



Citation: *CH v Minister of Employment and Social Development*, 2024 SST 349

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

**Appellant:** C. H.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Érelégna Bernard

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**Decision under appeal:** General Division decision dated May 19, 2023  
(GP-22-372)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** In writing

**Decision date:** April 8, 2024

**File number:** AD-23-817

## Decision

[1] I am allowing this appeal. The Appellant is entitled to a Canada Pension Plan (CPP) disability pension.

## Overview

[2] The Appellant is a 56-year-old former educational assistant with a long history of depression and anxiety. She hasn't worked since October 2017, following a series of personal and workplace crises that left her feeling unable to cope with her job.

[3] The Appellant applied for a CPP disability pension in July 2020.<sup>1</sup> She claimed that she could no longer work because of various conditions, including depression and anxiety, neck and back pain, and heart arrhythmia. The Minister refused this application after finding that the Appellant did not have a severe and prolonged disability as of December 31, 2020, the last time she had CPP disability coverage.

[4] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by teleconference and dismissed the appeal. It found that, although the Appellant had some physical and psychological limitations, she still had the capacity to regularly perform substantially gainful employment during her coverage period. It also found that the Appellant hadn't complied with recommended treatment.

[5] The Appellant then applied for permission to appeal to the Appeal Division. Last September, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. At the Appellant's request, I decided this matter based on a review of the existing oral and written record.

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<sup>1</sup> See Appellant's application for CPP disability pension submitted on July 23, 2020, GD2-13.

[6] Now that I have considered submissions from both parties, I have concluded that the Appellant is entitled to a CPP disability pension. The evidence shows that the Appellant had a severe disability as of December 31, 2020 and has continuously had one ever since.

## Issue

[7] For the Appellant to succeed, she had to prove that, more likely than not, she became disabled during her coverage period and has remained so ever since. Under the CPP, a disability must be severe and prolonged:

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup> A claimant isn't entitled to a disability pension if they are regularly able to do some kind of work that allows them to earn a living.
- A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>3</sup> The disability must be expected to keep the claimant out of the workforce for a long time.

[8] The parties agreed that the Appellant's CPP disability coverage ended on December 31, 2020.<sup>4</sup> That meant I had to assess the Appellant's condition as of that date and decide whether she had functional limitations that got in the way of her earning a living.

## Analysis

[9] I have applied the law to the available evidence and concluded that the Appellant had a severe and prolonged disability during her coverage period. I am satisfied that the Appellant's physical and psychological condition as of December 31, 2020, did not

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<sup>2</sup> See section 42(2)(a)(i) of the *Canada Pension Plan*.

<sup>3</sup> See section 42(2)(a)(ii) of the *Canada Pension Plan*.

<sup>4</sup> Under section 44(2) of the *Canada Pension Plan*, a "minimum qualifying period" is established by making threshold contributions to the CPP. The Appellant's CPP contributions are listed on her record of earnings at GD2-43.

permit her to deliver the kind of regular performance demanded in a commercial workplace.

### **The Appellant had a severe disability during her coverage period**

[10] Over the years, the Appellant has been assessed and treated for a wide variety of medical conditions, including:

- Depression and anxiety
- Neck, back, and shoulder pain
- Heart palpitations and chest pain
- Insomnia and fatigue
- Headaches and dizziness
- Attention deficit and hyperactivity disorder (ADHD)
- Gastroesophageal reflux disease (GERD)
- Sinus infections
- Tinnitus
- High cholesterol

[11] In deciding whether the Appellant is disabled, I must look at her condition as a whole.<sup>5</sup> However, it is clear that her psychological problems were a major reason for her leaving her job.

[12] The Appellant has a history of depression and anxiety going back to childhood. She was an educational assistant for 28 years, but things started to unravel around 2015, after one of her co-workers, with whom she was very close, killed himself. A few months later she lost her stepfather, another important person in her social support network. At the same time, she began working with a child who had a lot of temper tantrums. The Appellant felt that she knew how to handle this child, but the classroom teacher disagreed with her approach. She had the support of a new principal, but she

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<sup>5</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

felt increasingly isolated from her co-workers. Under increasing stress, she began to think about suicide. It all became too much, and she went off work in October 2017.

[13] In her application for CPP disability benefits, the Appellant wrote that she left her job because of anxiety and stress, compounded by back and neck pain and a heart condition that left her tired and dizzy. She reported few physical limitations, except for standing, kneeling, and lifting, but she noted many difficulties with her mental and emotional behaviours. She said that she had trouble remembering things and prioritizing tasks. She said that she couldn't concentrate, organize her activities, or deal with unexpected situations.

[14] I can't exclusively base my decision on the Appellant's subjective account of her impairments. However, there is enough objective evidence on file to convince me that she was disabled during the relevant period.

– **The Appellant's family physicians documented significant mental health problems**

[15] CPP disability claimants must provide medical evidence of functional limitations that affect their ability to work.<sup>6</sup> It is not enough for claimants to simply list diagnoses; they must also show that their medical conditions prevent them from making a living.

[16] In this case, the Appellant has produced ample evidence of a significant mental health condition, starting with office notes documenting regular and frequent visits with her family physicians. What follows is just a sample:

- In November 2017, Dr. Alexiadis described a "very difficult visit" in which the Appellant presented as rude and tearful, expressing herself in "disorganized speech." The Appellant said that she felt isolated, angry, and depressed because of interpersonal conflicts at work. Dr. Alexiadis diagnosed the

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<sup>6</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

Appellant with depression, work stress, and anxiety, as well as a possible borderline personality disorder.<sup>7</sup>

- In December 2017, Dr. Kang advised the Appellant to go on short term disability for the time being, as she was unable to work due to depression, anxiety, and stress. The Appellant wanted to list neck pain and shoulder pain among her disabling conditions, but Dr. Kang advised against it, since they were “not the primary reasons” she was off work.<sup>8</sup>
- In September 2018, Dr. Broaders saw the Appellant for longstanding left arm and shoulder pain that had worsened in the previous six months. Dr. Broaders remarked that the Appellant was a “very vague and disorganized historian, jumping from one topic to another.” What was supposed to be a 15-minute session instead lasted 40, and the Appellant left in tears.<sup>9</sup>
- In January 2019, Dr. Wentzel noted that the Appellant had not slept in two weeks and was feeling quite hyperactive, disorganized, and distractable. She thought she had missed a couple doses of Wellbutrin. She had not been on her ADHD medications for some time because she couldn’t afford them.<sup>10</sup>
- In March 2019, Dr. Wentzel relayed the Appellant’s concern that her heart was “acting up.” She had a hole in her pant leg and was moving her hands frequently while talking, writing in notebook in an attempt to organize herself.<sup>11</sup>
- In October 2019, the Appellant was in to review her long-term disability insurer’s recommendations. Dr. Wentzel observed that she was very disorganized and “difficult to have conversation with, jumping from topic to topic, distractible, fidgeting, touching papers on desk, moving in her chair.”

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<sup>7</sup> See office note dated November 8, 2017 by Dr. Maria Alexiadis, general practitioner, GD2-176.

<sup>8</sup> See office note dated December 12, 2017 by Dr. Maria Kang, general practitioner, GD2-177.

<sup>9</sup> See office note dated September 13, 2018 by Dr. Melissa Broaders, general practitioner, GD2-212.

<sup>10</sup> See office notes dated January 11, 2019 (GD2-223) and January 23, 2019 (GD2-224) by Dr. Maria Wentzel, general practitioner.

<sup>11</sup> See Dr. Wentzel’s office note dated March 23, 2019, GD2-228.

Dr. Wentzel also noted that the Appellant had “limited insight into her mental health,” focusing instead on her heart.<sup>12</sup>

- In November 2019, Dr. Wentzel reported the Appellant’s complaints of constant vertigo, headaches, nausea, and head ringing. Her neck and shoulders hurt, and her brain was in a fog; she didn’t know where she was going when driving. She appeared very disorganized — “her baseline.”<sup>13</sup>
- In December 2019, Dr. Wentzel wrote that, while the Appellant’s vertigo had resolved, her tinnitus was active, causing a constant buzzing in her ears. She also complained of brain fog neck, shoulder, and jaw pain, and symptoms related to GERD.<sup>14</sup>
- In January 2021, Dr. Wentzel noted that the Appellant was a “very difficult historian,” who required significant redirection and re-focusing. The Appellant reported that her head felt “weird,” and she was sick to her stomach every day.<sup>15</sup>

**– The Appellant’s medical assessments confirm significant depression and anxiety**

[17] The Appellant has also been assessed pursuant to her claim for benefits through her employer’s long-term disability insurer. Both her treatment providers and independent medical examiners have concluded that the Appellant has significant mental health problems:

- In April 2018, Dr. Alexiadis completed a long-term disability application form declaring the Appellant unable to work because of depression, anxiety, and ADHD, as manifested by symptoms such as fatigue, disorganization, and poor concentration. Dr. Alexiadis did not completely rule out a possible return

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<sup>12</sup> See Dr. Wentzel’s office note dated October 8, 2019, GD2-121.

<sup>13</sup> See Dr. Wentzel’s office note dated November 24, 2020, GD2-106.

<sup>14</sup> See Dr. Wentzel’s office note dated December 3, 2019, GD2-105.

<sup>15</sup> See Dr. Wentzel’s office note dated January 14, 2021, GD2-102.

to work but warned that work-related stressors might interfere with her recovery.<sup>16</sup>

- In September 2018 and again in March 2019, a psychiatrist reviewed the Appellant's medical file on behalf of the Appellant's private insurer. Dr. Luczak agreed that the Appellant's symptoms were consistent with her previous diagnoses of major depression, generalized anxiety disorder, and ADHD. He found that, since the Appellant's departure from work was precipitated by "unbearable distress" in dealing with co-workers, her current psychological condition was specific to her current work circumstances and not the job per se. Dr. Luczak suspected that the Appellant had decompensated (fallen out of prior equilibrium) and rated her condition as moderate.<sup>17</sup>
- In July 2019, an independent psychiatric assessment found that the Appellant met the diagnostic criteria for major depressive disorder and social anxiety disorder. Dr. Rasic noted that the Appellant had also been previously diagnosed with ADHD, but he found no clear evidence of ADHD symptoms in her childhood. Still, Dr. Rasic found that the Appellant's psychological symptoms were in the severe range leading to significant functional impairment. He concluded that it was unlikely that she would be able to complete work tasks, and he cautioned that the stress of the workplace would put her at risk for further deterioration. However, he noted that she had not yet received intensive treatment for her symptoms, some of which were longstanding. He also noted that she had recovered from prior periods of depression. As a result, he concluded that her prognosis for symptomatic and functional improvement was fair.<sup>18</sup>

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<sup>16</sup> See attending physician's statement completed by Dr. Maria Alexiadis on April 1, 2018, GD2-163.

<sup>17</sup> See health practitioner's memos dated September 9, 2019 (GD2-196) and March 21, 2019 (GD2-229) by Dr. Alex Luczak, psychiatrist.

<sup>18</sup> See independent psychiatric assessment report dated July 17, 2019 by Dr. David Rasic, psychiatrist, GD2-255.



– **Some of the Appellant’s other conditions contributed to her disability**

[18] The Appellant’s mental health by itself would qualify her for the CPP disability pension. But her functionality is further diminished by two physical impairments, for which there is at least some objective medical evidence:

- The Appellant insists that she suffers from neck and shoulder pain. An x-ray of her cervical spine, which reveals osteoarthritis and mild degenerative disc disease, indicates at least some biological basis for the pain, even if it fails to account for its intensity.<sup>19</sup>
- The Appellant has long complained of heart problems, including chest pain, shortness of breath, and arrhythmia. There appears to be an organic foundation to these complaints. Specialist reports confirm that the Appellant suffered heart failure in 2011 and, although the crisis resolved, she was left with some abnormalities in her cardiac functioning, including a mild to moderate reduction in her left ventricular ejection fraction.<sup>20</sup>

**The Appellant lacked capacity when viewed as a whole person**

[19] The leading case on the interpretation of “severe” is *Villani*, which requires the Tribunal, when assessing disability, to consider a disability Appellant as a “whole person” in a real-world context.<sup>21</sup> Employability is not to be assessed in the abstract, but rather in light of “all of the circumstances.” Those circumstances fall into two categories:

- A claimant’s background — matters such as “age, education level, language proficiency and past work and life experience” are relevant.
- A claimant’s medical condition — this is a broad inquiry, requiring that the claimant’s condition be assessed in its totality.

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<sup>19</sup> See x-ray of the cervical spine dated December 21, 2020, GD2-94.

<sup>20</sup> See reports dated September 4, 2020 (GD2-74), December 6, 2020 (GD2-72), and December 16, 2020 (GD2-72) by Dr. Christiansen Koilpillai, cardiologist.

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

[20] In this case, I don't think that the Appellant had anything left to offer a real-world employer by the end of 2020. At that point, she was 52 years old — more than a decade from the typical age of retirement but not young either. At that stage in life, job seekers are often handicapped by a perception, fair or not, that they are too old to be retrained.

[21] The Appellant has some advantages. She is a native English speaker. She has a university degree in psychology and child studies. She has years of work experience. Even so, her field is relatively narrow, and there are only so many jobs for which she is qualified. Even if the Appellant had been able to overcome age prejudice and secure another job, I doubt that she would have succeeded. Given her history of anxiety and depression, I am not convinced that the Appellant would have been able to offer the kind of consistent and reliable performance that employers demand.

### **The Appellant took reasonable steps to get better**

[22] The Appellant suffers, to varying degrees, from a host of medical conditions. To her credit, she has explored numerous treatment options:

- For depression and anxiety, she has received some counselling (through her employer employee assistance program)<sup>22</sup> and has tried a number of psychotropic medications, including Wellbutrin, Ativan, and Trazodone.
- For GERD, she has taken several drugs, including Pantoprazole, Omeprazole, and Zantac.
- For neck and back pain, she has received physiotherapy, chiropractic, massage and TENS, and has taken prescription painkillers such as Celebrex.
- For her heart condition, she has taken Coversyl, Pravastatin, and Metoprolol.

[23] As well, the Appellant has regularly seen her family doctors and consulted with specialists, including a cardiologist and otolaryngologist.

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<sup>22</sup> There is evidence that the Appellant saw a counsellor three or four times through her Employee Assistance Program in November and December 2017. See progress notes by Kim Strange, GD2-190.

[24] However, the Minister says that the Appellant hasn't done enough to address her impairments. In particular, he alleges that the Appellant repeatedly and unreasonably refused to comply with her doctors' treatment recommendations, in particular:

- she refused to try sertraline or pregabalin for her anxiety and depression;
- she stopped taking Adderall for her ADHD;
- she refused to restart Trazodone for her insomnia; and
- she failed to pursue cognitive behavioural therapy.

[25] I have examined the circumstances surrounding these alleged lapses. I have concluded that, in each case, the Appellant had a reasonable explanation for not complying with medical advice. I also saw nothing to indicate that compliance would have significantly improved her functionality.

– **The law requires CPP disability claimants to follow medical advice**

[26] The *Canada Pension Plan* does not say anything about treatment. However, a case called *Lalonde* says that disability claimants must mitigate (do what they can to alleviate) their impairments by following their doctor's treatment recommendations.<sup>23</sup> *Lalonde* also requires decision-makers to consider whether a claimant's refusal of recommended treatment is unreasonable and, if so, what impact that refusal is likely to have on the claimant's disability.<sup>24</sup>

– **CPP disability claimants won't be penalized for refusing medical advice — provided they have objectively good reason for doing so**

[27] A long line of cases has recognized that CPP disability claimants can have good reason for refusing treatment. Each case depends on its own particular facts.

[28] As far back as 2000, the Pension Appeals Board (PAB) found that a claimant's refusal of some treatments was not always unreasonable given the disability.<sup>25</sup> In a case called *Bulger*, the claimant had fibromyalgia. The PAB reasoned that she couldn't

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<sup>23</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

<sup>24</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>25</sup> See *Bulger v Minister of Human Resources Development* (May 18, 2000), CP 9164 (PAB).

be expected to participate in treatment programs with the same enthusiasm, regularity, and positive attitude as persons who were simply recovering from, for example, a fracture.

[29] In some cases, the General Division has followed *Bulger* and found that refusing treatment recommendations can be reasonable, depending on a claimant's personal circumstances. In a case called *J.N.*, the General Division found that a claimant could not be expected to seek treatment for alcoholism, a disease he couldn't admit to having.<sup>26</sup>

[30] In another case, *J.R.*, the General Division specifically stated that the claimant's lack of compliance with treatment recommendations was "intertwined with his psychological illness."<sup>27</sup> The claimant stated that his depression left him lacking in energy, and his doctor stated that he lacked motivation. The General Division found that his refusal to follow treatment recommendations was not unreasonable; rather, it was a symptom of his illness.

[31] On appeal, the Appeal Division overturned the General Division's decision.<sup>28</sup> However, in doing so, it didn't deny that a claimant's failure to take prescribed medications might be a symptom of his psychological illness. Instead, it found that the General Division ignored evidence that the claimant's noncompliance was rooted, not in any lack of energy or motivation, but in a philosophical opposition to prescription drugs.

[32] On other occasions, the Appeal Division has recognized that the same medical conditions that make a claimant disabled can also make them unable to seek out or accept appropriate treatment. For example:

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<sup>26</sup> See *J.N. v Minister of Employment and Social Development*, 2018 SST 1208. See also *V.R. v Minister of Employment and Social Development*, 2021 SST 121.

<sup>27</sup> See *J.R. v Minister of Employment and Social Development*, 2018 SST 1232.

<sup>28</sup> See *Minister of Employment and Social Development v J.R.* 2019 SST 584.

- A claimant who had been diagnosed with psychosis was excused from taking medication because he believed that his doctors were engaged in a conspiracy to keep him drugged.<sup>29</sup>
- A claimant was excused from discharging himself from cognitive behavioural therapy because his psychiatrist had previously noted that he lacked insight into his mental health condition.<sup>30</sup>
- A claimant's refusal to take anti-anxiety medication was not held against her because she exhibited so-called "Cluster B" personality disorder traits, such as impulsivity, low intelligence, and, again, lack of insight into her condition.<sup>31</sup>

[33] These cases show that the question of whether refusing treatment is unreasonable is partly subjective: it matters what the claimant's individual situation is, especially when there is evidence linking their medical condition and associated symptoms to their failure to follow treatment recommendations. The question is not just whether the treatment recommendations themselves were objectively reasonable, but whether the claimant's decisions or behaviours in refusing treatment were reasonable, considering their circumstances.

**– The Appellant had reasonable explanations for not following treatment recommendations**

[34] In this case, the Minister argues that the Appellant has not tried hard enough to get better. He points to specific instances in which the Appellant failed to follow medical advice. He says that her explanations for these failures are not compelling or reasonable.

[35] I disagree, particularly on that last point. Given the Appellant's circumstances, I find that she had good reasons for not following medical advice.

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<sup>29</sup> See *C.C. v Minister of Employment and Social Development*, 2023 SST 67.

<sup>30</sup> See *K.P. v Minister of Employment and Social Development*, 2022 SST 1426.

<sup>31</sup> See *T.H. v Minister of Employment and Social Development*, 2020 SST 569.

***The Appellant couldn't afford some therapies and medications***

[36] The record contains numerous indications that the Appellant was deterred from pursuing recommended treatments by their cost.<sup>32</sup>

[37] In his March 2019 file review, Dr. Luczak expected improvement once the Appellant was back on her medications, but he cautioned that recovery would depend on her ability to consistently pay for them going forward. He noted that her inability to afford medications was likely “unmasking” her underlying symptoms of ADHD.<sup>33</sup>

[38] In November 2020, the Appellant’s family physician noted that it was “financially inaccessible” for the Appellant to attend an audiologist or a balance and dizziness centre.<sup>34</sup>

***The Appellant’s mental health impeded her ability to comply with treatment recommendations***

[39] There is another, more significant, factor that interfered with the Appellant’s capacity to follow medical advice: her psychiatric condition. The Appellant’s medical records document the Appellant’s many complaints about “brain fog” that affected her ability to think and remember. Dr. Wentzel’s notes corroborate those complaints, describing the Appellant on several occasions as “very difficult historian,” who required “significant re-direction and re-focusing.”<sup>35</sup> In my experience, medical practitioners reserve such language for patients whose thought processes are markedly disordered.

[40] Following his July 2019 independent medical examination, Dr. Rasic suggested that the Appellant try Sertraline or Pregabalin, a class of antidepressant medications known as selective serotonin re-uptake inhibitors (SSRIs). He also recommended six weeks of psychotherapy, as well as up to 20 sessions of cognitive behavioural therapy.

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<sup>32</sup> See Dr. Wentzel’s office note dated July 29, 2020, GD2-115.

<sup>33</sup> See Dr. Luczak’s report dated March 21, 2019, GD2-229.

<sup>34</sup> See Dr. Wentzler’s office note dated November 24, 2020, GD2-106.

<sup>35</sup> See Dr. Wentzel’s office notes dated October 22, 2020 (GD2-110), October 27, 2020 (GD2-108), and January 14, 2021 (GD2-103).

[41] It is unclear whether the Appellant could have afforded such treatments. But even if cost wasn't an issue, the available evidence suggests that the Appellant's judgment was clouded by the very psychiatric condition for which she needed treatment.

[42] When Dr. Wentzel met with the Appellant to discuss Dr. Rasic's recommendations, she observed that the Appellant appeared distracted and overwhelmed. She also noted that the Appellant was very disorganized and "difficult to have conversation with, jumping from topic to topic, distractible, fidgeting, touching papers on desk, moving in her chair." Dr. Wentzel made a point of noting that the Appellant had "**limited insight into her mental health** [my emphasis]."<sup>36</sup>

[43] The Appellant told her family doctor that she did not feel that she could attend psychological counselling while she was also receiving physiotherapy. She also wanted to defer starting any new medication until she had completed laboratory blood testing. Later, the Appellant declined to add an SSRI, as previously discussed, because she was worried about potential side effects.<sup>37</sup> She also gave up taking medication for ADHD out of concern that it would affect her heart.<sup>38</sup>

[44] Dr. Wentzel attempted to assure the Appellant that her concerns were groundless. It appears that those assurances did not register. Even so, while the Appellant's failure to pursue further treatment may not have been reasonable, it did occur for a reason. The evidence strongly suggests that the Appellant's psychiatric condition itself prevented her from fully complying with medical recommendations. Depression and anxiety, which afflicted the Appellant through no fault of her own, robbed her of the self-awareness that she needed to treat those conditions effectively.

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<sup>36</sup> See Dr. Wentzel's office note dated October 8, 2019, GD2-121.

<sup>37</sup> See Dr. Wentzel's office note dated May 4, 2020, GD2-119.

<sup>38</sup> See Dr. Wentzel's office note dated November 24, 2020, GD2-106.

***It's not clear that compliance would have made any difference***

[45] The law requires CPP disability claimants to make reasonable efforts to get better. However, nothing in the law requires a claimant to follow through on each and every treatment recommendation. In this case, there is no suggestion that the Appellant is inherently opposed to medical treatment. She has tried many medications and therapies and has objected to only a few. In some instances, she believed that prescribed medications were causing unwanted side effects. In others, she pleaded that she was unable to afford treatments or fit them into her schedule.

[46] Whether or not these objections were grounded in objective reality, they were almost certainly influenced, if not driven, by the Appellant's psychiatric illness, which affected her ability to weigh the risks and benefits associated with a specific course of treatment. In any case, it is not obvious that any of the refused treatments would have significantly improved the Appellant's condition. There is no guarantee that a specific treatment, even if recommended by a medical practitioner, will make an appreciable difference to a psychiatric illness. This is especially true when the illness, as in this case, has already been addressed with other therapies, to limited success.

**The Appellant did not have sufficient capacity to pursue alternative employment**

[47] A case called *Inclima* requires disability claimants with residual capacity to show that they have made reasonable efforts to obtain and secure employment and that these efforts have been unsuccessful because of their health condition. In this case, the Appellant lacked the residual capacity to make such efforts. For that reason, I will not draw a negative inference from the lack of any evidence that she launched a job search or investigated retraining programs. The Appellant had a genuine belief that she could no longer do any kind of work, and the medical evidence bears that out.

**The Appellant has a prolonged disability**

[48] The Appellant's medical reports indicate that she has suffered from a severe disability — led by anxiety and depression — since her coverage period ended in 2020.



The medical evidence since then indicates that her condition has not improved, and I see no prospect that it will improve, even with further treatment or medication. She has been effectively unemployable since her qualifying period, and I don't see that changing in the foreseeable future.

## Conclusion

[49] I find the Appellant disabled as of October 2017, when she left her job as a teaching assistant for good. Since the Minister received her application for benefits in July 2020, the Appellant is deemed disabled as of April 2019.<sup>39</sup> That means the effective start date of the Appellant's CPP disability pension is August 2019.<sup>40</sup>

[50] The appeal is allowed.



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Member, Appeal Division

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<sup>39</sup> Under section 42(2)(b) of the *Canada Pension Plan*, a person cannot be deemed disabled more than 15 months before the Minister received the application for a disability pension.

<sup>40</sup> According to section 69 of the *Canada Pension Plan*, payments start four months after the deemed date of disability.