



Citation: *VP v Minister of Employment and Social Development*, 2024 SST 281

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: V. P.
Representative: M. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 7, 2023 (issued by
Service Canada)

Tribunal member: Jackie Laidlaw

Type of hearing: Videoconference

Hearing date: February 13, 2024

Hearing participants: Appellant
Appellant's Representative
ASL Sign language interpreter
ASL Sign language interpreter

Decision date: March 1, 2024

File number: GP-23-915

Decision

[1] The appeal is allowed.

[2] The Appellant, V. P., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of April 2022. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is a 59-year-old woman who has been deaf since birth. Because of this, her first language is American Sign Language (ASL). In April 2021 she started to experience vertigo. This caused her to have balance issues and pain in her head. She also has brain fog. She has been unable to work since December 2021.

[4] The Appellant applied for a CPP disability pension on May 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.

[5] The Appellant says she has been a hard worker in her life, and she now cannot find any work which would accommodate her conditions.

[6] The Minister says the Appellant was actively searching for employment before and after her minimum qualifying period (MQP) of December 31, 2022.¹ The Minister also submits that there is no severe pathology.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2022. This date is based on the child rearing

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 GD 2-6.

provision, a credit split and her CPP contributions. She must also prove that she 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 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 that she could earn a living from, then she 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 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.

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 had a severe and prolonged disability as of December 2021. She 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?

[15] 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 her ability to work

[16] The Appellant has:

- permanent total hearing loss since birth.
- peripheral vestibulopathy. This is a condition of the inner ear which is responsible for balance and spatial orientation. It causes sudden and severe vertigo, nausea, vomiting and difficulty walking.
- occipital neuralgia. This is a condition of inflamed nerves through the scalp at the back of the head. This causes headaches and a feeling of electric shock in the back of the head and neck.
- diabetes 2.
- hypertension.
- irritable bowel syndrome (IBS).
- cervical, thoracic, and lumbar spine pain.

[17] However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁶ When I

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

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

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 her ability to work.⁷

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

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

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says the following:

- Because ASL is her first language, and she has a limited ability to lip read (especially during COVID with face masks), she must always have an interpreter with her when applying for jobs. This has made some employers uncomfortable.
- She would require accommodations to have a phone job.
- Her loss of hearing limits the jobs she can do. She has done low-skilled jobs because they generally do not require her to communicate verbally.
- Because of her balance and back pain, she is unable to lift more than 10 lbs, cannot run heavy machinery, cannot stand for long and cannot drive first thing in the morning.
- She is able to sit and type. However, her eyes will sway, and she has a two-hour limit. She struggles to respond to immediate emails.
- The “brain fog” makes her fearful. She has difficulty with focus and attention.

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

[20] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work no later than December 31, 2022.⁸

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

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

[21] There is no dispute the Appellant has had total hearing loss since birth. I accept this would limit her job prospects. To her credit, she has found work throughout her life which accommodates her condition. These jobs have been in manual labour. I find her hearing loss contributed substantially to her inability to continue working when the other conditions causing vertigo, loss of balance and headaches were introduced.

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

[23] A letter from her family physician, Dr. Kimberley Sutton, dated November 27, 2022 (close to her MQP), states her hearing impairment is permanent and limited her employment opportunities. The vertigo and headaches since May 2021⁹ impact her work as they are unpredictable. Dr. Sutton noted further chronic conditions of diabetes 2, hypertension, and IBS. All of her conditions together, Dr. Sutton indicated, have limited the Appellant's ability to find gainful employment.¹⁰

[24] Dr. Sutton sent another letter dated August 24, 2023, showing the Appellant's working diagnoses are vestibular neuropathy and occipital neuralgia. Dr. Sutton notes the Appellant had not had any resolution of her intermittent symptoms, despite extensive investigations, physiotherapy, and medication trials. The Appellant developed headaches and dizziness in 2021. The symptoms are still constantly present and impact her ability to function.¹¹

[25] Dr. Syavash Vahabi, locum for Dr. Sutton in May 2022, noted that the Appellant also has had degeneration of the cervical, thoracic, and lumbar spine since 2004, and degeneration of the shoulder since 2007. The neck and back pain prevent heavy duties and prolonged standing. The Appellant's deafness prevented phone communication jobs.¹²

⁹ I am aware Dr. Sutton stated the conditions began in May 2021. However, the Appellant explained she first experienced them in April 2021.

¹⁰ See GD 1-30.

¹¹ See GD 4-2.

¹² See GD 2-96.

[26] The Appellant has been followed by neurologist Dr. Shaikh since January 2022. Dr. Shaik's many notes show numerous trials of medications, and tests revealing no cause for the conditions of peripheral vestibulopathy and occipital neuralgia.¹³

[27] I disagree with the Minister that a lack of pathology is a reason to deny the benefit. The doctors are not questioning if the Appellant has these symptoms, they just haven't found the cause yet. The exact cause of a condition is not of importance in my determination. The ability to work with the conditions is important. And I find the medical evidence supports that the Appellant is unable to work with her conditions.

[28] The medical evidence supports that all of the Appellant's conditions have prevented her from working by December 2022.

[29] 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 her from earning a living at any type of work, not just her usual job.¹⁴

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

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

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

[31] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.¹⁵

¹³ See GD 4-3, GD 4-7, GD 4-15, and GD 4-17.

¹⁴ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

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

[33] The Minister denied her benefit partly because she tried to look for work before and after her MQP. This does not determine if a condition is severe. Looking for work shows she is trying to work with her condition. Not being able to work with her conditions is the test.

[34] The Appellant began to feel the symptoms of vertigo in April 2021. She went to her doctor and tried medications and continued to work. She left her job on an assembly line making masks in November 2021 because she was being discriminated against due to her hearing loss. In December 2021 she got a job on another assembly line and the spinning of the machine made her sick because of her vertigo. She left after her first day and never returned.

[35] After that, she did attempt to find work, but needed interpreters to accommodate her to interviews. Her vertigo increased and she could not return to any job on an assembly line. She had four interviews, with Walmart and UPS and at a veterinary clinic, and did not get any jobs. She believes it was due to her need for interpreters.

[36] The Appellant is 59 years old and almost at retirement age. She has a high school education. She is limited in her transferable skills. All of these conditions would be barriers to finding or retraining for suitable employment.

[37] I find that the Appellant's disability was severe as of December 2021 when she could no longer work.

Was the Appellant's disability prolonged?

[38] The Appellant's disability was prolonged.

[39] The Appellant has been deaf since birth. The Appellant's peripheral vestibulopathy and occipital neuralgia conditions began in April 2021. These conditions have continued since then.¹⁶

[40] The deafness is permanent.

[41] The Appellant has not had any benefit from medications. By May 2023, two years after the onset of the conditions, Dr. Shaikh did not recommend any further investigations or drugs.¹⁷ This implies he is not expecting any change.

[42] The Appellant's vertigo, balance and headaches will more than likely continue indefinitely.

[43] I find that the Appellant's disability was prolonged as of December 2021 when she could no longer work.

When payments start

[44] The Appellant's disability became severe and prolonged in December 2021.

[45] There is a four-month waiting period before payments start.¹⁸ This means that payments start as of April 2022.

Conclusion

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

[47] This means the appeal is allowed.

Jackie Laidlaw

Member, General Division – Income Security Section

¹⁶ 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.

¹⁷ See GD 4-3.

¹⁸ Section 69 of the *Canada Pension Plan* sets out this rule.