



Citation: *TB v Minister of Employment and Social Development*, 2024 SST 689

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: T. B.
Representative: Therese Menard
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 6, 2022 (issued by
Service Canada)

Tribunal member: Lianne Byrne
Type of hearing: Videoconference
Hearing date: April 18, 2024
Hearing participants: Appellant
Appellant's representative
Minister's representative
Decision date: June 17, 2024
File number: GP-22-83

Decision

[1] The appeal is allowed.

[2] The Appellant, T. B., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of January 2019. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant was 47 years old as of December 31, 2019. He worked as a crane operator, bus driver, and driver for a construction firm. He says that he has been unable to work since November 2017 due to groin pain and anxiety.

[4] The Appellant applied for a CPP disability pension on September 6, 2018. 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 Tribunal held a videoconference hearing on April 8, 2021. In a decision dated May 31, 2021, the Tribunal dismissed his appeal. The Appellant appealed this decision to the Social Security Tribunal's Appeal Division.

[6] The Appeal Division held a teleconference hearing on November 2, 2021. By decision dated January 6, 2022, the Appeal Division allowed the Appellant's appeal and referred the appeal back to the General Division for reconsideration.

[7] The Appellant says he has a severe and prolonged disability. His testimony and the medical evidence show that he was incapable regularly of pursuing any substantially gainful occupation by December 31, 2019. He did not unreasonably refuse any treatments. He has tried many medications which were either ineffective or caused intolerable side effects.

[8] The Minister says that the evidence does not support a determination that the Appellant was disabled by December 31, 2019. Limitations have not been identified in relation to his groin pain, which would have prevented him from performing all types of work by December 31, 2019. His long history of anxiety symptoms has not precluded him from obtaining and maintaining substantially gainful employment in the past. Medical information has not been submitted to account for any medical care he received from May 2019 until he was seen in the Emergency Department in July 2020. The overall evidence does not support concerted attempts to adhere to the treatment recommended for his psychological symptoms.

What the Appellant must prove

[9] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2019. In other words, no later than December 31, 2019. This date is based on his CPP contributions.¹ He must also prove that he continues to be disabled.²

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

[11] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[12] 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

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 GD2-156.

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.

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.

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

[14] 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.

[15] 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.

Reasons for my decision

[16] I find that the Appellant had a severe and prolonged disability as of September 2018. 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:

- Bilateral inguinal pain
- Generalized Anxiety Disorder
- Social Anxiety Disorder

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

[19] 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

[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 conditions have resulted in functional limitations that affect his ability to work.

[22] His groin pain began in the Spring of 2016. It was mostly on the right side radiating down the right leg. He was thought to have bilateral inguinal hernias. However, no evidence of hernias was found on exploratory surgery in 2016.

[23] He tried to work despite his pain. He began a temporary, full-time position doing a driving job in May 2017. By November 2017, his pain was excruciating. He had to stop working before the end of his contract.

[24] He was prescribed antibiotics. He tried physiotherapy. He lost weight. However, none of these helped with his pain.

[25] He continued to believe his groin pain was caused by bilateral hernias because this was the opinion of a urologist. However, his family physician and other doctors did not agree. His family physician thought that his pain was caused by his mental state.

[26] As of December 31, 2019, he could not do anything around the house. He used crutches to get around. He could not walk on inclines, go up the stairs, stand on a ladder, or do any motion involving the abdominal region. He could not sit for long periods of time. He could not carry heavy objects. His wife helped him get dressed. He had difficulty driving.

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.

[27] In addition to his pain, he has had mental health conditions since childhood. He was diagnosed with generalized anxiety disorder and social anxiety disorder. The busier the environment, the more difficult it is for him. He avoids other people. He struggles with communication. He does not answer the door or telephone. He loses his breath while talking.

[28] He saw a psychiatrist in 2017. The psychiatrist prescribed medication, which he took initially. However, he realized he was being treated for delusions. This was very upsetting to the Appellant, who strongly believed his pain was caused by hernias. He stopped taking the anti-psychotic medication. He continued taking his other medications, but found they were either ineffective or caused intolerable side effects.

[29] In 2023, he was diagnosed with Post-Traumatic Stress Disorder (PTSD). Despite his recent diagnosis, he says his symptoms began in 2017 when he was trying to be heard regarding the pain from his hernias. He had to fight to be believed, which caused him a lot of stress.

[30] He finally found a doctor in Sudbury who believed he had hernias. This doctor performed surgery in July 2023. The surgery was successful in reducing his groin pain somewhat. However, he remains functionally limited.

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

[31] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work no later than December 31, 2019.⁸

[32] The medical evidence supports what the Appellant says. Dr. Suzanne Shephard, family physician, completed the CPP Medical Report on September 18, 2018. She noted his diagnoses as generalized anxiety disorder and chronic bilateral inguinal pain.

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

[33] Dr. Shephard indicated that the Appellant is very limited by his generalized anxiety disorder and social anxiety disorder, such that he was not engaging with his family and had anxiety about leaving his house.

[34] With respect to the Appellant's inguinal pain, it is evident from the reports on file that there was difficulty in diagnosing the Appellant's hernias. I considered the following:

- In September 2016, Dr. Diederick Jalink, general surgeon, performed laparoscopic surgery, but did not find any hernias.
- In March 2018, Dr. Thomas McGregor, urologist, thought his groin pain was from chronic epididymitis and inflammation. He was advised to try antibiotics if his symptoms flare.
- In April 2018, Dr. Singar, urologist, diagnosed him with groin strain/tendinitis.
- On July 31, 2018, Dr. Jalink, noted that the CT scan showed likely bilateral inguinal lipomas with no significant hernia. There was no clear organic cause for the Appellant's pain.

[35] The Appellant testified that his groin pain and unemployment also led to mental health problems. He started to see Dr. Moustafa Eid, psychiatrist, in October 2018. He was diagnosed with generalized anxiety disorder and social disorder. Dr. Eid prescribed medication.

[36] On November 8, 2018, Dr. Eid thought the Appellant might have a hypochondrial delusion of having a hernia. He was started on anti-psychotic medication.

[37] Dr. Eid wrote on December 12, 2018 that the Appellant continues to experience generalized anxiety disorder and social anxiety symptoms along with hypochondriacal ideas of having undiagnosed inguinal pathology.

[38] On January 4, 2019, Dr. Shephard wrote that the Appellant wanted a second opinion regarding his psychiatric treatment because he felt Dr. Eid was not listening to him. However, Dr. Shephard did not make a referral.

[39] On February 22, 2019, Dr. Eid noted that the Appellant stopped taking the anti-psychotic medication. The Appellant was fixated on having a hernia despite a lack of medical evidence.

[40] Dr. Shephard reported on March 11, 2019 that he had been off medications for about a month. He is using CBD oil and marijuana. He is focused on his pain and does not have much insight into his generalized anxiety disorder.

[41] On April 5, 2019, Dr. Eid observed the Appellant to be tense and anxious. Dr. Eid also noted he had paranoid personality traits and delusional disorder somatic type.

[42] There is a gap in the medical information from April 2019 to July 2020. The Appellant explained at the hearing that he moved at that time. He was also frustrated with doctors because he did not feel he was being heard.

[43] On May 15, 2019, Dr. Shephard confirmed that the Appellant had moved. She went on to say that his social anxiety is significant, but he is reluctant to receive treatment. He continues to experience physical pain, which has not responded to physiotherapy. He lacks insight into his psychological condition, which makes adherence to a medical regime and maintaining employment difficult.

[44] There are also multiple medical reports dated after December 31, 2019. These include the following:

- On July 22, 2020, Olivia Sullivan, registered nurse, wrote in a Crisis Intervention Assessment that the Appellant attended the emergency room for multiple chronic complaints, including anxiety. He was not interested in taking medications for his anxiety.

- On August 6, 2020, Dr. John Chisolm, family physician, reported that an ultrasound report showed small bilateral inguinal hernias.
- On January 27, 2021, Dr. Eric Labelle noted that the Appellant has chronic groin pain. There was no clear evidence of inguinal hernia on examination. Anxiety was suspected to be a significant component of his presenting issue.
- On April 26, 2021, Christine Contant, psychotherapist, wrote that he presented with significant functioning disturbance and symptoms of anxiety. He previously struggled to gain support from physicians involved in his care.
- On May 6, 2021, Dr. B. Fortin-Langelier, psychiatrist, reported that there could be a psychotic process behind some of his distress, which could align with a delusional disorder diagnosis.
- On August 31, 2021, Ms. Labine reported that he did not take the anti-psychotic medication prescribed by Dr. Fortin-Langelier because he does not agree that he is delusional. He is very upset that the physician would order this medication.
- On September 13, 2021, Ms. Labine noted that it is very challenging to treat the Appellant because he disputed diagnoses and treatment recommendations.
- On September 28, 2021, Ms. Labine wrote that the Appellant has taken the anti-psychotic medication consistently since his last appointment. He feels it may be helping him slightly.
- On January 31, 2022, Ms. Monfils-Harvey, nurse practitioner, wrote that the Appellant does not feel he is being treated for the right symptoms.
- On February 11, 2022, Ms. St. Denis, social worker reported that he presented with significant anxiety and distress over his symptoms. He will be introduced to dialectical behavioural therapy.

- On February 15, 2022, Ms. Monfils-Harvey noted the Appellant's opinion that he has complex PTSD. He shows some obsessive compulsive disorder characteristics.
- On April 1, 2022, Ms. St. Denis advised that he has long-term memory deficits.
- On April 14, 2022, Ms. Monfils-Harvey noted that his anti-psychotic medication was changed.
- On October 4, 2022, Dr. A. Cheok, psychiatrist, saw the Appellant for anxiety and depression. He also has symptoms most consistent with PTSD.

[45] The medical evidence supports that the Appellant's pain and mental health symptoms prevented him from doing physically-demanding work, including his driving job, by December 31, 2019.

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

– **The Appellant didn't follow all medical advice**

[47] To receive a disability pension, an appellant must follow medical advice.⁹ If an appellant doesn't follow medical advice, then they must have a reasonable explanation for not doing so.¹⁰

[48] The Appellant didn't follow medical advice. He gave a reasonable explanation for not following the advice.

[49] The Appellant has undergone numerous treatments, including several surgeries, multiple medication trials, physiotherapy, and counselling. However, he has been noted on numerous occasions to have stopped taking the medications he was prescribed. He says that he stopped taking anxiety medications because they were either ineffective or

⁹ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁰ See *Brown v Canada (Attorney General)*, 2022 FCA 104.

caused side effects, including headaches. He stopped taking anti-psychotic medication because he does not believe he is delusional.

[50] He was noted by both Dr. Sheppard and Ms. Labine to lack insight into his health problems. Dr. Sheppard wrote that his lack of insight into his psychological conditions makes it difficult for him to adhere to a medical regime.

[51] Ms. Labine indicated that it is very challenging to treat him because he disputes his diagnoses and treatment recommendations. He does not feel he is being treated for the right symptoms.

[52] Dr. Sheppard and Ms. Labine's evidence are consistent with the Appellant's own testimony. He testified that he was frustrated with his doctors because he did not feel they were listening to him. He felt he was being treated for the wrong symptoms.

[53] The Appellant's lack of insight plays a role in his resistance to treatment. It is therefore reasonable that the Appellant has not followed all treatment recommendations.

[54] The Appellant gave a reasonable explanation why he didn't follow medical advice. So, it doesn't matter that he didn't follow it.

[55] 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.¹¹

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

[56] 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

¹¹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

- language abilities
- past work and life experience

[57] 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.¹²

[58] I find that the Appellant can't work in the real world. He hasn't been able to work since September 2018.

[59] The Appellant was 47 years old as of December 31, 2019. He has a building technician diploma. He has worked as a crane operator, motor coach driver, and driver for a construction firm. He is fluent in the English language.

[60] The Appellant has worked mainly in driving and physically-demanding jobs, which he can no longer do because of his physical limitations, including difficulty lifting heavy objects, walking, and stair climbing. Although he is young enough to retrain for alternate, suitable work, he has memory impairment as well as difficulty leaving his home, communicating, and interacting with other people.

[61] His physical and mental health symptoms as of December 31, 2019 would have precluded him from returning to his previous jobs, attempting alternate work, or retraining for alternate work.

[62] I find that the Appellant's disability was severe as of September 2018.

Was the Appellant's disability prolonged?

[63] The Appellant's disability was prolonged.

[64] The Appellant's conditions began in 2016. These conditions have continued since then.¹³

¹² See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹³ 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.

[65] I considered Dr. Shepphard's opinion that his prognosis is uncertain. He was noted to have longstanding generalized anxiety disorder and social anxiety that have been difficult to treat. He also has chronic pain with a guarded prognosis for improvement.

[66] I also considered the Appellant's testimony that, although his pain has improved somewhat since surgery, he continues to have functional limitations. His anxiety has not improved over time despite treatment.

[67] The Appellant's conditions will more than likely continue indefinitely.

[68] I find that the Appellant's disability was prolonged as of September 2018.

When payments start

[69] The Appellant's disability became severe and prolonged in September 2018.

[70] There is a four-month waiting period before payments start.¹⁴ This means that payments start as of January 2019.

Conclusion

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

[72] This means the appeal is allowed.

Lianne Byrne
Member, General Division – Income Security Section

¹⁴ Section 69 of the *Canada Pension Plan* sets out this rule.