



Citation: *JH v Minister of Employment and Social Development*, 2024 SST 331

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: J. H.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 1, 2023 (issued by
Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: Videoconference

Hearing date: March 14, 2024

Hearing participant: Appellant

Decision date: April 4, 2024

File number: GP-23-1434

Decision

[1] The appeal is dismissed.

[2] The Appellant, J. H., 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 57 years old. She completed a Doctor of Philosophy and a residency in medical physics. She worked as a medical physicist until August 2021. She said she developed medical conditions after receiving vaccines for Covid. She stopped working in August 2021.

[4] The Appellant said she has many health issues including brain fog, anxiety, painful and unstable knees, digestive issues, and intolerance to cold.

[5] The Appellant applied for a CPP disability pension on July 11, 2022. 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.

[6] The Appellant says she has ongoing symptoms from her conditions. She can't follow up on recommended treatment or referrals to specialists. She said that is because she has to live in a warm (tropical) climate. Therefore she can't come back to Canada to attend specialist appointments or receive treatment. She now lives in Florida and may move to Malaysia. The only health care that is available to her is at a private clinic in Florida. She can't afford to pay for treatment at that clinic. So she has to treat herself and manage all of her conditions without professional care.

[7] The Minister says the evidence does not prove the Appellant has a prolonged disability. She had symptoms that affected her, but the evidence does not show the condition is long continued and of indefinite duration.

What the Appellant must prove

[8] 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 March 14, 2024.¹

[9] The *Canada Pension Plan* defines “severe” and “prolonged.”

[10] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.²

[11] 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.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

[13] 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.

[14] 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.

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 section 44(2) of the *Canada Pension Plan*. The Appellant’s CPP contributions are on page GD2-63. 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.

Matters I have to consider first

The Appellant asked to change the hearing to a teleconference

[15] The Tribunal schedules hearings based on an appellant's availability and preferences. The Appellant requested a hearing by videoconference. Before the hearing began, the Appellant said she changed her mind and preferred to proceed by teleconference.

[16] I allowed the Appellant's request and changed the method of proceeding to teleconference. She said she would be more comfortable in a teleconference. Her request wouldn't delay the appeal or affect another party. The hearing continued at the scheduled time.

Reasons for my decision

[17] I find that the Appellant hasn't proven she has had a severe and prolonged disability by March 14, 2024, and continuously since then. I reached this decision by considering the following issues:

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

The Appellant's disability is not severe?

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

– **The Appellant’s functional limitations had some effect on her ability to work**

[19] The Appellant has:⁴

- Neurological symptoms (not yet diagnosed)
- A fractured patella (healed)
- Poor circulation
- General anxiety disorder
- Digestive system malfunction

[20] However, I can’t focus on the Appellant’s diagnoses.⁵ Instead, I must focus on whether she has functional limitations that get in the way of her earning a living.⁶ 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 affect her ability to work.⁷

[21] I find that the Appellant had functional limitations that affected her ability to work.

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

[22] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.⁸ She says she can’t live in Canada because it is too cold. She has had anxiety, lethargy, irritability, insomnia, and brain fog. She said she had some of these symptoms for more than 20 years. She said she has a neurological disorder and abnormal bowels. For the past six years she has had to give herself an enema every day.

[23] The Appellant said she fell down and broke her patella. The specialist told her it was healed but she still has pain. She also feels her other knee will break. With that limitation and weakness she feels she has to use a wheelchair.

⁴ See GD2-88, 178, 209.

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

⁸ See GD2-12

[24] The Appellant tried some of the treatment her family doctor recommended but it didn't help her symptoms. In July 2022 she went to a private clinic in Florida. She said they specialize in her conditions. She said her symptoms were improved by the end of the treatment but feels she needs more.

[25] The Appellant's doctor referred her to a neurologist. The Appellant said the wait was too long and she left Canada before she could get an appointment. She also decided not to wait (or return) for the recommended colonoscopy.

[26] The Appellant said she has not had any treatment since 2022 because she has had to live in Florida or Malaysia. In Malaysia she consulted a person who administers Chinese medicine. She has no information about that consultation. She continues to manage her own health care. She treats herself based on what she learned at the clinic in Florida.

– **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 March 14, 2024.⁹

[28] The medical evidence supports some of what the Appellant says.

[29] The Hippocratic Health Institute in Florida reported the Appellant had poor circulation, recurring anxiety, muscle loss, digestive system malfunction, and joint degeneration.¹⁰ Dr. Nunez said the Appellant's symptoms began in March 2021. She said she discharged the Appellant from care in June 2022 "with much improvement". Dr. Nunez encouraged her to continue her efforts for continuous recovery. Dr. Nunez also said the Appellant was expected to return to work with modified duties.¹¹

[30] The Appellant's family doctor reported the Appellant has neurological symptoms that are not yet diagnosed.¹² Dr. Rees referred the Appellant to specialists. She

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ See the full report beginning at GD2-88.

¹¹ Dr. Nunez said this in her report at GD2-88.

¹² See GD2-178.

recommended the Appellant see a neurologist and a gastroenterologist. Dr. Rees said the Appellant might have osteoarthritis and scheduled some tests.

[31] Dr. Iqbal saw the Appellant and advised her “strongly” against water fasting. She wrote in June 2022 that the Appellant had a history of anxiety but did not take medication because they didn’t help. The Appellant told Dr. Iqbal she was not very depressed or anxious at the time.¹³

[32] The orthopaedic specialist, Dr. Moore wrote that the Appellant had a fall and fractured her right patella.¹⁴ She was treated conservatively. The patella was healed, and her exam was normal.

[33] In June 2022, the Appellant’s physiotherapist wrote that there was nothing to explain the Appellant’s reported weakness.¹⁵ The therapist could not complete the disability forms as the Appellant requested.

[34] The medical evidence supports that the Appellant had symptoms that affected her ability to work. It also shows the knee injury healed and other symptoms improved with treatment. It also confirms there is medical advice about treatment the Appellant did not follow. Doctors confirmed they could not diagnose and treat her conditions without further testing.

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

– **The Appellant didn’t follow medical advice**

[36] To receive a disability pension, an appellant must follow medical advice.¹⁶ If an appellant doesn’t follow medical advice, then they must have a reasonable explanation

¹³ See Dr. Iqbal’s letter beginning at GD2-204.

¹⁴ See Letters at GD2-209 and 211.

¹⁵ See GD2-213.

¹⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

for not doing so.¹⁷ If they don't have a reasonable explanation, then I must also consider what effect, if any, the medical advice might have had on the appellant's disability.¹⁸

[37] The Appellant didn't follow medical advice. She didn't give a reasonable explanation for not following the advice. The Appellant said she agreed to be hospitalized in 2022 for 10 days to try to diagnose her conditions. She said the doctors told her the tests did not explain her symptoms.

[38] The Appellant decided to not wait for additional referrals about the neurological and digestive symptoms. She describes these symptoms as severe. She says they make her unable to work. But she decided to not follow her family doctor's advice to investigate the disabling symptoms. She did not schedule appointments as recommended. She did not follow up with her doctor, so she doesn't know if appointments were scheduled for her.

[39] The Appellant gave two main reasons for not following the advice. Her explanations are not supported by evidence. They are not reasonable.

[40] The Appellant said she felt she couldn't stay in Canada any longer to wait for the referrals. She said she feels her intolerance to cold is too severe for her to be in Canada. Even 20 degrees Celsius makes her uncomfortable. There is no evidence to support the Appellant's position that she can't live in Canada. There is no evidence to suggest that it would be reasonable to stay away from Canada even though it means she can't access needed medical care. She confirmed that no health professional told her she had to leave Canada because of her health.

[41] The second reason the Appellant gave was that a friend (non-medical) told her the Covid vaccines probably caused her symptoms. Therefore, she felt a referral to other specialists would not benefit her. There is no evidence to support this belief.

[42] I must now consider whether following this medical advice might have affected the Appellant's disability. I find that following the medical advice might have made a

¹⁷ See *Brown v Canada (Attorney General)*, 2022 FCA 104.

¹⁸ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

difference to the Appellant's disability. The Appellant described the possible neurological symptoms and the digestive symptoms as causing or contributing to most of her limitations. She said she has to be very protective of her knees even though the broken patella healed. But the other symptoms are related to the possible neurological condition and the digestive malfunction. Her family doctor felt referrals to specialists were necessary. With a diagnosis, the Appellant may be able to access treatment to relieve some or all of the symptoms.

[43] It was not reasonable for the Appellant to accept her friend's explanation about the cause of her symptoms and refuse to follow her treating doctor's advice. Also, the Appellant said no health professional told her she had to leave Canada for her health. She decided to leave without medical advice. Her decision was unreasonable because it meant that she would not receive the care that was necessary to explore the cause of her symptoms and identify possible treatment.

[44] The Appellant didn't follow medical advice that might have affected her disability. This means that her disability wasn't severe.

[45] When I am deciding whether a disability was severe, I usually have to consider an appellant's personal characteristics.

[46] This allows me to realistically assess an appellant's ability to work.¹⁹

[47] I don't have to do that here because the Appellant didn't follow medical advice and didn't give a reasonable explanation for not following the advice. This means she hasn't proven that her disability was severe by March 14, 2024.²⁰

¹⁹ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁰ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

Conclusion

[48] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe. Because I have found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[49] This means the appeal is dismissed.

Anne S. Clark

Member, General Division – Income Security Section