellant’s income for a year is substantially gainful if it is equal to or more than the maximum amount they could get as a disability pension for that year.¹⁷

¹⁵ GD2-50.

¹⁶ GD3-2.

¹⁷ See section 68.1 of the Canada Pension Plan Regulations.

[23] The Appellant's earnings from work in 2022 were \$21,633.¹⁸ Substantially gainful earnings in 2022 were considered to be \$17,489.96.

[24] The Appellant's earnings from January 2022 to September 6, 2022, were substantially gainful, but the Minister decided the Appellant was still disabled, despite his earnings.

[25] However, for the time period in question, September 1, 2022, to December 31, 2022, the Appellant's earnings were not substantially gainful.

[26] Even if I considered the Appellant's entire income for 2022 to be substantially gainful, I don't believe he ceased to be disabled by September 1, 2022. The Appellant's income should be put in the context of the purpose of the *Canada Pension Plan*. It is benefit-conferring legislation. It is meant to be interpreted in a broad and generous manner.¹⁹ The *Canada Pension Plan* must be applied with some reference to the "real world."²⁰ A broad and generous interpretation of the Appellant's income would indicate that his income is only one piece of evidence for me to consider.

[27] I considered whether the Appellant's employer, Prince Albert Child Care Co-operative, would be considered a benevolent employer. For an employer to be found benevolent, the accommodation must go beyond what would be expected in the marketplace. Whether an employee is providing market value for his or her services depends on the employer's performance expectations, especially as compared to other employees in the same position.²¹

[28] The Appellant's job description with Prince Albert Child Care Co-operative was to provide quality care to children with age-appropriate activities.²² The employer noted the Appellant's work was "satisfactory". This doesn't mean that it was "good" or that he didn't need accommodations. In fact, the Appellant couldn't do the job on his own. He

¹⁸ GD7-3.

¹⁹ *Rizzo v Rizzo Shoes Ltd. (Re)* [1998] 1 S.C.R. 27.

²⁰ *Villani v. Canada (Attorney General)*, 2001 FCA 428.

²¹ See *Atkinson v. Canada (Attorney General)*, 2014 FCA 187 and *Minister of Employment and Social Development v. TD* 2020 SST 1021.

²² GD2-28.

needed regular assistance from co-workers. One of the main tasks of his job was to do activities with children. But he needed regular assistance from his co-workers to do this primary task of his employment. Further, he needed assistance from co-workers with supervising the children. Again, this is a primary task of being a childcare provider. But he couldn't do this without regular help. He also needed assistance with behaviour management of the children. I acknowledge the employer says, he had the ability to handle the demands of the job. However, based on the regular assistance he needed from co-workers just to do the basic and main job duties of a childcare worker; it is evident that he didn't have the ability to handle the demands of the job. The Appellant's performance expectations, compared to other employees in the same position, were less than the work expected of other employees. He required regular assistance from co-workers, but his co-workers worked independently.

[29] I also relied on the testimony of the Appellant. He said there were new rules implemented regarding the care of the children. These rules started around the end of August 2022. But following these rules was different for him compared with the other employees. The care he provided to the children was different and less than other employees. One example was he didn't have to lift children under three years.

[30] I find the Appellant was working for a benevolent employer. The accommodations went beyond what would be expected in the marketplace and his performance expectations were significantly less than other employees in the same position.

The Appellant's work history

[31] The Minister's position is that the Appellant no longer met the severe and prolonged criteria by August 31, 2022, when he demonstrated the capacity for substantially gainful work.

[32] I don't believe the Minister has met its onus to show the Appellant ceased to be disabled any time between September 1, 2022, and March 31, 2023.

[33] The Appellant worked as a childcare provider for the same employer from January 25, 2022, to December 21, 2022. Yet, the Minister found he was disabled from

January 25, 2022, to September 6, 2022, and provided no evidence that anything changed.

[34] At the hearing, the Appellant testified that he stopped working on December 21, 2022, because of rule changes. He explained these rules weren't consistently followed by all staff and his employer didn't explain the expectations they had of him. The difficulty the Appellant had with the implementation of new rules was a functional limitation that he has had since 2016, when he was first found to be disabled. Dr. Dew said in November 2016 that the Appellant was inflexible in terms of a work schedule, and he was confused by change.²³ The Appellant told me these rules and changes in policy started happening in August 2022, and he had difficulty adjusting to them.

[35] In 2016, when the Minister found the Appellant to be disabled, he was fired from his job as a childcare provider because he was unable to carry out programmed activities, or work on his own and needed constant supervision.²⁴ The Appellant's employer said during his work in 2022, he needed regular assistance from co-workers during activities, supervision and behaviour management. These are the same functional limitations he had in 2016 when the Minister said he was disabled.

[36] I next considered if the Minister has shown that the Appellant ceased to be disabled anytime between December 21, 2022, and March 31, 2023. This is when the Minister reinstated the Appellant's disability pension.

[37] I don't believe it has.

[38] In 2016, the Appellant was fired from his job as a childcare provider because he couldn't fulfill the requirements of the job. This included being unable to carry out programmed activities, or work on his own and needed constant supervision. The Minister relied on this when it decided the Appellant was incapable of working on a regular and gainful basis due to the nature of his medical condition and functional limitations.²⁵ In January 2023, the Appellant was again working as a childcare provider

²³ GD2-272 to 276.

²⁴ GD2-30.

²⁵ GD2-6.

but for a new employer, X. However, he wasn't able to meet the requirements of the job and was fired just as he was in 2016.

[39] In summary, the Minister hasn't shown that the Appellant ceased to be disabled anytime between September 1, 2023, and March 31, 2023. His medical conditions, his work efforts and his functional limitations have remained the same from July 2016, until April 1, 2023, when his disability benefits were reinstated.

Conclusion

[40] The Minister has failed to prove on a balance of probabilities, that the Appellant regained work capacity at any time after his deemed date of onset of July 2016. There is no evidence that his medical condition changed or that his capacity to work changed between September 1, 2023, and April 1, 2023.

[41] For the reasons above, I find that the Minister was not entitled to terminate payment of the Appellant's CPP disability pension between August 31, 2022, and March 31, 2023. I find that the Appellant is eligible for a CPP disability pension because his disability was severe and prolonged.

[42] This means the appeal is allowed.

Connie Dyck
Member, General Division – Income Security Section