



Citation: *PO v Minister of Employment and Social Development*, 2025 SST 276

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: P. O.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 29, 2020 (issued
by Service Canada)

Tribunal member: Selena Bateman

Type of hearing: In Writing

Decision date: February 21, 2025

File number: GP-23-2048

Decision

[1] The appeal is dismissed.

[2] The Appellant, P. O., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is 60 years old. She worked as a cashier. She has memory issues, asthma, depression, and other conditions. In her CPP disability application, she wrote that she was disabled as of 1999.¹

[4] The Appellant applied for a CPP disability pension three times. This appeal is based on the application of April 4, 2019. 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. Earlier, a colleague gave her an extension of time to appeal.²

[5] The Appellant says that she is disabled from all work, largely due to her severe memory loss. She says that she has many health conditions that prevent her from working, including severe pain all over her body and ulcerative colitis. She has poor physical abilities to do almost all tasks. She says her condition is worsening.³

[6] The Minister says that the evidence doesn't support a finding of disability. Her work questionnaire noted her work as satisfactory. While she had limitations, the Minister argues that they wouldn't prevent her from doing all forms of work.⁴

¹ See GD1-4 and GD2-29 to 48.

² See the decision of April 19, 2024.

³ See GD2-32 to 38 and 52 to 56.

⁴ See GD16.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2012. This date is based on her CPP contributions.⁵ She must also prove that she continues to be disabled.⁶

[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. A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁷

[10] The Appellant must prove she has a severe and prolonged disability on a balance of probabilities. She has to show it is more likely than not that she is disabled.

Reasons for my decision

[11] I find that the Appellant hasn’t proven she had a severe and prolonged disability by December 31, 2012. I reached this decision by considering whether her disability was severe. Because I found that it wasn’t, I didn’t consider whether it was prolonged.

[12] I could only consider the Appellant’s health conditions and limitations by the end of 2012. I found that she had residual work capacity at that time. This doesn’t mean that she continues to have work capacity today.

⁵ 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 GD2-153.

⁶ 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)*, 2011 FCA 318.

⁷ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe and prolonged 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.

The Appellant's disability wasn't severe by 2012

[13] The Appellant's disability wasn't severe. I reached this finding by considering several factors. I explain these factors below.

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

[14] The Appellant has allergic rhinitis, asthma, chronic fatigue, degenerative disc disease, depression, memory impairment (short and medium-term), and ulcerative colitis.

[15] However, I can't focus on the Appellant's diagnoses.⁸ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.⁹ 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.¹⁰

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

– What the Appellant says about her functional limitations

[17] The Appellant says that her medical condition resulted in functional limitations that affect her ability to work. She says that her memory is poor. She couldn't retain instructions, names, or faces. She wrote everything in a date book and refers to her notes. She says her asthma is severe and she has breathing problems. Housework was difficult to do because of extreme fatigue.

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

[18] The Appellant must provide some medical evidence to support that her functional limitations affected her ability to work no later than December 31, 2012.¹¹

[19] The medical evidence supports that the Appellant had asthma/allergic rhinitis, chronic fatigue, degenerative disc disease, depression, memory impairment (short and

⁸ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹⁰ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

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

medium-term), ulcerative colitis, vitamin B12 deficiency. She saw Dr. Dow for bladder issues, headaches, and low back pain.¹²

[20] In December 2012, Dr. Dow (family doctor) detailed the Appellant's medical conditions at that time. This is particularly relevant as this letter was written near the end of her coverage period. She had depression that was diagnosed in June 1997. She struggled with anhedonia, impaired concentration, and chronic fatigue. She didn't have suicidal ideation and wasn't emotionally labile.¹³

[21] The medical evidence supports that the Appellant has a memory impairment with difficulty retaining new information. In 2001, she had a psychological assessment by Dr. Berk. She had an impaired ability to learn new information.¹⁴

[22] The medical report for the CPP disability application was completed in April 2019 by Dr. Fulton (family doctor). This is about seven years after the end of her coverage period. Dr. Fulton had been treating her for three to four years. She had degenerative disc disease with low back pain, depression, and a chronic memory impairment. She had difficulty following instructions, decreased problem solving, and impaired goal setting.¹⁵

[23] The Minister argues that Dr. Fulton noted the onset of the Appellant's back symptoms as 2006. However, there is no supporting medical evidence to establish the presence of a severe back condition by 2012 and afterwards.¹⁶

[24] I agree with the Minister. A December 2012 record notes that the Appellant complained of left sciatica and low back pain from time to time. This condition wasn't significantly limiting.¹⁷

¹² See GD2-362 to 363 and 368 to 400.

¹³ See GD2-362 to 363.

¹⁴ See GD2-293 to 297.

¹⁵ See GD2-244 to 252.

¹⁶ See GD2-362 to 363 and GD16-6.

¹⁷ See GD2-163.

[25] The medical evidence also supports that the Appellant has asthma. She has limitations to working in areas that would have environmental allergies. She saw Dr. Luntao (Respirologist) in November 2011. She had wheezing, shortness of breath, and coughing with environmental allergens. Her symptoms were triggered with exposure to perfumes, gas, pollen, smoke, and dust. In February 2012, she was assessed for shortness of breath and hay fever-like symptoms. She attended an asthma education clinic in August 2012 where she reported an increase in allergy symptoms because of the humidity.¹⁸

[26] The Minister also argues that Dr. Fulton's opinion on work doesn't address the Appellant's medical condition by 2012. Dr. Fulton's letter was written many years later.¹⁹ I agree with the Minister. Other medical evidence authored by prior treating physicians better speaks to her condition by the end of her coverage period.

– **The Appellant followed medical advice**

[27] To receive a disability pension, an appellant must follow medical advice.²⁰

[28] The Appellant followed medical advice. She took Celexa for depression since 1999.

[29] The Appellant took medication for ulcerative colitis/proctitis. This condition was controlled with the use of Salofalk enemas. She didn't have a progression of symptoms leading up to 2012. She had intermittent flares.²¹

[30] The Appellant's B12 deficiency was well managed by injections every two months.²²

[31] The records support that with specialist treatment, her allergy symptoms improved. The Appellant had assessments and treatment for her asthma in 2011 and 2012. A respirology report suggested that the Appellant continue Advair and add

¹⁸ See GD2-281 to 284, 401, and 413 to 416.

¹⁹ See GD16-6.

²⁰ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

²¹ See GD2-163.

²² See GD2-163.

Atrovent. In early 2012, she reported an 80% improvement since beginning Ventolin and Advair.²³

– **The Appellant could work in the real world**

[32] 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:

- age
- level of education
- language abilities
- past work and life experience²⁴

[33] I find that the Appellant could work in the real world as of December 31, 2012.

[34] The Appellant's age is her largest barrier to employability. She has less than a decade before the usual age of retirement in Canada. Retraining is unlikely due to her age and memory impairment. She speaks English. It is unclear if she has post-secondary education. She has limited work experience with few transferable skills.

[35] The medical evidence supports that in November 2011, she was independent in her activities of daily living. She could do housework and maintain her home without difficulty.²⁵

[36] The Appellant's allergies may prevent her from working in some environments where her symptoms would be triggered. Work that involved fumes, dust, and organic materials wouldn't be appropriate. Physical work isn't realistic. Because of her memory limitations, she needed a controlled environment with repetitive tasks and support.²⁶ This doesn't eliminate all forms of work.

²³ See GD2-281 to 284, 407 to 408, and 413 to 416.

²⁴ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁵ See GD2-413.

²⁶ See GD2-163.

[37] The Appellant had residual work capacity. I further came to this conclusion when I considered her available work history. The evidence supports that she was able to perform the role of a cashier, despite her limitations. She stopped work before she received specialist treatment for her allergies. There is no evidence of a work attempt after she received specialist treatment for her allergies.

The Appellant worked between 2009 to 2011

[38] The Appellant worked at X, as a cashier at a vegetable stand. She worked from September 2009 to November 2011, doing seasonal work. Her income wasn't substantially gainful in each year. She usually worked 35 to 40 hours per week from March to October. Her paystubs were available in the appeal file, which supported that she was a reliable worker. It is likely that she would have reached the substantially gainful amount if she had year-long employment.

[39] In November 2014, she reported doing quite well at her job when she wrote things down because of her memory issues. She believed that her asthma impacted her ability to work at this job. There was flour in the air because of the bakery. The vegetable stand had dust and dirt. After she was laid off during the winter, she didn't think she could return because of her breathing problems from asthma.²⁷

[40] The medical evidence supports that this was before she saw the respirologist and changed her asthma medications to help control her symptoms.

[41] An employer questionnaire dated February 2013 for X was available in the appeal file. This evidence doesn't support that her health conditions got in the way of her working regularly.

[42] The employer questionnaire also doesn't raise questions as to whether the Appellant had a benevolent employer. She was hired and worked when the company needed a cashier. She performed productive work. Her attendance was good, and her

²⁷ See GD1-4, GD2-63 to 64 and 401.

work was satisfactory. She worked independently with minimal supervision needed. She didn't require help from co-workers. She took time off work when she had pneumonia.²⁸

– **The Appellant didn't try to find and keep a suitable job**

[43] If the Appellant could work in the real world, she must show that she tried to find and keep a suitable job. She must also show her efforts weren't successful because of her medical conditions.²⁹ Finding and keeping a suitable job includes retraining or looking for a job she can do with her functional limitations.³⁰

[44] The evidence supports that the Appellant didn't try to work after her allergy treatment improved her condition. Unfortunately, there isn't enough information to show that she could not work despite treatment for her conditions.

[45] Therefore, I can't find she had a severe disability by December 31, 2012.

Conclusion

[46] I find that 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.

[47] This means the appeal is dismissed.

Selena Bateman

Member, General Division – Income Security Section

²⁸ See GD2-350 to 352 and 353 to 356.

²⁹ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

³⁰ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.