



Citation: *LR v Minister of Employment and Social Development*, 2024 SST 378

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

## Decision

**Appellant:** L. R.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated September 18, 2023  
(issued by Service Canada)

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**Tribunal member:** Sharon Buchanan

**Type of hearing:** Videoconference

**Hearing date:** April 9, 2024

**Hearing participants:** Appellant

**Decision date:** April 16, 2024

**File number:** GP-23-1743

## Decision

[1] The appeal is allowed.

[2] The Appellant, L. R., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of May 2023. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant is 60 years old. She has a limited employment history and grade 10 education. The Appellant worked for temp agencies, and her last job was part time work in a grocery store bakery washing pans and cutting bread. In 2007 the Appellant had TVT sling surgery<sup>1</sup>. Shortly after the surgery she began experiencing complications - chronic pain, urinary retention and urgency, and irritable bowel syndrome (IBS). These symptoms, especially urinary urgency, were aggravated by the Appellant's anxiety and depression. The Appellant was further limited by left knee pain.

[4] The Appellant applied for a CPP disability pension on April 22, 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 it's the combination of her conditions that makes her days so difficult. It is not just the complications from her bladder surgery. She said its the combination and interaction of her bladder symptoms, ongoing pain, and worsening anxiety symptoms that make it impossible for her to work.

[6] The Minister says the Appellant's conditions have been effectively managed with conservative treatment. The Minister says after the Appellant last qualified for disability benefits, she was reported to be stable multiple times and she returned to work. This demonstrates her disability is not severe and she is capable of work within her limits.

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<sup>1</sup> A mesh sling is placed under the urethra to keep it in its normal position.

## What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2021. This date is based on her CPP contributions and credit split with her former husband.<sup>2</sup> She must also prove that she continues to be disabled.<sup>3</sup>

[8] The Appellant had CPP contributions in 2022 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if she became disabled between January 2022 and September 31, 2022, and continues to be disabled.<sup>4</sup>

[9] This means I must look at all the Appellant's medical conditions together to see what effect they have on her ability to work. I also must 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.

[10] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>5</sup>

[11] 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.

[12] The Appellant has to prove she has a severe and prolonged disability. She has to prove this on a balance of probabilities.

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<sup>2</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 page GD2-6 in the file.

<sup>3</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>4</sup> This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

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

## Reasons for my decision

[13] I find that the Appellant had a severe and prolonged disability as of July 2022. 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?

[14] The Appellant's disability was continuously severe. I reached this finding by considering several factors. I explain these factors below.

#### – The Appellant's functional limitations affected her ability to work

[15] The Appellant has:

- Chronic pelvic pain since TVT sling surgery, urinary incontinence, urinary retention, recurrent urinary tract (UTI) and kidney infections
- Chronic depression/anxiety exacerbated by chronic pain
- Burning mouth syndrome
- Low back and knee pain
- IBS

[16] However, I can't focus on the Appellant's diagnoses.<sup>6</sup> Instead, I must focus on whether she has functional limitations that got in the way of her 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 her ability to work.<sup>8</sup>

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

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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.

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

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

- She goes to the bathroom, often two times in an hour because her bladder never fully empties.
- Her sleep is disturbed because she is up several times in the night needing to void.
- Her bladder leaks. She can't bend over or lift because it causes pain, a strong pulling sensation and triggers leaking.
- She always needs to have immediate access to a bathroom – it dictates where she can go, and what she can do.
- She never knows when she gets up in the morning whether she will be able to void, or whether she will be constipated. If she is constipated, then can't void.
- When she has UTIs she is functionally limited, and it can take a considerable time for antibiotics to get it under control. Sometimes multiple medications are required before the symptoms begin to subside.
- Her groin pain limits what she can do. It is difficult to do cleaning tasks, or vacuum, and she can't lift, stretch, or bend.
- She has paralyzing anxiety. Stress and anxiety aggravate her bladder issues. When she is anxious it triggers an immediate need to use a bathroom.
- Her anxiety distracts her. She can't concentrate on anything. She can't easily rid herself of anxious thoughts.
- Daily life can be difficult depending on how severe her anxiety is.
- Her knee pain can be debilitating and came on suddenly in July 2022. It means she can't kneel or bend her knee. Standing aggravates the pain.

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

[19] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work no later than September 30, 2022.<sup>9</sup>

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

[21] In August 2022 the Appellant's family physician, Dr. Perfanis, who has treated her for over 30 years listed the impairments and functional limitations that in his opinion made the Appellant functionally disabled.<sup>10</sup> He said the Appellant's 2007 TVT sling surgery resulted in:

- constant suprapubic pressure, urinary frequency and urgency, urinary retention, urinary incontinence, and the need to get up to urinate five times a night,
- recurrent urinary tract (UTI) and kidney infections, chronic pelvic and back pain, constipation, and difficulty eliminating bowels with diarrhea, abdominal bloating, cramping and pain.

[22] The family physician said these impairments result in functional limitations that include:

- Very limited ability to lift from floor to waist, carry, bend/twist at the waist, kneel/squat.
- Limited ability to sit, stand and walk for prolonged periods.
- Urinary urgency and incontinence – inability to be away from a washroom for more than an hour at a time.

[23] In August 2022 Dr. Perfanis said knee pain contributed to the Appellant's pain, mood symptoms and varying degrees of functional impairment.<sup>11</sup> He said the symptoms

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

<sup>10</sup> See GD2-199

<sup>11</sup> See GD2-200

included joint locking, frequent giving way, pain and difficulty with prolonged standing or walking.<sup>12</sup>

[24] The family physician also said the Appellant's longstanding chronic depression and anxiety is exacerbated by her chronic pain condition.

[25] The medical evidence supports that the Appellant's anxiety, disturbed sleep, and the limitations on her ability to lift, bend, stand for any length of time, kneel or squat significantly affected her ability to do the physical work she has done all her life.

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

– **The Appellant followed medical advice**

[27] To receive a disability pension, an appellant must follow medical advice.<sup>13</sup>

[28] The Appellant followed medical advice.<sup>14</sup>

[29] The Appellant has had multiple recommended surgeries to try and correct the complications from the 2007 TVT sling. She has had procedures to remove scarring and adhesions. She has tried medications for her conditions.

[30] The Appellant's family physician said she has seen eight specialists for her chronic pelvic pain issues. She has tried multiple medications with no guarantee they would ameliorate her symptoms.

[31] The Minister said although the Appellant endorsed mental health symptoms, there was no evidence that suggested she required an assessment or ongoing treatment from a psychiatrist or psychologist.

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<sup>12</sup> See GD2-163

<sup>13</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>14</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[32] The Appellant said that she has followed the advice that has been given her regarding her mental health symptoms. No one has ever suggested that she see a psychiatrist. I don't fault her for that.

[33] Dr. Perfanis said the Appellant had tried more medications for her chronic mental health issues than there was room on the form to list. He said she continued to see a psychotherapist regularly. Dr. Perfanis said she experienced sedation, dry mouth, worsening headaches, and side effects from medications that she could not tolerate.<sup>15</sup>

[34] I now must 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.<sup>16</sup>

– **The Appellant's work in 2022 and 2023 was not substantially gainful**

[35] The Minister said the evidence shows the Appellant retained the capacity to perform some type of work after September 2022. She had earnings in 2022 and 2023.

[36] To be severe, the Appellant's functional limitations must regularly prevent her from working at any substantially gainful occupation, not just her usual job or the work she was trained for.<sup>17</sup>

[37] I am not persuaded the Appellant's work was substantially gainful.

[38] A substantially gainful occupation is one that pays as much or more than the maximum amount of a CPP disability pension.<sup>18</sup> In 2022 it was \$17,489.40.<sup>19</sup>

[39] The Appellant had not worked for some time. The Appellant tried to work. She started working in a bakery in March 2022. She washed baking pans, cut bread, set out products. She said she couldn't do cash because she wouldn't be able to leave her post

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<sup>15</sup> See GD2-200

<sup>16</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>17</sup> See *Klabouch v. Canada (Attorney General)*, 2008 FCA 33.

<sup>18</sup> See section 68.1 of the *Canada Pension Plan Regulations*.

<sup>19</sup> See Canada Pension Plan (CPP) Maximum Amounts of New Benefits



as soon as she felt the need to get to the bathroom. It was too stressful. She couldn't stock shelves because she can't lift or stretch.

[40] She said the most time she attended work consistently was during the two weeks of training. After that her time at work dwindled. She often called in sick if she woke up and had problems with voiding. She said she never knows what is ahead of her until she gets up to start the day. She said she worked as much as she was capable of. Her earnings for 2022 were \$4,784.<sup>20</sup> The Appellant couldn't recall how much she earned in 2023, except it was less than her earnings in 2022. She stopped working some time in the late spring because she could no longer even do a few hours due to her anxiety, bladder issues and pain.

[41] In concluding the Appellant's work was not substantially gainful I have considered that she was off work for six weeks in the fall of 2022 after surgery. Even when I discount this time, the remaining earnings in the months worked are not substantially gainful.

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

[42] 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 and past work and life experience.

[43] 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.<sup>21</sup>

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

[45] The Appellant is 60 years old. She lived in a group home and was educated by group home staff from the time she was 13 to 18 years old. She thinks her schooling may be equivalent to grade 10. She doesn't have computer or keyboarding skills.

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<sup>20</sup> See GD2-6

<sup>21</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[46] The Appellant's work experience is limited. Her work has been part time, physical jobs that were available through temp agencies. This includes her work at Toyota, which also was part time work through a temp agency. For many years the Appellant did not work outside the home much because her spouse would not allow it. Her work experience is extremely limited.

[47] The Appellant's personal factors do not suggest she can work in the real world. Her age, lack of education and limited work experience are significant factors that will work against the Appellant. I am not persuaded that prospective employers would think the Appellant has transferable skills.

[48] I find that the Appellant's disability was severe as of July 2022. The Appellant's functional limitations from her chronic pelvic pain, anxiety and depression were further aggravated by the onset of acute knee pain in July 2022 which contributed to disabling functional impairments.

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

[49] The Appellant's disability was prolonged. The Appellant's condition began in July 2022 and has continued since then.<sup>22</sup> The Appellant's condition will more than likely continue indefinitely.

[50] The Appellant's conditions are chronic and longstanding.

[51] In May 2017, Rita Cutajar, the Nurse Practitioner who sees the Appellant when Dr. Perfanis isn't available said the Appellant's chronic illnesses were severe and prevented her from being able to work. She said the Appellant was suffering from severe complications of bladder surgery following the insertion of a sling and that this had led to debilitating ongoing pelvic pain. She said the Appellant also had a history of anxiety, migraine headaches and IBS.<sup>23</sup>

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<sup>22</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>23</sup> See GD3

[52] I place significant weight on the opinion of the family physician. He has known and treated all the Appellant's conditions for over thirty years. He knows her, and her history of childhood and domestic abuse.<sup>24</sup>

[53] In August 2022 Dr. Perfanis said due to the Appellant's multiple conditions she was functionally disabled. He did not think she could return to any type of work.

[54] The Minister points to the medical evidence from the Appellant's specialists to support that her bladder condition is improving. The Appellant's urologist Dr. Lemos advised her to continue working in May 2023, and said continuing to work with heavy lifting modifications was beneficial to her symptoms.

[55] I acknowledge the Appellant reports some improvement from the September 2022 surgery, however, she continues to have groin pain and incontinence issues. The pain was worse with activity such as bending and heavy lifting, work, and stress. She continues to wait for total mesh resection surgery. In the meantime, she continues to see Dr. Lemos for mesh-related pain and urinary incontinence.<sup>25</sup>

[56] She is waiting for another MRI and further surgery to remove the balance of the mesh that was inserted in 2007. She will then require a further procedure to secure the bladder without using mesh. There is no medical evidence that these procedures will resolve the Appellant's symptoms. According to Dr. Perfanis multiple surgeries for her bladder issues in 2011, 2012, 2016, 2019 have only offered temporary improvement in her condition.<sup>26</sup>

[57] Significantly, the Appellant's functional limitations are not just related to her bladder issues, her condition is also affected by mental health issues and knee pain. When I consider whether the limitations from the Appellant's medical conditions get in the way of her earning a living, I must look at all the conditions, not just the main one.<sup>27</sup>

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<sup>24</sup> She told me this in the hearing

<sup>25</sup> See GD2-161

<sup>26</sup> See GD2-199

<sup>27</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[58] I found the Appellant's description of the limitations from all her medical conditions, and the way in which they interact and aggravate each other to be compelling. I believed her when she said maybe if it was just one problem, she could manage. But all of them together, it's just too much.

[59] I give significant weight to the evidence of the Appellant's family physician. He considers all the Appellant's conditions and how they impact her, and I am persuaded this is the most realistic assessment of the Appellant's health.

[60] In July 2023 he said the Appellant's long-term prognosis remained uncertain, however given the persistent nature of her complaints, that have not resolved, her prognosis was guarded. Dr. Perfanis said the Appellant's symptoms from the left knee meniscal tear shows no improvement after rehabilitation, oral medications, and injections. He said the Appellant's anxiety and depression are chronic. Although her symptoms fluctuate, she has never achieved remission.

[61] I find that the Appellant's disability was prolonged as of July 2022.

## **When payments start**

### **Effective date of Payment Following the Division of Unadjusted Pensionable Earnings**

[62] The Appellant's disability became severe and prolonged in July 2022.

[63] However, the *Canada Pension Plan* says the effective date of payment for CPP Disability benefits following a division of unadjusted pensionable earnings is to be established by the date of attribution of the credit split. The effective date for payment to start is the month following the month in which the credit split takes place.<sup>28</sup>

[64] The Appellant applied for a credit split in February 2023. The date of attribution of the credit split was April 26, 2023.

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<sup>28</sup> See subsection 55.2(9) of the *Canada Pension Plan*.

[65] The Appellant's pension payments start as of May 2023.

## **Conclusion**

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

[67] This means the appeal is allowed.

Sharon Buchanan  
Member, General Division – Income Security Section