



Citation: *CW v Minister of Employment and Social Development*, 2024 SST 398

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

## Decision

**Appellant:** C. W.  
**Representative:** K. W.

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

---

**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 12, 2022 (issued by  
Service Canada)

---

**Tribunal member:** Brianne Shalland-Bennett

**Type of hearing:** In person

**Hearing date:** December 14, 2023

**Hearing participants:** Appellant  
Appellant's representative and witness

**Decision date:** January 9, 2024

**File number:** GP-22-1710

## Decision

[1] The appeal is dismissed.

[2] The Appellant, C. W., isn't eligible for a Canada Pension Plan (CPP) disability pension.

[3] This decision explains why I am dismissing the appeal.

## Overview

[4] The Appellant is 53 years old. She completed high school and went to trades school. She was laid off from her job as a housekeeper in October 2019. This is because there wasn't enough work. She was supposed to go back to work around March 2020, but she wasn't recalled because of the COVID-19 pandemic.

[5] The Appellant got COVID in March 2020. She says there was a period of time after she got sick where she could still work with her limitations. During this period, she says she could not get work because of the closures caused by the pandemic. By January or February 2022, her health (because of long haul COVID) got so bad she could no longer work.

[6] The Appellant applied for a CPP disability pension on March 10, 2022. The Minister of Employment and Social Development (Minister) refused her application. It says her disability wasn't severe and prolonged by December 31, 2019.<sup>1</sup>

[7] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

## Matters I have to consider first

### **The Appellant's minimum qualifying period is December 31, 2019**

[8] The Appellant's minimum qualifying period is December 31, 2019.

---

<sup>1</sup> This date is called the Appellant's minimum qualifying period. I will explain what this date means next.

[9] Service Canada used the Appellant's years of CPP contributions to calculate her coverage period. This is called a "minimum qualifying period."<sup>2</sup>

[10] The Appellant's representative says the only reason the Appellant didn't have earnings after 2019 was because of the forced closures by the government in the pandemic. He says she should not be punished for following the rules.

[11] The Appellant's representative also says the *Emergencies Act* and the *War Measures Act* supersede the CPP. He said these laws support that any kind of contributions the Appellant would have made (if not for the closures) would allow her to automatically get "topped up" to the minimum amount of contributions she needs to qualify for a disability benefit.<sup>3</sup>

[12] The Minister says there isn't a provision in the law that would allow it to consider the pandemic closures when calculating the Appellant's minimum qualifying period. It says the Appellant's minimum qualifying period is December 31, 2019.<sup>4</sup>

[13] I agree with the Minister. I am bound by the laws of the *Canada Pension Plan*.

[14] The law says the Minister of National Revenue is responsible for reporting information relating to earnings and contributions to the Minister.<sup>5</sup> On that basis, the Minister prepares the Record of Earnings and other information that is used to establish a minimum qualifying period.

[15] I don't have the authority to assume what the Appellant's earnings *may* have been if not for the pandemic closures. I have to follow the law. In review of the Appellant's earnings and contributions included with the file, I find her minimum qualifying period is December 31, 2019.

---

<sup>2</sup> See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are explained in GD3.

<sup>3</sup> I asked the Appellant's representative to provide me with the specific laws and information he is relying on to make his decision at the hearing. He didn't provide this information. His response is at GD11.

<sup>4</sup> See GD6.

<sup>5</sup> See section 92(2) of the *Canada Pension Plan*.

## What the Appellant must prove

[16] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by no later than December 31, 2019. She must also prove that she continues to be disabled.<sup>6</sup>

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

[18] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>7</sup>

[19] 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.

[20] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>8</sup>

[21] 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.

[22] 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.

---

<sup>6</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>7</sup> 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.

<sup>8</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## Reasons for my decision

[23] I find the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2019. 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?

[24] The Appellant's disability wasn't severe by December 31, 2019. I reached this finding by considering several factors. I explain these factors below.

#### – The Appellant's functional limitations

[25] The Appellant has long-haul COVID<sup>9</sup>, depression, and anxiety.

[26] However, I can't focus on the Appellant's diagnoses.<sup>10</sup> Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.<sup>11</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 by December 31, 2019.<sup>12</sup>

[27] I find the Appellant has functional limitations that affect her ability to work **now**. They didn't affect her ability to work **by** December 31, 2019.

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

[28] The Appellant says she didn't have functional limitations that affected her ability to work by December 31, 2019.

[29] The Appellant says her limitations started when she got COVID-19 in March 2020. She started feeling better in June 2020. She says she could still work, even though she had shortness of breath and fatigue. She says Her symptoms got

---

<sup>9</sup> This includes myocardial dysfunction, fatigue, and shortness of breath.

<sup>10</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>11</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>12</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

progressively worse in 2021. Around that time, she started getting symptoms of depression and anxiety. By January or February 2022, she says she could no longer work. Here is what she says about her limitations **since** December 31, 2019:

- She can't walk or stand for more than 15 to 20 minutes.
- She needs a walker to move around.
- She feels dizziness and weak daily.
- She has shortness of breath at rest and with activity.
- She fatigues easily and has trouble sleeping.
- Her mood isn't good, she is anxious, and she feels upset about her situation.
- She has brain fog, poor concentration, and poor memory.
- She has speech problems and difficulty communicating.

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

[30] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work no later than December 31, 2019.<sup>13</sup>

[31] The medical evidence doesn't show the Appellant had limitations that affected her ability to work by December 31, 2019.

[32] Dr. Nagel (family doctor) says his notes show the Appellant wasn't precluded from all types of work by December 31, 2019. He says she was in good health up until March 2020.<sup>14</sup> Dr. Nagel's evidence is consistent with what the Appellant says. She says her limitations started after she got COVID-19 in March 2020.<sup>15</sup>

[33] I recognize the Appellant has limitations that affect her ability to work now. However, as mentioned above, she must provide some medical evidence that shows her limitations affected her ability to work **no later than December 31, 2019**.

---

<sup>13</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>14</sup> See GD1-13 to 14 and GD2-97.

<sup>15</sup> The medical evidence shows the Appellant has had shortness of breath, weakness, a depressed mood, poor concentration, insomnia, and fatigue **since** March 2020. This is after her minimum qualifying period ended. See GD1-11 to 15 and GD2-116 to 124.

[34] The medical evidence doesn't support the Appellant had limitations that affected her ability to work **by** then. As a result, she hasn't proven she had a severe disability by December 31, 2019.

– **Why I didn't consider the Appellant's personal characteristics**

[35] When I am deciding if a disability is severe, I usually have to consider an appellant's personal characteristics. Factors like her age, level of education, language abilities, and past work and life experience, may affect if an appellant can work in the real world.<sup>16</sup>

[36] But I didn't consider the Appellant's personal characteristics. This is because an appellant can't qualify for a disability pension based on their personal characteristics alone. There must still be medical evidence to support a finding of a disability.<sup>17</sup>

[37] In the Appellant's case, there isn't any medical evidence to support a finding of disability by December 31, 2019. Since there is no relevant medical evidence, there is no reason to consider her personal characteristics.

## **Conclusion**

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

[39] This means the appeal is dismissed.

Brianne Shalland-Bennett

Member, General Division – Income Security Section

---

<sup>16</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>17</sup> Section 42(2)(a) of the *Canada Pension Plan* says that a person is disabled only if they have a severe and prolonged **mental or physical disability**. See also *Villani v Canada (Attorney General)*, 2001 FCA 248 at paragraph 50, where the Court said that "[m]edical evidence will still be needed..."