



Citation: *RH v Minister of Employment and Social Development*, 2023 SST 2007

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

## Decision

**Appellant:** R. H.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 28, 2022 (issued by  
Service Canada)

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**Tribunal member:** Jackie Laidlaw

**Type of hearing:** In Writing

**Hearing date:** December 18, 2023

**Decision date:** December 27, 2023

**File number:** GP-22-1397

## Decision

[1] The appeal is allowed.

[2] The Appellant, R. H., 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 was a 53-year-old man in December 2019, the time of his minimum qualifying period (MQP). He worked mainly as a general handyman labourer. He has a history of alcohol abuse and depression. He stopped working in October 2017 when he was charged with child luring and sexual interference charges. He was convicted in 2019 and sentenced to jail for two years. When he was released from jail in 2020, he had a difficult time reintroducing back into society. He became anxious, stressed, and isolated. He has a court order banning the use of the internet for life.

[4] The Appellant applied for a CPP disability pension on November 15, 2021. 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 said in a letter that he has changed his name and he is still being persecuted. He was beaten up in jail for sex crimes. His picture was publicized. People now recognize him, and he fears constantly he will be beaten up again.

[6] The Minister says the Appellant has always managed to work with his history of alcohol abuse and low mood.

## What the Appellant must prove

[7] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2019. This date is based on a credit split and his CPP contributions.<sup>1</sup> He must also prove that he continues to be disabled.<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 capable regularly of doing 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 he has to show it is more likely than not that he is disabled.

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<sup>1</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 GD 2-6.

<sup>2</sup> In *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that the appellant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2001 FCA 318.

<sup>3</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>4</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## **Matters I have to consider first**

### **The Appellant wasn't at the hearing**

[14] A hearing can go ahead without the Appellant if he got the notice of hearing.<sup>5</sup> I decided that the Appellant got the notice of hearing because the Tribunal made numerous attempts to contact the Appellant. His last known address was his sister's. The night before the hearing his sister contacted the Tribunal and left a message. She stated the Appellant had been in the hospital for the last couple of months and not up to attending. She stated we should hold the hearing without him. So, the hearing took place when it was scheduled, but without the Appellant.

### **Reasons for my decision**

[15] I find that the Appellant had a severe and prolonged disability as of October 2017. He 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?**

[16] 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 his ability to work**

[17] The Appellant has:

- a history of alcohol abuse.
- Generalized anxiety disorder (GAD).
- a social phobia.

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<sup>5</sup> Section 12 of the 2013 version of the *Social Security Tribunal Regulations* sets out this rule.

[18] However, I can't focus on the Appellant's diagnoses.<sup>6</sup> Instead, I must focus on whether he has functional limitations that got in the way of him earning a living.<sup>7</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 his ability to work.<sup>8</sup>

[19] I find that the Appellant had functional limitations that affected his ability to work.

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

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

[21] The Appellant wrote that he cannot work on phones or on computers because he is banned for life from using the internet.<sup>9</sup>

[22] In a hand-written note the Appellant stated he never gets jobs after a background check is done and they learn he has been convicted of sex crimes.<sup>10</sup>

[23] The Appellant also wrote that he would be unable to work because he always needs to be with a family member because he fears for his life.<sup>11</sup>

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

[24] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work no later than December 31, 2019.<sup>12</sup>

[25] The medical evidence supports what the Appellant says.

[26] The Appellant's family physician, Dr. Lynett, provided clinical notes from November 2009 until November 2021.<sup>13</sup> In February 2010, the Appellant had

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<sup>6</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>7</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>8</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>9</sup> See GD 2-46 a letter dated November 2021.

<sup>10</sup> See GD 2-141 August 15, 2022.

<sup>11</sup> *IBID.*

<sup>12</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>13</sup> See GD 2 pages 94 to 139.

depression and was taking Zoloft. His alcohol abuse was in remission. By February 2015, his depression was continuing to improve. The last note before his MQP is from September 27, 2018, that the Appellant just got out of jail for drinking and driving.<sup>14</sup> It was in 2019 that the Appellant was convicted for sexual offences and sentenced to jail for two years.

[27] The Appellant noted in his application that he had been getting ongoing group therapy and learning coping skills since September 2020. He had taken addiction counselling since August 2021. He had been receiving counselling from a social worker Andrea Bevan since July 2020 and counselling and direction from his probation officer Tara Rolston since July 2020.<sup>15</sup>

[28] This would indicate the Appellant got out of jail after six months<sup>16</sup> in around July 2020 and started receiving counselling at that point.

[29] The first medical note after he got out of jail was February 11, 2021, where Dr. Lynett states he had been sober for two years.<sup>17</sup> This would mean the Appellant had been sober at the time of his MQP.

[30] Dr. Lynett went on to state in February 2021 that the Appellant was not functioning well at home. He had been beaten up in jail and was stressed trying to reintroduce himself back into normal life.<sup>18</sup>

[31] Dr. Lynett did support the Appellant's Ontario Disability Support Program (ODSP) application.<sup>19</sup> Dr. Lynett noted a diagnosis of GAD, social phobia, and alcohol abuse in remission for two years on his ODSP form in April 2021. In the ODSP application, Dr. Lynett noted the Appellant was unable to work with others, was housebound and had severe nervousness. He also indicated the Appellant was back out of jail and fearful of

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<sup>14</sup> See GD 2-112.

<sup>15</sup> See GD 2-31 application November 15, 2021.

<sup>16</sup> See GD 2-147 as noted in psychiatrist Dr. Kumaran's examination on July 13, 2022.

<sup>17</sup> See GD 2-115.

<sup>18</sup> See GD 2 115-116.

<sup>19</sup> See GD 2-115.

physical attacks due to his crimes. Dr. Lynett noted the Appellant needed a psychiatric review and treatment to overcome anxiety.<sup>20</sup>

[32] In November 2021 someone torched the Appellant's truck, and he began using alcohol to cope with his stress. Dr. Lynett noted the Appellant was always looking over his shoulder for people due to his criminal activity.<sup>21</sup> This confirms the Appellant's panic and anxiety about being attacked were founded.

[33] In the medical report for the CPP disability benefit, Dr. Lynett diagnoses mental health with major depressive episode and alcohol abuse causing poor focus, low motivation, high anxiety, and insomnia as well as social phobia. Dr. Lynett stated he was unable to work with these symptoms. He also diagnosed a medical condition as a "sexual abuse offender" and noted the Appellant is always looking over his shoulder for impending doom. Because he was traumatized in jail, he is now unable to shake this feeling. Dr. Lynett indicated the Appellant should move away for a fresh start.<sup>22</sup>

[34] I realize the medical records are well after his MQP. However, the Appellant was in jail at the time of his MQP. His GAD and panic attacks arose out of the beatings he got in jail, and because of the public fall-out from his actions which put him in jail. Therefore, I accept that at the time of his MQP the Appellant had GAD and panic attacks.

[35] The Appellant could not work in December 2019 because he was in jail. He was in jail for child luring and sexual interference charges. I take official notice that this type of behaviour would be widely accepted as a mental health condition. This is supported by Dr. Lynett when he listed "sexual abuse offender" as one of his diagnoses.<sup>23</sup>

[36] The medical evidence supports that the Appellant's mental health prevented him from working by December 31, 2019.

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<sup>20</sup> See GD 2-120 April 19, 2021.

<sup>21</sup> See GD 2-137.

<sup>22</sup> See GD 2-93 November 8, 2021.

<sup>23</sup> IBID

[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>24</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 affected 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>25</sup>

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

[41] The Appellant was 53 years-old at the time of his MQP with a high school education. These two factors may be a barrier to finding suitable work. The Appellant has been a labourer and general handyman in the past and is not prevented from doing so by any physical condition. However, he is banned for life from using the internet, which would seriously limit his ability to work. His past life experience, being in jail and especially being convicted of child luring and sexual interference charges would limit, if not bar him from employment.

[42] The Appellant would be prevented from working by reason of his past life experiences.

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

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



[43] I find that his disability was severe. The Appellant's efforts show that, as of October 2017 when he was charged with the offences and stopped working, he could not regularly do any work he could earn a living from.

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

[44] The Appellant's disability was prolonged.

[45] The Appellant's alcoholism, GAD and anxiety have been present on and off since at least 2009 and have continued since then.<sup>26</sup>

[46] The mental status examination with psychiatrist Dr. Kumaran in July 2022 indicated the Appellant had GAD with panic attacks. The Appellant had anxiety and trouble sleeping.<sup>27</sup>

[47] After the examination with the psychiatrist, Dr. Lynett wrote the Tribunal endorsing the Appellant's CPP application. He indicated the Appellant is totally disabled due to his major depressive episode/anxiety and PTSD symptoms.<sup>28</sup>

[48] The Appellant's conditions will more than likely continue indefinitely.

[49] The Appellant has been sober for long stretches of time, and then "falls off the wagon" when he cannot handle the stress of life. This was noted in November 2021 by Dr. Lynett that he returned to drinking when his car was torched. It is likely his alcohol abuse will continue despite attempts at recovery.

[50] I find that the Appellant's disability was prolonged as of October 2017.

### **When payments start**

[51] The Appellant had a severe and prolonged disability in October 2017.

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<sup>26</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.

<sup>27</sup> See GD 2-147 July 13, 2022.

<sup>28</sup> See GD 2-146 August 4, 2022.

[52] 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.<sup>29</sup> After that, there is a 4-month waiting period before payments start.<sup>30</sup>

[53] The Minister received the Appellant's application in November 2021. That means he is considered to have become disabled in August 2020.

[54] His pension payments start as of December 2020.

## Conclusion

[55] I find that the Appellant is eligible for a CPP disability pension because his disability was severe and prolonged.

[56] This means the appeal is allowed.

Jackie Laidlaw

Member, General Division – Income Security Section

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<sup>29</sup> Section 42(2)(b) of the *Canada Pension Plan* sets out this rule.

<sup>30</sup> 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.