



Citation: *CD v Minister of Employment and Social Development*, 2024 SST 1036

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: C. D.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 19, 2023 (issued by
Service Canada)

Tribunal member: Dawn Kershaw

Type of hearing: Teleconference

Hearing date: March 19, 2024

Hearing participant: Appellant

Decision date: April 8, 2024

File number: GP-23-1230

Decision

[1] The appeal is allowed.

[2] The Appellant, C. D., is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of December 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant is 55. She last worked for about 12 years as a manager of a pizza store. She stopped working in September 2021 because she was short of breath and got fatigued. She also has aches and pains in her whole body.

[4] The Appellant applied for a CPP disability pension on July 7, 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.

[5] The Appellant says she can't work because she gets shortness of breath and then it feels like her body doesn't want to move anymore. Although she pushed herself and worked when she just had fibromyalgia, she now has problems moving because of the shortness of breath. She says she can't work at any job.

[6] The Minister says although the Appellant may not be able to do a physically demanding job, she isn't prevented from doing work that fits her functional limitations. The Minister also says that even though her family doctor said she had depression, there wasn't any testing or referrals or medication changes that would show she had limitations from this.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by the hearing date. In other words, no later than March 19, 2024.¹

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

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.²

[10] 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.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

[12] 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.

[13] 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.

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 GD2-6. In this case, the Appellant’s coverage period ends after the hearing date, so I have to decide whether she was disabled by the hearing date.

² 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.

³ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Reasons for my decision

[14] I find that the Appellant had a severe and prolonged disability as of August 2021. She 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?

[15] The Appellant's disability was continuously severe. I reached this finding by considering several factors. I explain these factors below.

– The Appellant's functional limitations affected her ability to work

[16] The Appellant has:

- non-ischemic cardiomyopathy
- supraventricular tachycardia
- fibromyalgia

[17] However, I can't focus on the Appellant's diagnoses.⁴ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁵ 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.⁶

[18] I find that the Appellant has functional limitations that affected her ability to work.

– What the Appellant says about her functional limitations

[19] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says she has:

⁴ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁵ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁶ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- shortness of breath
- body aches and pains
- fatigue
- occasional light headedness

[20] The Appellant said she worked until she could not work anymore. She got rushed to hospital in August 2021 with chest discomfort. She hasn't worked since.

[21] She said the cardiologist tried to get her to stop work twice before this episode. But she told him she could not because she was the sole income earner and didn't want to lose her house.

[22] This time the cardiologist told her she had to stop working. She said neither the cardiologist nor her family doctor will clear her to return to work. She said when the cardiologist told her she could not work anymore, she went to her family doctor to ask if she could work part-time. Her family doctor also told her she could not.

[23] She gets shortness of breath when she does 10 or 15 minutes of activity. Then she has to sit down for 30 to 45 minutes before she can start again.

[24] If she walks for half an hour she feels like her body doesn't want to move. She has to sit down and rest.

[25] The Appellant said she doesn't have chest pain as much as she used to. She also agreed with the doctors that her racing heart is controlled by medications. Her heart is fine if she is sitting.

[26] In addition to her heart problems with activity, the Appellant has aches and pains from fibromyalgia. Before her heart problem, she worked through the fibromyalgia. She said she worked in pain and came home in pain. Sometimes her body seized up, and she got charley horses and cramps.

[27] She can't move as much now because she gets shortness of breath and fatigue. Not moving as much has worsened her aches and pains.

[28] The Appellant said she isn't one to sit at home. She wants to be working but she has difficulty being active.

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

[29] The Appellant must provide some medical evidence that supports that her functional limitations affected her ability to work no later than the hearing date.⁷

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

[31] The Appellant's family doctor says she has:

- limited physical stamina and exertion
- inability to walk for prolonged periods
- inability to lift
- inability to do stairs
- inability to stand for prolonged periods
- inability to bend⁸

[32] The Appellant's family doctor has been her doctor for more than five years and sees her regularly. She wrote that the Appellant's non ischemic cardiomyopathy will stay the same, last more than a year and be continuous.⁹

[33] She wrote that wasn't certain what her prognosis was for her fibromyalgia, but it would last more than a year and be continuous.¹⁰

[34] Like the Appellant she said the Appellant's supraventricular tachycardia was controlled by medication.¹¹

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

⁸ See CPP medical report signed by Dr. Lisa Jansen on August 23, 2022, at GD2-97.

⁹ See CPP medical report signed by Dr. Lisa Jansen on August 23, 2022, at GD2-97.

¹⁰ See CPP medical report signed by Dr. Lisa Jansen on August 23, 2022, at GD2-97.

¹¹ See CPP medical report signed by Dr. Lisa Jansen on August 23, 2022, at GD2-97.

[35] The Appellant's cardiologist wrote that the Appellant had shortness of breath with any activity for a prolonged period. He said her cardiomyopathy affects her ability to work and do other activities of daily living such as cleaning.¹²

[36] The medical evidence supports that the Appellant's body pain and fatigue from her fibromyalgia and cardiomyopathy prevent her from doing any activity for a prolonged period, including her usual job.

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

– **The Appellant followed medical advice**

[38] To receive a disability pension, an appellant must follow medical advice.¹³

[39] The Appellant followed medical advice.¹⁴

[40] The Appellant has done everything that the medical professionals have told her to do. The Minister didn't suggest otherwise.

[41] The Minister did say that she hasn't exhausted all the treatments she can do, but this isn't the test. She has done what they told her to do. I will deal in the next section with what the Minister said about the Appellant's treatment being conservative.¹⁵

[42] 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 her from earning a living at any type of work, not just her usual job.¹⁶

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

[43] When I am deciding whether the Appellant can work, I can't just look at her medical conditions and how they affect what she can do. I must also consider factors such as her:

¹² See Dr. Sheldon Lewis's March 6, 2023, report at GD2-94.

¹³ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁴ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

¹⁵ See Minister's submissions at GD2-9.

¹⁶ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

- age
- level of education
- language abilities
- past work and life experience

[44] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say that she can work.¹⁷

[45] I find that the Appellant can't work in the real world. She hasn't been able to work since August 2021.

[46] The Appellant is almost 56 years old. Her age would have a negative impact on her ability to retrain or to find a different kind of employment than she has done in the past.

[47] She has a high school diploma. A long time ago in her early 20's she did a college psychology course successfully.

[48] The Appellant has worked in retail, as a cashier, in housekeeping, in a factory and managing a pizza store. She doesn't have any office experience. At the pizza store, she ordered stock, cleaned the store, made pizzas and made bank deposits.

[49] The Appellant said she mostly types with one finger. She thought she might be able to type with two hands, but she would not be very fast. Her hands also cramp up at times.

[50] The Appellant worked until she could not work anymore. Even though she was in pain from fibromyalgia, she kept working. She kept working even though she worked in pain and went home in pain.

¹⁷ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

[51] But then she got a heart problem. This added to her difficulties. She tried to go back to work after she was hospitalized for her heart condition in August 2021, but she could not breathe and was physically exhausted.

[52] Her cardiologist says she should not work, and that is just because of her heart causing her shortness of breath and fatigue.¹⁸

[53] But she doesn't just have a heart problem, she also has the pain that comes with fibromyalgia. Her family doctor says she doesn't just have shortness of breath. She also has chronic total body pain and fatigue that limits her physical abilities to even do her household chores or her activities of daily living. She also explained that her pain has worsened because she can't keep moving as much because of her shortness of breath and fatigue.¹⁹

[54] The Appellant's family doctor also includes depression as a reason she can't work, but there isn't sufficient evidence to support this. Despite this, I find that the Appellant's shortness of breath, fatigue and pain mean she can't work.

[55] Even though the Minister said her cardiologist said she didn't have shortness of breath with her activities of daily living, he must have been talking about non-physical activities. Because he specifically said in the report that her cardiomyopathy affects her ability to work and do other activities of daily living like cleaning or doing any activity of any prolonged period. He also said it wasn't reasonable to expect her to return to work at this time or in the future.²⁰

[56] The Appellant can't do a physical job because of her shortness of breath and fatigue. I further find that she can't do a sedentary job because she has limited stamina. She also is unable to stand or walk for prolonged periods.²¹

¹⁸ See Dr. Sheldon Lewis's March 6, 2023, report at GD2-94.

¹⁹ See Dr. Lisa Jensen's February 9, 2024, letter at GD5-2.

²⁰ See Dr. Sheldon Lewis's March 6, 2023, report at GD2-94.

²¹ See CPP medical report signed by Dr. Lisa Jensen on August 23, 2022, at GD2-97.

[57] Her inability to stand or walk for prolonged periods means she can't do even a less physical job if it involves standing or walking for long. Because she has no experience in an office and has no real typing skills and has chronic body pain, I find that she can't do a sedentary job.

[58] I find that the Appellant's disability was severe as of August 2021 when she had to stop working because of her heart condition. She hasn't been able to work since.

Was the Appellant's disability prolonged?

[59] The Appellant's disability was prolonged.

[60] The Appellant's heart condition began in August 2021. Her conditions have continued since then.²²

[61] The Appellant has not improved, and her doctors say she won't. Her cardiologist says she won't be able to work in the future. Her family doctor says she is totally disabled.²³

[62] The Appellant's conditions will more than likely continue indefinitely. No doctor has said that the Appellant will get better. Her heart condition is expected to remain the same.

[63] I find that the Appellant's disability was prolonged as of August 2021. Even though her last day of work was shown as September 27, 2021, this was the day she started getting Employment Insurance. The Appellant hasn't worked since she was in hospital in August 2021 except for one day that she tried and wasn't able to.

When payments start

[64] The Appellant's disability became severe and prolonged in August 2021.

²² 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.

²³ See Dr. Sheldon Lewis's March 6, 2023, report at GD2-94; see also Dr. Lisa Jensen's February 9, 2024, letter at GD5-2.

[65] There is a four-month waiting period before payments start.²⁴ This means that payments start as of December 2021.

Conclusion

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

[67] This means the appeal is allowed.

Dawn Kershaw
Member, General Division – Income Security Section

²⁴ Section 69 of the *Canada Pension Plan* sets out this rule.