



Citation: *MG v Minister of Employment and Social Development*, 2024 SST 346

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

# Decision

**Appellant:** M. G.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Andrew Kirk

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated December 13, 2022 (issued  
by Service Canada)

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**Tribunal member:** Adam Picotte

**Type of hearing:** Teleconference

**Hearing date:** April 5, 2024

**Hearing participants:** Appellant  
Appellant's witness  
Respondent

**Decision date:** April 7, 2024

**File number:** GP-22-2070

## Decision

[1] The appeal is allowed.

[2] The Appellant, M. G., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of July 2015. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant is 68 years old. At the time he applied for a CPP disability benefit he was 60 years old. He is well educated with a masters degree in psychology. He spent much of his career working as a psychoanalyst. He wrote that he could no longer work because of major depressive disorder, along with various other medical conditions, including chronic pain, acid reflux and high cholesterol.

[4] The Appellant applied for a CPP disability pension on June 28, 2016. 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] That decision was allowed in 2018 by another general division member. Following the issuance of the decision, the Minister requested a corrigendum that the date of onset be revised from 2011 to January 2014 to be consistent with the minimum qualifying period on the file. This change was made by the initial member.

[6] As a result, the Appellant filed an appeal with the Tribunal's appeal division. Various processes flowed out of this resulting in the matter proceeding to the federal court and then back to the general division for a hearing *de nova*. That brought the matter before me for a hearing.

[7] The Appellant says that following his mother suffering the onset of psychological decompensation in January 2014, he too had a resulted decompensation in his

psychological condition. This left him unable to work in any capacity. He says that since January 2014 he has had both a severe and prolonged disability.

[8] The Appellant further states that he had a period of incapacity and that as a result he ought to be entitled to a longer period of disability benefits under the CPP.

[9] The Minister says there is no evidence of incapacity and rather, the Appellant's testimony during the oral hearing supports that he was not incapacitated. The Minister further states that there is no medical evidence during the prorated MQP and as a result, the appeal should be dismissed.

## What the Appellant must prove

[10] For the Appellant to succeed, he must prove he has a disability that was severe and prolonged by December 31, 2003. In other words, no later than December 31, 2003. This date is based on his CPP contributions.<sup>1</sup> He must also prove that he continues to be disabled.<sup>2</sup>

[11] The Appellant had CPP contributions in 2014 that were below the minimum amount the CPP accepts. These contributions let the Appellant qualify for a pension if he became disabled between January 2014 and April 2014, and he continues to be disabled.<sup>3</sup>

[12] The *Canada Pension Plan* defines "severe" and "prolonged."

[13] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>4</sup>

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<sup>1</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 GD2-93.

<sup>2</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>3</sup> This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

<sup>4</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.

[14] 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 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.

[15] 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>

[16] 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.

[17] 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.

## **Matters I have to consider first**

### **There is no basis for a finding of incapacity**

[18] Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that the person has been incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid.<sup>6</sup>

[19] This section of the CPP is precise and focused in that it does not require consideration of the capacity to make, prepare, process, or complete an application for

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

<sup>6</sup> Section 60(8) of the *Canada Pension Plan*

disability benefits, but only the capacity of forming or expressing an intention to make an application.<sup>7</sup>

[20] The capacity to form the intention to apply for benefits is not different in kind from the capacity to form an intention with respect to other choices which present themselves to an applicant. The fact that a particular choice may not suggest itself to an applicant is not evidence of incapacity.<sup>8</sup>

[21] The Appellant did not present any evidence of incapacity at the hearing. He did not supply a certificate of incapacity, did not indicate he was under a committee of estate with the Public Guardian and Trustee of his home province, and evidenced during the hearing that he continued to engage in daily activities such as driving his mom to medical appointments and dealing with legal matters. These all support that he continued to have capacity.

[22] I am satisfied that the Appellant did not lack capacity at any relevant time to this appeal. As such, the incapacity provisions do not apply.

### **The Minister is not prejudiced in its position on disability**

[23] Prior to the oral hearing, I requested the Minister's position on whether or not it was prejudiced in asserting that the Appellant was not disabled. I requested this position because following the hearing in 2018, the Minister wrote to the Tribunal and advised that it did not contest that the Appellant was disabled.<sup>9</sup>

[24] In response, the Minister stated that the hearing is *de nova* with new evidence being presented.

[25] I am satisfied that the Minister is free to change its perspective as the file had been referred back to the GD to be considered anew. Further, the evidence that is in the

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<sup>7</sup> *Canada (Attorney General) v. Danielson*, 2008 FCA 78

<sup>8</sup> *Sedrak v. Canada (Social Development)*, 2008 FCA 86

<sup>9</sup> See Gd 12

file is not necessarily the same as what was in the file previously. For these reasons, I am satisfied that the Minister is free to change its position on this matter.

## Reasons for my decision

[26] I find that the Appellant had a severe and prolonged disability as of January 2014. 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?

[27] 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

[28] The Appellant has:

- Major depressive disorder;
- Chronic pain;
- Sleep problems;
- Acid reflux; and
- High cholesterol

[29] However, I can't focus on the Appellant's diagnoses.<sup>10</sup> Instead, I must focus on whether he has functional limitations that got in the way of him 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 his ability to work.<sup>12</sup>

[30] I find that the Appellant has functional limitations that affected his ability to work.

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<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.

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

[31] The Appellant says that his medical conditions have resulted in functional limitations that affect his ability to work. He says that in 1999 following a motor vehicle accident, he was forced to reduce his psychology practice. While he continued to practice, it was greatly reduced. By 2011, the Appellant was advised to stop work and remained off work until 2012. This was because he had cognitive impairments, disturbed sleep, and various physical complaints. In 2013, the Appellant's situation improved. He was doing better as his depression had improved and his mother's auto-insurance file had resolved. This resulted in a reduction in his stress. This is supported by his psychologist having advised him in 2012 that he could attempt returning to work, which he did.

[32] However, in January 2014, the Appellant decompensated. Following the poisoning of the family dog, the Appellant's mother's psychological condition became volatile. This caused the Appellant to experience serious agitation in his own mental health. He began to feel hopeless and had serious nightmares.

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

[33] The Appellant must provide some medical evidence that supports that his functional limitations affected his ability to work between January and April 2014.<sup>13</sup>

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

[35] Dr. Keith in a letter of June 20, 2016, wrote that the Appellant suffered from the following impairments since 2011:

- (i) Disturbed sleep;
- (ii) Mood disturbances;
- (iii) Generalized and posttraumatic anxiety and worry;

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

(iv) Cognitive impairments; and

(v) Physical complaints.<sup>14</sup>

[36] During the oral hearing, she told me that these conditions improved in 2012, to the point that she supported the Appellant could attempt a return to work, they remained present through 2014 and after that time as well.

[37] Dr. Keith went on to write that these impairments interfered with the Appellant's ability to participate in social contact, family activities, and housekeeping. She opined that he was no longer able to continue working in his position as a psychotherapist.

[38] Dr. Keith wrote that based on her assessment the Appellant met the criteria for psychological disorders including major depressive disorder and adjustment disorder with anxiety.<sup>15</sup>

[39] Dr. Keith reported that she provided psychotherapy as needed with cognitive behavioural therapy strategies. The Appellant's initial response to treatment was moderate but he has reached maximum recovery. His sessions now are booked as needed or on a crisis basis. Dr. Keith further reported that the Appellant's impairments include disturbed sleep, mood disturbance, helplessness, generalized and posttraumatic anxiety and worry, cognitive impairments, difficulty organizing and multitasking, decreased physical stamina and tinnitus.<sup>16</sup>

[40] These impairments interfere with the Appellant's ability to participate in social contact, family activities and housekeeping. Dr. Keith stated that the Appellant's GAF was 45-55 which indicates moderate to severe symptoms. His prognosis for a full recovery was poor and further treatment may assist in crisis situations, but is unlikely to result in improvement to return to work. He is no longer able to continue his work as a psychotherapist or return to any type of employment.

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<sup>14</sup> GD2-144-146

<sup>15</sup> GD2-145

<sup>16</sup> GD2-140-143

[41] During the oral hearing I heard from Dr. Keith about the impact, the death of his mom's dog and her subsequent decompensation had on the Appellant. She told me that he became suicidal, was suffering from nightmares, and had significant cognitive impairments.

[42] I note that Dr. Keith did not see the Appellant between January and April 2014. As such, her observations were based on her meetings with the Appellant in 2013 and later in 2014.

[43] The Minister argued that I ought not to consider this as the CPP requires objective medical evidence at the time of the MQP. However, I am not persuaded by its position.

[44] The CPP does not require that the medical evidence be contemporaneous with the MQP. In many cases, medical evidence provided at precisely the time of the MQP will not be available. In *Wieler v. Minister of Human Resources Development*, CP 20466 (PAB), the Pension Appeals Board decided that it is not necessary that a claimant provide a medical opinion at the time of the MQP, and the Tribunal is entitled to draw reasonable inferences from the evidence presented.<sup>17</sup>

[45] In this case, Dr. Keith had been the Appellant's treating psychologist since at least 2011. She continued to see the Appellant through 2013 and later in 2014. She provided an informed opinion about the Appellant's medical condition and the decompensation he experienced in January 2014. I am satisfied that this evidence establishes the Appellant underwent a decompensation in his mental health condition that resulted in him being unable to work in any capacity as of January 2014.

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

– **The Appellant followed medical advice**

[47] To receive a disability pension, an appellant must follow medical advice.<sup>18</sup>

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<sup>17</sup> 2018 SST 26 at paragraph 14

<sup>18</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[48] The Appellant followed medical advice.<sup>19</sup> I saw nothing in the file and the Minister did not assert either in its submissions or at the hearing, that the Appellant had failed to follow medical advice. As such, I am satisfied that this is not an issue before me.

[49] 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.<sup>20</sup>

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

[50] 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
- language abilities
- past work and life experience

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

[52] I find that the Appellant can't work in the real world. He hasn't been able to work since January 2014.

[53] As of January 2014, the Appellant's mental health decompensated to the point he was no longer able to function in any form of employment. I am satisfied that his level of function, already impaired by his mental health conditions, became completely unmanageable following his mother's psychological decompensation. He became suicidal and was no longer able to attempt his reengagement with his psychotherapy practice. This is evidenced by the fact that he became suicidal and was unable to manage his behaviours. His cognitive impairments were present to the point that he

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<sup>19</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

<sup>20</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

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

could not function in a work environment. By his own account, the Appellant was no longer able to provide any form of therapy by this time.

[54] It is clear through both the evidence at the oral hearing and in the file materials, that the Appellant's impairments interfered with his ability to participate in social contact, family activities and housekeeping.

[55] When I think about whether someone has capacity to work in the real world. I need to look at their personal characteristics. Here, the Appellant's impairments consisted of disturbed sleep, mood disturbance, helplessness, generalized and posttraumatic anxiety and worry, cognitive impairments, difficulty organizing and multitasking, and decreased physical stamina.<sup>22</sup>

[56] When I consider these impairments in conjunction with the Appellant's relatively older age at the time of his MQP, I am satisfied that he was incapable regularly of pursuing any substantially gainful occupation since January 2014.

[57] I find that the Appellant's disability was severe as of January 2014.

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

[58] The Appellant's disability was prolonged.

[59] The Appellant's conditions began in 2011 and worsened in January 2014. These conditions have continued since then.<sup>23</sup>

[60] The Appellant's conditions will more than likely continue indefinitely. Dr. Keith opined in June 2016 that because of his diagnosis of major depressive disorder and adjustment disorder with anxiety, that the Claimant would be unable to continue his work as a psychotherapist or a return to any type of employment. His prognosis for a full recovery is poor. Further treatment is unlikely to result in improvement to be able to

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<sup>22</sup> GD2-140-143

<sup>23</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.

return to work, either full or part time.<sup>24</sup> As a result I am satisfied that the Appellant's disability was prolonged by January 2014.

[61] I find that the Appellant's disability was prolonged as of January 2014.

### **When payments start**

[62] The Appellant's disability became severe and prolonged in January 2014.

[63] The Appellant applied for a CPP disability pension on June 28, 2016. The maximum period of retroactivity under the CPP is 15 months with a four-month waiting period before payments start.<sup>25</sup> This means that payments start as of July 2015.

### **Conclusion**

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

[65] This means the appeal is allowed.

Adam Picotte

Member, General Division – Income Security Section

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<sup>24</sup> GD2-145

<sup>25</sup> Section 69 of the *Canada Pension Plan* sets out this rule.