



Citation: *GH v Minister of Employment and Social Development*, 2024 SST 932

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

# Decision

**Appellant:** G. H.  
**Representative:** Paul Sacco

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated October 6, 2023 (issued by  
Service Canada)

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**Tribunal member:** Virginia Saunders

**Type of hearing:** Teleconference

**Hearing date:** July 18, 2024

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

**Decision date:** August 2, 2024

**File number:** GP-24-58

## Decision

[1] The appeal is allowed.

[2] The Appellant, G. H., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of January 2022. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant worked in invoicing at a university library for over 40 years. Because of the pandemic, she started doing this job from home in 2020. As time passed, the job demands and working alone became more difficult. There were challenges in her home life. She became stressed and anxious. She had no energy or motivation. She went to see her family doctor, who told her to stop working.

[4] The Appellant went on medical leave in September 2021. She didn't return to her old job, and she didn't look for any other type of work. She received long-term disability (LTD) benefits from her workplace insurance until she turned 65 in January 2024. At that time, she was declared retired, and her LTD benefits stopped.

[5] The Appellant applied for a CPP disability pension in October 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.

[6] The Appellant says she hasn't been able to work since September 2021 because of limitations caused by stress, anxiety, and depression.

[7] The Minister says the medical evidence doesn't show that the Appellant has a severe disability.

## What the Appellant must prove

[8] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by January 2024, which is the month she turned 65.

[9] 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. The Appellant has enough contributions for her coverage period to end after January 2024.<sup>1</sup>

[10] However, a CPP disability pension can't be paid after the month in which a person turns 65.<sup>2</sup> In addition, payment of the disability pension starts four months after a person becomes disabled.<sup>3</sup> This means that, to actually be paid anything, the Appellant must prove that she had a severe and prolonged disability by September 2023, and that she continued to be disabled up to and including January 2024.

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

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

[13] 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.

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<sup>1</sup> See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on GD2-69-70.

<sup>2</sup> See section 44(1)(b) and section 70 of the *Canada Pension Plan*.

<sup>3</sup> See section 69 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] 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>

[15] 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.

[16] 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.

## **Reasons for my decision**

[17] I find that the Appellant had a severe and prolonged disability as of September 2021. She was still disabled when she turned 65 in January 2024.

### **The Appellant's disability was severe**

[18] 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 her ability to work**

[19] The Appellant has been diagnosed with anxiety and depression.<sup>6</sup> However, I can't focus on her diagnoses.<sup>7</sup> Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.<sup>8</sup> When I do this, I have to look at all of her medical conditions (not just the main one) and think about how they affected her ability to work up to and including January 2024.<sup>9</sup>

[20] I find that the Appellant had functional limitations that affected her ability to work.

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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> See GD2-93.

<sup>7</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>8</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>9</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

[21] The Appellant seemed honest and direct when she gave her evidence at the hearing. It was consistent with what she wrote in her disability application. I believe what she told me.

[22] The Appellant says that her depression and anxiety cause the following limitations:

- she worries about everything and can't concentrate on tasks like paying bills, making schedules, or planning meals
- she is afraid of doing things incorrectly, so she puts off completing tasks and lies down on the couch instead
- she is forgetful and easily distracted
- she can't sleep at night, so she is exhausted and can't focus the next day
- she doesn't have the energy or motivation to look after herself, get dressed, or do simple household chores<sup>10</sup>

[23] The Appellant told me that she hasn't improved at all since she stopped working. She has good days and bad days, but she can't be productive regularly. She lives on a small dairy farm with her husband, her adult son and daughter, and her elderly parents. She doesn't do any regular work on the farm. She opens the mail and leaves it for others to deal with. She sweeps the barn occasionally because it calms her, but she has no assigned tasks, and no one relies on her for help. She doesn't provide any personal care for her parents. She looked after some of their paperwork but stopped after she made some errors which caused them to lose their overseas pensions. She has given up her hobbies, except for a crochet project that helps her calm down.

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<sup>10</sup> See GD2-46, 49, and 52, and the audio recording of the hearing.

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

[24] The Appellant must provide some medical evidence to support that her functional limitations affected her ability to work no later than January 2024.<sup>11</sup>

[25] The Minister argues that the medical evidence doesn’t support what the Appellant says. According to the Minister, there is a lack of clinical examination findings, diagnoses, investigations, treatments, prescribed medications, or specialist referrals. If the Appellant’s symptoms were so bad that she could not work, there would have been more aggressive intervention or regular management by a mental health specialist.<sup>12</sup>

[26] The Minister noted that the Appellant saw a psychiatrist, Dr. Basker, for a one-time consultation in August 2022. Dr. Basker observed the Appellant had good eye contact, reasonable rapport, normal speech, no delusions, and no evidence of a thought disorder. He suggested the Appellant have group counselling while she waited for individual counselling, and a routine structure to her day that included regular physical activity.

[27] The Minister noted that the Appellant found psychotherapy sessions were helpful, but she only sees a counsellor at the local hospital intermittently. She has not had any other follow-up with psychiatry, psychology, or psychotherapy.<sup>13</sup>

[28] Finally, the Minister noted that Dr. Basker recommended medication trials, but the Appellant had stopped taking all antidepressant medication by April 2023.

[29] I disagree with the Minister.

[30] First, there isn’t a lack of clinical examination findings or diagnoses. In January 2023, the Appellant’s family doctor, Dr. Kluz, said they had been treating the Appellant for anxiety and depression since March 2020. They recommended she stop working in September 2021.<sup>14</sup> Dr. Kluz’s notes from October 2021 through June 2022 show the

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<sup>11</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>12</sup> See GD4-2-6.

<sup>13</sup> See GD4-4-5.

<sup>14</sup> See GD2-92 and GD2-96.

Appellant saw them regularly and they observed that she was stressed, anxious, and depressed.<sup>15</sup>

[31] Dr. Basker—a specialist—must have accepted Dr. Kluz’s conclusions, because he recommended treatment based on them, and he didn’t order any further investigations except blood tests.<sup>16</sup>

[32] Second, Dr. Basker and Dr. Kluz recommended treatments they felt were appropriate to the Appellant’s situation. The Minister stated that different, more aggressive treatment and referrals would have been recommended if the Appellant’s condition was bad enough that she could not work. But the Minister didn’t provide any evidence to support this argument.

[33] I will talk about the Appellant’s medication use later.

[34] Third, although Dr. Basker made some positive observations about the Appellant, he also noted the following:

- she was easily distracted but could be redirected
- she was “quite anxious” throughout the interview
- her mood was subjectively and objectively depressed
- her affect was reactive and anxious
- she had a negative, ruminative thought process
- often her thought process was circumstantial (that is, she would go off the topic)<sup>17</sup>

[35] An appellant doesn’t have to show every possible sign or symptom of a medical condition. What is important is whether the limitations they do have are enough to leave them unable to work enough to earn a living.

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<sup>15</sup> See GD3-4-16.

<sup>16</sup> See GD2-110-115.

<sup>17</sup> See GD2-114.

[36] In January 2023, Dr. Kluz said the Appellant had decreased concentration, memory, and ability to cope with life stressors. She had insomnia, problems with motivation, and problems with multi-step directions.<sup>18</sup>

[37] The observations by Dr. Kluz and Dr. Basker are consistent with the Appellant's evidence of her limitations. They support that she would have difficulty doing any kind of regular work because she can't focus, complete tasks, or motivate herself. Although Dr. Basker said she could be redirected when she got distracted, that help would not be available in a workplace.

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

– **The Appellant followed medical advice**

[39] To receive a disability pension, an appellant must follow medical advice.<sup>19</sup> If they don't, then they must have a reasonable explanation for not doing so.<sup>20</sup>

[40] The Appellant mostly followed medical advice. When she didn't, she had a reasonable explanation.

[41] The Appellant tried many different medications but had to stop them because of their side effects.<sup>21</sup> This includes Zoloft, which Dr. Basker recommended. She told me she "gave it a good try" but had to stop because it caused nausea and made her mood worse.

[42] There is no evidence that Dr. Kluz or Dr. Basker felt the Appellant was being unreasonable in stopping medications. When she told the Minister's medical adjudicator that she had stopped taking antidepressants, it wasn't because she had refused them. She was simply between prescriptions. She told me that she is now trying a different medication that Dr. Kluz prescribed reluctantly. She didn't remember the name. She can

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<sup>18</sup> See GD2-93.

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

<sup>20</sup> See *Brown v Canada (Attorney General)*, 2022 FCA 104.

<sup>21</sup> See GD2-111.



only take it when she is really stressed. When she does take it, she sleeps long into the next day. It doesn't help her overall mood.

[43] The Appellant has gone to therapy as much as possible. She had to stop individual psychotherapy in May 2022 because she moved to a new area. She still tries to go to group therapy at the local hospital, just as Dr. Basker recommended, but finds it hard because she feels worse after listening to other participants. She can't motivate herself to go. She still hasn't been able to get into individual counselling. She hasn't been able to try any on-line resources because she can't concentrate enough to use a computer.

[44] These are reasonable explanations. Waiting lists are preventing the Appellant from getting individual care. Her mental health condition is preventing her from using the help that is available. It isn't her fault.

[45] I now have to decide whether the Appellant could 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>22</sup>

– **The Appellant could not work in the real world**

[46] When I am deciding whether the Appellant could work, I can't just look at her medical conditions and how they affected what she could do. I must also consider factors such as her age, level of education, language abilities, and past work and life experience.

[47] These factors help me decide whether the Appellant could work in the real world—in other words, whether it is realistic to say that she could work.<sup>23</sup>

[48] I find that the Appellant could not work in the real world by September 2021. She had many years of experience in an invoicing position that probably gave her some transferable skills. However, at 62 years old with only a high school education, it's

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<sup>22</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

<sup>23</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

unlikely she would be hired to do a job that needed training. She would have to do unskilled work.

[49] But I don't think the Appellant could regularly do **any** type of work. Her problems with energy, focus, and concentration mean she would not be able to complete even simple tasks on time and without help or supervision. Her lack of motivation would make it hard for her to go to work regularly. The fact that she can't regularly do menial tasks on the farm tells me that she would not be a productive employee in a work setting. It isn't realistic to say that she could work in the real world.

[50] I find that the Appellant's disability was severe as of September 2021, when she stopped working on her doctor's recommendation.

### **The Appellant's disability was prolonged**

[51] I also find that the Appellant's disability was prolonged as of September 2021.

[52] The Appellant's conditions began in 2020. She was able to work for a year after that, but finally had to stop. Her conditions have continued since then.<sup>24</sup> In January 2023, Dr. Kluz said her condition would likely remain the same and last for more than one year.<sup>25</sup> I accept the Appellant's evidence that she hasn't improved.

### **When payments start**

[53] The Appellant's disability became severe and prolonged in September 2021.

[54] There is a four-month waiting period before payments start.<sup>26</sup> This means that payments start as of January 2022.

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<sup>24</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>25</sup> See GD2-93.

<sup>26</sup> Section 69 of the *Canada Pension Plan* sets out this rule.

## **Conclusion**

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

[56] This means the appeal is allowed.

Virginia Saunders  
Member, General Division – Income Security Section