



Citation: *LT v Minister of Employment and Social Development*, 2024 SST 411

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: L. T.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 17, 2021 (issued
by Service Canada)

Tribunal member: Michael Medeiros

Type of hearing: Teleconference

Hearing date: March 6 and April 4, 2024

Hearing participant: Appellant

Decision date: April 23, 2024

File number: GP-23-762

Decision

[1] The appeal is allowed.

[2] The Appellant, L. T., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of May 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 55 years old. He is legally blind. He's had a successful career as a voice-over actor for cartoons, but his deteriorating eye condition has made it harder to do his job and earn a gainful living from it.

[4] The Appellant applied for a CPP disability pension on September 22, 2020.¹ 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's had a severe and prolonged disability since at least 2019. That's when his condition started to overwhelm his ability to do his job. The technological aids that had helped him before were no longer useful. He got less and less work because of the accommodations he needed. His earnings are too low for him to support himself.

[6] The Minister says that the Appellant is disabled, but only as of January 2023. The Appellant retained the capacity to perform some type of suitable work until his medical condition deteriorated in 2023. The Minister acknowledges that the evidence demonstrates the sporadic nature of the Appellant's employment, as well as the declining trend in his work activity and employment earnings over the last several years.

¹ The Appellant's application was received by the Minister on December 30, 2020, but the medical report was received on September 22, 2020: see GD2-37 and GD2-84. The Minister accepts that the date of application should be the date that the medical report was received: see Minister's submissions at GD14-4.

However, there is no medical evidence to support that the Appellant's health status worsened significantly prior to January 2023.

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, 2023. In other words, no later than December 31, 2023. This date is based on his CPP contributions.² He must also prove that he continues to be disabled.³

[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.⁴

[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.⁵

[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.

² 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 at GD14-16 and 17.

³ 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.

⁴ 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.

⁵ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

[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.

Matters I have to consider first

I accepted late documents

[14] The hearing started on March 6, 2024. The Appellant submitted records after the hearing from his talent agency that showed the details of his work and earnings from 2013 to 2023 (see GD15). I accepted these documents in a letter dated March 12, 2024 (see GD16). I said in that letter that I would provide my reasons for accepting the late documents in this decision. The documents required that I reconvene the hearing on April 4, 2024, to ask some further questions.

[15] I accepted the late documents for the following reasons:⁶

- The records are highly probative of the main issue on appeal – whether the Appellant has the capacity for substantially gainful work. They are a complete, detailed, and accurate record of all of his work and earnings during the relevant period.
- They were submitted the day after the hearing, causing as little delay as possible.
- They could have been submitted earlier, but the Appellant didn't appreciate their importance.
- The Minister was able to provide a response (see GD18), so it wasn't unfair to accept the documents.

⁶ Section 42(2) of the *Social Security Tribunal Rules of Procedure* sets out what factors I must consider when deciding whether to accept late evidence

Reasons for my decision

[16] I find that the Appellant had a severe and prolonged disability as of January 2021. 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?

[17] 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

[18] The Appellant has congenital macular degeneration (cone dystrophy) in both eyes, an eye disorder that causes the Appellant to be legally blind.

[19] However, I can't focus on the Appellant's diagnosis.⁷ Instead, I must focus on whether he has functional limitations that got in the way of him earning a living.⁸ 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.⁹

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

– What the Appellant says about his functional limitations

[21] The Appellant says that his medical condition has resulted in functional limitations that affect his ability to work. His eye condition got progressively worse, which made it progressively more difficult to make a living as a voice-over actor. By 2019, it became very hard to do his job without significant accommodation. He got less and less work and his earnings have dropped below what he needs to live.

⁷ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁸ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁹ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[22] The Appellant wanted to be a voice-over actor for cartoons since he was a child. He's had a successful career doing what he always wanted to do. He loves his work. Unfortunately, his eyesight has deteriorated to the point that he can't do the job without considerable accommodation. The reality is that he isn't getting much work anymore because of it.

[23] The Appellant has had this condition since he was a child, but it's got worse over time. It makes it difficult for his eyes to focus and see things. He can't read small print or use most websites. It also makes him very light sensitive. He can't see in high light indoors. He can't see when it is bright outside. Over time, the Appellant developed an acute reaction to sunlight that resulted in photophobia, a fear of light. He can only leave the house after sunset or if it is overcast.

[24] The Appellant can't read normal size font, even in low light. He has to enlarge the words to a massive scale and place his face inches from the screen to make out the letters. Reading is a slow and exhausting process. The Appellant used computer applications that magnified text and inverted colours, which helped him read scripts. But by 2019, his eyes started to become very light sensitive. The technological aids couldn't compensate anymore.

[25] To do the job of a voice-over actor, you have to read your lines on cue, which includes matching your voice to the "mouth flaps" of the cartoon character on screen. The work is done in a recording studio, usually filled with bright lights. The lucrative work involves recording lines together with the other cast members in a live recording format.

[26] By around 2019, the Appellant started to really struggle at his job. It became incredibly difficult to read lines on cue when he couldn't read the script in session. He now had to memorize the entire script so that he could know his cue. Matching the mouth flaps was also becoming impossible in normal studio lighting. He had to have the lights off and be very close to the tv screen. It required that he be separate from the cast unless he had just a few lines. This created an added cost to the production company if they wanted to hire him.

[27] 2019 was the year when his eyes started to get “super” light sensitive and when his disability overwhelmed the technological aids that had been helping him to do his job. His ability to see steadily diminished from there. He continues to work but has been getting less and less of it. He can no longer do ensemble recordings unless he has just a few lines. He also believes that the production companies are reluctant to book him because he generally needs to be in the studio by himself and in the dark.

[28] The Appellant submitted records from his booking agent that show all of his earnings from working as a voice-over actor from 2013 to 2023.¹⁰ The only work he had during this period was booked through his agent. Below is a summary of his earnings:

Year	Gross earnings	“Net” earnings¹¹
2013	\$180,150.37	\$99,195.02
2014	\$210,826.65	\$151,215.05
2015	\$169,835.51	\$137,050.16
2016	\$117,059.95	\$84,318.18
2017	\$53,026.95	\$34,199.07
2018	\$35,480.90	\$18,012.65
2019	\$18,343.75	\$12,388.39
2020	\$31,559.27	\$22,308.45
2021	\$16,681.42	\$11,928.37
2022	\$3,670.77	\$2,891.68

¹⁰ See GD15. I accepted these documents after the hearing: see Tribunal's letter, dated March 12, 2024, at GD16.

¹¹ Net earnings, or “Total Net” on the Appellant's records at GD15, includes various deductions, such as GST and agent commission fees. It also likely includes union dues and CPP. The Appellant wasn't sure what exactly was included in this figure.

Year	Gross earnings	“Net” earnings ¹¹
2023	\$7,640.37	\$5,809.78

[29] The Appellant is paid like an independent contractor. His agent books the work. He gets a cheque from the talent agency, not the production company. The production company pays the union, who processes the cheque and sends it over to the agency. The agency’s accounting department takes care of GST and CPP and pays themselves their commission. The Appellant then gets a cheque from the agency.

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

[30] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work no later than December 31, 2023.¹²

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

[32] Dr. Ma, the Appellant’s ophthalmologist, diagnosed the Appellant with cone dystrophy degeneration, a condition he’s had since childhood. Dr. Ma said in his September 2020 medical report that the Appellant is legally blind in both eyes.¹³

[33] Dr. Ma assessed the Appellant in April 2016, August 2019, and July 2023.¹⁴ At the examination on August 6, 2019, the Appellant felt “his vision to be overall stable with no apparent changes,” although he did note a swirly light that came into his vision on occasion, as well as photophobia that made it harder to see during the day.¹⁵ Dr. Ma said that the Appellant was stable “from a retinal standpoint” and no treatment was needed. When Dr. Ma saw the Appellant again on July 27, 2023, the Appellant felt like it

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

¹³ See medical report, dated September 17, 2020, at GD2-84 to 92.

¹⁴ See Dr. Ma’s letters, dated April 5, 2016, August 6, 2019, and July 27, 2023, at GD2-78 and 83, and GD9-3.

¹⁵ See Dr. Ma’s letter, dated August 6, 2019, at GD2-83. See also Dr. Jackson’s letter, dated November 16, 2023, at GD12-10, which said that the Appellant has “severe loss of visual acuity” and “very severe light sensitivity that limits his ability to work and travel.”

was harder to see and was very sensitive to light. Dr. Ma said that the Appellant was “legally blind and is **much worse** since 2019.”¹⁶

[34] The medical evidence supports that the Appellant’s functional limitations affected his ability to work.

[35] Next, I will look at whether the Appellant has the capacity for substantially gainful work.

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

[36] When I am deciding whether the Appellant can work, I can’t just look at his medical condition and how it affects what he can do. I must also consider factors such as his:

- age
- level of education
- language abilities
- past work and life experience

[37] 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.¹⁷

[38] I find that the Appellant can’t work in the real world. He hasn’t been able to earn a substantially gainful living since January 2021. He is 55 years old, with a secondary school education, and many years of work as a voice-over actor. He hasn’t been able to earn a substantially gainful living since January 2021, when his earnings fell below the substantially gainful threshold set by the *CPP Regulations*.¹⁸ His earnings have further declined since then.

¹⁶ See GD9-3.

¹⁷ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁸ 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.

[39] The Minister accepts that the Appellant's disability was severe, but only as of January 2023. The Minister's view is that there isn't medical evidence to "support that the Appellant's health status worsened significantly to preclude him from performing suitable work prior to January 2023."¹⁹ I disagree.

[40] The Minister's position takes an unreasonably narrow view of Dr. Ma's July 2023 letter. Dr. Ma said that the Appellant's condition was much worse since 2019.²⁰ Dr. Ma's opinion isn't that in the year 2023, the Appellant's vision worsened. His opinion was that the Appellant's vision was much worse in 2023 compared to 2019. Dr. Ma's opinion therefore supports the Appellant's evidence that his vision progressively worsened since 2019.

[41] The evidence about the Appellant's earnings also supports that he stopped earning a substantially gainful living as of January 2021. Below is a chart that shows the substantially gainful amount under the *CPP Regulations* compared to the Appellant's earnings from work:²¹

Year	Substantially gainful amount	Gross earnings	Gross earnings less agent commission	Net earnings
2018	\$16,029.96	\$35,480.90	\$31,012.10	\$18,012.65
2019	\$16,353.54	\$18,343.75	\$15,869.21	\$12,388.39
2020	\$16,677.26	\$31,559.27	\$27,323.49	\$22,308.45
2021	\$17,025.22	\$16,681.42	\$14,410.13	\$11,928.37
2022	\$17,610.06	\$3,670.77	\$3,142.38	\$2,891.68
2023	\$18,508.36	\$7,640.37	\$6,607.79	\$5,809.78

¹⁹ See Minister's submissions, at GD18-2.

²⁰ See Dr. Ma's letter, dated July 27, 2023, at GD9-3.

²¹ See talent agency records, at GD15.

[42] I will consider the Appellant's gross earnings less agent commission fees as the Appellant's earnings from work for the purpose of assessing his capacity for substantially gainful work.²² The type of earnings that are considered in the "substantially gainful" analysis are typically gross earnings (before income taxes are deducted). The "net earnings" from the Appellant's talent agency records seem to include some income-related taxes. However, it doesn't make sense to consider the agent commission fees that are included in the Appellant's gross earnings in calculating his income from work. The commission fees are his agent's earnings, not his.

[43] The Appellant's earnings from work in 2019 were less than the substantially gainful amount, but in 2020 he managed to earn above it, even if you consider the "net earnings" figure. But in 2021 his earnings were again less than substantially gainful, and they have fallen considerably since then. His disability has therefore been continuously severe since January 2021.

[44] The Appellant says that his disability has been severe since 2019, but the medical evidence and the evidence of his earnings don't support this. Dr. Ma said in his August 2019 letter that the Appellant's vision was stable at that time.²³ And while the Appellant's earnings weren't substantially gainful in 2019, they rose well above that threshold in 2020. I accept that the Appellant's condition presented significant challenges for him since around 2019, but the evidence shows that it didn't overwhelm his ability to earn a substantially gainful living until 2021.

[45] I also find that the work he was doing in 2019 and 2020 was real work, as opposed to work for a "benevolent employer."²⁴ The Appellant explained the following at the hearing:

²² The Appellant's earnings information from his talent agency doesn't correspond at all to the earnings information from the CRA: see GD14-14 to 17. The Appellant explained that the earnings reported to the CRA didn't reflect the money he was earning from actual work in each of those years. What was reported to the CRA was entirely his accountant's decision. He trusted his accountant and didn't question him.

²³ See Dr. Ma's letter, dated August 6, 2019, at GD2-83.

²⁴ Working for a benevolent employer is not an "occupation" for the purpose of eligibility for a CPP disability benefit. Benevolent employment involves accommodations that go beyond what is required of an employer in the competitive marketplace. The "main difference [is] that the performance, output or product" expected from an appellant is considerably less than the usual performance output or product

- His job performance was good, but it took longer to get his lines out.
- He didn't want to appear blind to fellow cast members and so he tried to compensate by working harder and memorizing the whole script.
- It was awkward and uncomfortable and sometimes he would miss his lines, but he still got the job done.

[46] In my view, the accommodation given to the Appellant didn't rise to such a level that the overall quality of his work was considerably less than that of other voice-over actors. There is an added financial cost to his employers when they book extra studio time to record the Appellant separately, but some production companies continue to book him nonetheless. There is far less work for him out there, but that doesn't mean he can't do the job when he's hired. In my view, his earnings in 2019 and 2020 were from real work performed at an acceptable standard.

[47] I find that the Appellant's disability was severe as of January 2021.

Was the Appellant's disability prolonged?

[48] The Appellant's disability was prolonged.

[49] The Appellant's condition became disabling as of January 2021. This condition has continued since then, and will more than likely continue indefinitely.²⁵ The Appellant has had this condition since childhood, and it is getting progressively worse. Dr. Ma's opinion in July 2023 was that his condition was much worse since 2019.²⁶

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

When payments start

[51] The Appellant's disability became severe and prolonged in January 2021.

expected from other employees. See *Atkinson v Canada (Attorney General)*, 2014 FCA 187 and *Canada (Attorney General) v. Ibrahim*, 2023 FCA 204.

²⁵ 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.

²⁶ See Dr. Ma's letter, dated July 27, 2023, at GD9-3.

[52] There is a four-month waiting period before payments start.²⁷ This means that payments start as of May 2021.

Conclusion

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

[54] This means the appeal is allowed.

Michael Medeiros

Member, General Division – Income Security Section

²⁷ Section 69 of the *Canada Pension Plan* sets out this rule.