



Citation: *TM v Minister of Employment and Social Development*, 2024 SST 360

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: T. M.
Representative: Angelo Consiglio

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 24, 2022 (issued by
Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Teleconference

Hearing date: April 12, 2024

Hearing participants: Appellant
Appellant's representative

Decision date: April 13, 2024

File number: GP-23-890

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. M., 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 a former labourer, and was regularly employed in Ontario until he suffered a fractured thoracic spine in 2000. Following that injury, the Appellant was off work on a worker's compensation claim until 2002. He then returned to work with his accident employer until March 2005 when he was advised by his family physician to stop working.

[4] The Appellant has applied for a CPP disability pension on several occasions. Most recently the Appellant applied for a benefit on July 27, 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 says that he has been unable to work in any capacity since March 2005. He says that his chronic back pain and resulting impairments prevent him from engaging in any substantially gainful occupation.

[6] The Minister says that the Appellant has not adduced evidence of a disability that would entitle him to a CPP disability benefit.

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, 2006. In other words, no later than December 31,

2006. This date is based on his CPP contributions.¹ He must also prove that he continues to be disabled.²

[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.³

[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.⁴

[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.

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 GD4-6.

² 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.

³ 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.

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[14] I find that the Appellant hasn't proven he has had a severe and prolonged disability by December 31, 2006, 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?

Was the Appellant's disability severe?

[15] 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 affected his ability to work

[16] The Appellant has the following:

- A compression in his thoracic spine.
- Chronic pain.
- Headaches. and
- Numbness.

[17] However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether he has functional limitations that got in the way of him 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 affected his ability to work.⁷

[18] I find that the Appellant has functional limitations that affected his ability to work.

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.

What the Appellant says about his functional limitations

[19] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says he has the following functional limitations:

- **Socializing with friends and family** – The Appellant did not feel like socializing because of the pain he experienced.
- **Hobbies** – The Appellant told me that he had a fishing hobby but he had to give that up because of his pain. He told me that he was able to continue fishing until 2007 but even by then he was pushing himself to continue.
- **Personal care** – The Appellant told me that by 2006 he was reliant on his common law spouse to assist him with dressing in the morning.
- **Walking** – The Appellant told me he could walk a block and a half without having to stop and rest.
- **Sitting** – The Appellant told me that he could sit for 15 minutes before altering his position due to pain.
- **Sleep** – The Appellant told me that since 2000 he has had restless sleep. He wakes up approximately every two hours. This leaves him without energy.

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

[20] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work no later than December 31, 2006.⁸

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

[22] Dr. Ogundimu, Neurosurgeon, reported the Appellant had an accident in March 2000 when a dead tree fell on his head at work. He detailed that the Appellant's x-ray

⁸ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

showed a mild compression fracture in the body of T9. He wrote that the Appellant's condition also resulted in intermittent numbness in the fingertips.⁹

[23] An MRI in January 2001 indicated there was a fracture but nothing wrong with the bone and no soft tissue swelling.¹⁰

[24] In January 2002, Dr. Tait detailed that the Appellant had various symptoms in his back and thoracic spine. He wrote these symptoms worsened with activities. The Appellant was noted as suffering from headaches and numbness in his arms and legs while lifting.¹¹

[25] In December 2005, Dr. Tait detailed that the Appellant had been off work since March 23, 2005, due to pain in his back right shoulder and his rib cage area.¹²

[26] In February 2006, Dr. Wentzell wrote that the Appellant was limited from heavy lifting, pushing, pulling, activities at or above shoulder level, repetitive or sustained twisting, bending, and prolonged static postures.¹³

[27] In April 2006, Dr. Naigamwalla, wrote that the Appellant had suffered multiple fractures in his thoracic spine, arthritic changes, and neck pain. He further noted the Appellant suffered from chronic knee pain and that this impaired the Appellant's level of function.¹⁴

[28] Various medical records, followed from 2007 to 2021. These records demonstrate a continuing of pain and other related conditions that caused functional impairments for the Appellant.

⁹ GD2-333

¹⁰ GD2-337

¹¹ GD2-184

¹² GD2-187

¹³ GD2-312

¹⁴ GD2-319

[29] For instance, Dr. Schamp, a new family physician wrote that the Appellant was impaired in lifting, and numbness and tingling, and difficulty maintaining a static position all because of his chronic neck pain.¹⁵

[30] The medical evidence supports that the Appellant's medical conditions resulted in impairments that interfered with his ability to engage in substantially gainful employment. He was unable to do various daily activities necessary for functioning in a workplace. This included, pushing, pulling, lifting, and sustained repetitive activities.

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

The Appellant followed medical advice

[32] To receive a disability pension, an appellant must follow medical advice.¹⁶

[33] The Appellant followed medical advice.¹⁷ The Minister did not assert he had not followed medical advice, and I saw no evidence in the file material to suggest otherwise. As a result, I am satisfied that the Appellant did so.

[34] 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.¹⁸

The Appellant was able to work in the real world after his MQP

[35] When I am deciding whether the Appellant can work, I can't just look at his medical conditions and how they affect what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities

¹⁵ See GD2 274 – 277 and GD2 -236 -239

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

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁸ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

- past work and life experience

[36] 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.¹⁹

[37] I find that the Appellant was not continuously disabled by his MQP as a result of work capacity between June 2011 and November 2013. He was still able to work throughout this time.

[38] In his November 2019 application the Appellant wrote that he had been employed part time between June 2011 and November 2013. During this time he worked 5-8 hours a day, 2 -3 days a week.

[39] During the oral hearing, I asked the Appellant to confirm whether this was accurate. He advised me that it was.

[40] I also asked the Appellant what he earned hourly during this time. He was not certain, but he believed the amount earned was between \$15 – \$17/hour. The Appellant confirmed that his job duties consisted of raking gravel and unloading a dump truck at the landfill. The Appellant told me that this was meaningful work, done to create cement steps at construction sites. Given that this work was meaningful, and his job was not varied given his limitations, I am satisfied this is not a case of a benevolent employer.²⁰

[41] I asked the Appellant how he was paid because his record of earnings showed some earnings, but did not show earnings consistent with the amount of hours he worked at the rate of pay he asserted.²¹ The Appellant told me that he was uncertain if he was paid in cash or if all of his earnings were properly reported to the CRA.

[42] There is clearly a conflict in the evidence on file. In terms of explaining the conflict, I have placed weight on the information filed in 2019 by the Appellant. It was

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

²⁰ See *Atkinson v. Canada (Attorney General)*, [2014] F.C.J. No. 840, 2014 FCA 187

²¹ See GD2-140

closer in time to the date work. That statement is supported by the evidence presented by the Appellant during the oral hearing, that he worked between 2011 and 2013.

[43] Given the duration of employment and the resulting earnings of between \$7,800 and \$21,000.²² I am satisfied that the Appellant had some residual capacity for working substantially gainful employment after his MQP.

Conclusion

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

[45] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section

²² This range of earnings is based on 2-3 days worked for 5-8 hours a day for \$15-17/hour each year.