



Citation: *LM v Minister of Employment and Social Development*, 2025 SST 411

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: L. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 22, 2024 (issued
by Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: April 16, 2025

Hearing participants: Appellant
Appellant's witness

Decision date: April 23, 2025

File number: GP-24-642

Decision

[1] The appeal is dismissed.

[2] The Appellant, L. M., 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 56 years old. She last worked as an operations manager for a store (X). She says she stopped working in December 2022 due to poor mental health.¹

[4] The Appellant applied for a CPP disability pension on January 31, 2023. She previously applied on February 2, 2017. The Minister of Employment and Social Development refused both applications. The Appellant appealed the Minister's decision on her second application to the Social Security Tribunal's General Division.

[5] The Appellant says she can't work due to migraines, shoulder injuries, gastrointestinal issues, and poor mental health.

[6] The Minister says the Appellant's work history shows that she didn't become disabled during either of her coverage periods. Her coverage periods are when she had coverage under the *Canada Pension Plan*. So, she can't qualify for a disability pension.

[7] I agree with the Minister.

What the Appellant must prove

[8] For the Appellant to succeed, she must prove she has a disability that became **severe** and **prolonged** during one of her **coverage periods**. She must also prove that she has been continuously disabled since then.

¹ See GD1-5 to 13. See also GD2-10 and GD10-1 and 6 to 14.

[9] The Appellant's **coverage periods** are based on her contributions to the CPP.² She has two coverage periods. Her first coverage period ended on December 31, 2018. She made CPP contributions in 2024 that were below the minimum amount the CPP accepts. These contributions give her a second coverage period, from January 1 to June 30, 2024.³

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

[11] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.⁴

[12] This means I must look at all of the Appellant's medical conditions together to see what effect they have on her ability to work. I must also look at her background (including her age, level of education, language abilities, and 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.

[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁵

[14] 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.

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

² Service Canada uses an appellant's years of CPP contributions to calculate their coverage periods, or "minimum qualifying periods" (MQPs). The end of a coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are at GD16.

³ This is based on sections 19 and 44(2.1) of the *Canada Pension Plan*.

⁴ 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 get from a disability pension.

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

Matters I have to consider first

I rescheduled the hearing

[16] The hearing was originally scheduled for April 1, 2025. I rescheduled it to April 3 at the Appellant's request. She didn't attend the rescheduled hearing. Neither did the Minister. However, on April 3, the Minister filed evidence showing that the Appellant had made CPP contributions in 2024.⁶ This meant she could qualify for a disability pension if she became disabled between January 1 and June 30, 2024. Since this changed the key issue in the appeal, I rescheduled the hearing to April 16. I also allowed the parties to file written submissions (arguments) up until April 14. Neither of them did. The Appellant attended the hearing on April 16. The Minister did not attend.

I didn't extend the Appellant's filing deadline

[17] On January 10, 2025, the Appellant asked me to extend her filing deadline from January 15 by one month so that she could provide the results of upcoming medical tests. I refused this request because those results would not be relevant to whether she became disabled by December 31, 2018.⁷ I made this decision before her CPP contributions gave her a second coverage period in 2024. Since test results from after January 10, 2025, would not tell me whether she became disabled in her second coverage period either, there was still no need to change her filing deadline.

[18] To summarize, the Appellant's deadline for filing evidence ended on January 15, 2025. I then gave her from April 3 to 14, 2025, to file written submissions (but no new evidence) about whether she became disabled in her second coverage period.

Reasons for my decision

[19] The Appellant didn't become disabled during either of her coverage periods. So, I must dismiss her appeal.

⁶ See GD16.

⁷ See GD8.

The Appellant didn't become disabled by December 31, 2018

[20] I find that the Appellant didn't become disabled by December 31, 2018. Her disability wasn't severe.

[21] During the hearing, I asked the Appellant what medical conditions she is basing her appeal on. She said her appeal is based on migraines, gastrointestinal issues, and poor mental health. I pointed out that there was also evidence in her file about shoulder problems. She then confirmed that her shoulder problems form part of the basis of her appeal as well.

[22] But 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 must 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 She must provide some medical evidence to support that her functional limitations affected her ability to work.¹¹

– What the Appellant says about her functional limitations

[23] The Appellant says she has functional limitations that affect her ability to work. In her first disability pension application (from February 2017), she described difficulty with sitting, walking, lifting, carrying, reaching, and bending. She mentioned being anxious, confused, unfocused, and fatigued. She said she experiences vomiting, dizziness, fainting, and urinary frequency. During migraines, she may wear ear plugs and have blurry vision. She said these limitations impact her social activities. She depends on her children to do the housework.¹² Her second application (from January 2023) mentions panic attacks, neck pain, and restless legs among her symptoms.¹³

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

⁹ See *Klabouch v Canada (Attorney General)*, 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.

¹² See GD2-237 to 241.

¹³ See GD2-82 and 83.

[24] The Appellant's spouse testified that the Appellant's migraines have been a problem since they started dating in 1987. He thinks that she downplays the impact of her shoulder injuries.

– **What the medical evidence says about migraines and shoulder injuries**

[25] The medical evidence supports that the Appellant had functional limitations from migraines and shoulder injuries by December 31, 2018, but they weren't as severe as she says they were.

[26] The medical evidence shows that the Appellant's migraines were well treated until at least December 31, 2018. She responded "extraordinarily well" to Botox injections that were given by Dr. Blecher, a pain specialist.¹⁴ They produced "excellent relief" and "dramatic benefit." They were "really helping her" and she was "drastically improved."¹⁵ Her pain wasn't gone, but in October 2018 (the last time she got injections that year), she said she was generally doing well and she had only had a few headaches since her injections in May 2018.¹⁶ Most of her side effects from pain medications in 2017 were "mild," and she didn't have any side effects from pain medications in 2018.¹⁷

[27] In June 2019 (after December 31, 2018), Dr. Blecher wrote, "Patient reports an ongoing, consistent and generally sustained reduction in pain and discomfort to the areas being targeted by the interventional treatments."¹⁸ He was referring both to migraines and to the Appellant's shoulders, for which she also got injections. Her first injection was in 2014 or earlier.¹⁹ She still gets those injections every three months. She testified that they help with the pain, although she has been advised not to lift anything heavy. I note that she was able to do "a fair bit of fishing" in 2018 despite her shoulder problems.²⁰ So, I conclude that injections helped her shoulder pain.

¹⁴ See GD2-226 to 228.

¹⁵ See GD2-231, 232, 234 to 236, and GD10-22.

¹⁶ See GD10-24 and 25.

¹⁷ See GD10-15 to 29.

¹⁸ See GD10-28.

¹⁹ See GD2-220.

²⁰ See GD2-123.

– **Why I give some evidence more weight than other evidence**

[28] There is some medical evidence to suggest that the Appellant’s migraines **were not** well managed in the years leading up to 2019. I will now explain why I give that evidence less weight than the evidence that shows her migraines were well treated.

- First, the Appellant reported having an odd reaction to injections in July 2015. Dr. Crisp (a neurologist) determined that this was not a reaction but rather a complex migraine.²¹ There is no evidence that she experienced a similar event again. In other words, this was an isolated incident.
- Second, the Appellant applied for employment insurance in 2016 on the basis that she was vomiting every day from severe migraines.²² But severe migraine symptoms aren’t reflected in the clinical notes from that period. Rather, Dr. Blecher confirmed in July 2016 that her pain had been averaging a 2 out of 10 and that she had actually **reduced** her use of ondansetron, which she used to manage nausea and vomiting.²³
- Third, Dr. Sorensen (her family doctor) completed a CPP medical report in February 2017. She said migraines impacted the Appellant’s ability to work—but she didn’t explain how.²⁴ The closest notes in time to when that report was written are from Dr. Blecher in April 2017, not from Dr. Sorensen, and they undermine Dr. Sorensen’s statement. Dr. Blecher said Botox was “doing well for migraine prophylaxis” (that is, migraine prevention). The Appellant had started going for walks and was doing more housework.²⁵
- Fourth, in March 2017, Dr. Blecher wrote in a brief letter addressed “to whom it may concern” that, “while [injections] have helped reduce the impact burden of her migraine disability, [the Appellant] continues to suffer significantly from

²¹ See GD2-226 to 228, 231, and 232.

²² See GD2-251 to 263.

²³ See GD2-234 to 236.

²⁴ See GD2-198 to 202.

²⁵ See GD10-15.

her ongoing chronic migraine diagnosis.”²⁶ Yet the clinical notes indicate that injections were effective. In April 2017, Dr. Blecher recorded the Appellant’s average pain as a 3 out of 10.²⁷ This isn’t consistent with Dr. Blecher’s letter. I prefer his clinical notes, which were taken at specific points in time based on his observations of and conversations with the Appellant.

- Fifth, in May 2017, May 2018, and June 2019, Dr. Blecher had the Appellant complete a “pain disability index” by rating her “disability level” from 0 to 10 in relation to different categories like “family/home responsibilities,” “recreation,” and “social activity.”²⁸ In May 2018 (the last time this index was taken before December 31, 2018), her scores for these categories ranged from 4 to 7 and her total score was 36 out of 70. Unfortunately, I don’t know what time period these scores cover. Unlike the Appellant’s average pain score, which was recorded at **every** appointment, the pain disability index was taken about once a year and may have covered a short or a long period of time. This is why I rely on her pain scores but not her pain disability index.
- Finally, whenever Dr. Blecher gave the Appellant injections, he recorded the percentage of relief provided by the last set of injections and how long that relief lasted. I don’t give weight to these measures because they can’t be reconciled with the rest of Dr. Blecher’s notes. For example, on May 23, 2018, he said there was 0% relief from the last injections, **but** that relief lasted 9 to 12 hours (implying more than 0% relief), **and** that the Appellant felt injections were still worthwhile.²⁹ Even after moving from Ontario to Nova Scotia, the Appellant kept getting injections in Ontario for some time.³⁰ This tells me that they were effective and likely provided more than just a few hours of relief. Otherwise, she would not have travelled to another province to get them.

²⁶ See GD2-187.

²⁷ See GD10-15.

²⁸ See GD10-17, 18, 22, 23, and 27.

²⁹ See GD10-22.

³⁰ See the hearing recording.

– **What the medical evidence says about gastrointestinal issues**

[29] Regarding gastrointestinal issues, the medical evidence shows that the Appellant took Tecta for acid reflux and that this helped.³¹ She had some nausea, bloating, and stomach pain in 2013 and 2014, which were attributed to a uterine fibroid.³² There is no further mention of this issue. So, I find that the issue resolved.

– **What the medical evidence says about mental health**

[30] I don't accept that the Appellant had limitations from poor mental health by 2018. In 2015, she told Dr. Crisp that she thought she had mild depression.³³ There is no indication that she spoke to her family doctor about this, though. She mentioned being anxious to Dr. Sorensen in June 2018. Yet Dr. Sorensen didn't recommend medication or counselling, and the Appellant said she was doing well at their next appointment in September 2018.³⁴

– **Summarizing the Appellant's functional limitations**

[31] In summary, I find that the Appellant may have missed an occasional day of work due to an especially bad migraine. But generally, her migraines were well managed until December 31, 2018. In addition, she had limitations with lifting due to shoulder injuries. She didn't have limitations from gastrointestinal issues or poor mental health.

[32] I now have to decide whether the Appellant could regularly work as of December 31, 2018. To be severe, the Appellant's functional limitations must have kept her from earning a living at any type of work, not just her usual job.³⁵

³¹ See GD2-204 to 207 and 210.

³² See GD2-211 and 213.

³³ See GD2-231 and 232.

³⁴ See GD2-112 and 115.

³⁵ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

– **The Appellant could work in 2018**

[33] 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
- work and life experience

[34] These factors help me decide whether the Appellant can work in the real world—in other words, whether it is realistic to say she can work.³⁶

[35] I find that the Appellant could still work in the real world as of December 31, 2018. Her personal characteristics favour employability. She was only 49 years old and a native English speaker. She had an engineering safety certificate, a Microsoft professional diploma, and some post-secondary education in accounting. She had administrative work experience.³⁷

[36] The Appellant's limitations were minimal. They would not have kept her from doing a sedentary job. She may have missed some work due to especially bad migraines, but I find that this didn't happen often enough to make her an unreliable employee. She could report to work on a predictable basis. Although she left her administrative job in 2016, I have already found that the surrounding medical evidence doesn't explain why—it doesn't support that she was an unreliable employee. Her administrative job paid a substantially gainful salary of \$52,000 annually.³⁸

³⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

³⁷ See GD2-82, 237, and 238.

³⁸ See GD2-237. A substantially gainful income in 2016 was \$15,489.72. See section 68.1 of the *Canada Pension Plan Regulations*.

– **The Appellant didn't show that her limitations kept her from working in 2018**

[37] If the Appellant can work in the real world, she must show that she tried to find and keep a suitable job. She must also show that her efforts weren't successful because of her medical conditions.³⁹ Finding and keeping a suitable job includes retraining or looking for a job that she can do with her functional limitations.⁴⁰

[38] The Appellant hasn't proven that her medical conditions kept her from working by December 31, 2018. After leaving her job in 2016, the Appellant didn't try to work again until January 2020 when she got a six-month contract at X University providing administrative support to a vice president. She did that job until March 2020, when Covid-19 pandemic restrictions were introduced. The University terminated all casual staff, including her. She figures that she missed about three weeks of work due to migraines, but no one spoke to her about this.⁴¹ This tells me that her attendance was adequate for the role. Her termination wasn't related to her medical conditions.

[39] The Appellant started her most recent job, as operations manager at X, in April 2021. She was able to sustain that job—which involved doing computer work, handling staff issues, and tending to the till and merchandise—until December 2022. She quit after she asked for a leave of absence and her boss refused to give her one. She said her boss was also harassing her.⁴²

[40] The Appellant's job was substantially gainful.⁴³ And I conclude that she was regularly able to perform her duties, at least initially. Otherwise, her employer would not have kept her employed. It was ultimately the Appellant who left her job, and not her employer that terminated her employment.

[41] It is impossible to say exactly when the Appellant's attendance might have become a problem, since there is no medical evidence from June 2020 to May 2023.

³⁹ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

⁴⁰ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

⁴¹ See the hearing recording.

⁴² See GD1-7, GD2-82, 151 to 154, and the hearing recording.

⁴³ The Appellant earned \$52,000 per year (GD2-11 to 13). A substantially gainful income in 2021 and 2022 was less than \$18,000. See section 68.1 of the *Canada Pension Plan Regulations*.

She says she missed one to four days per week. But according to a questionnaire, her employer considered her attendance fair, her work was satisfactory, and she didn't require help from co-workers.⁴⁴ Her current family doctor, Dr. Macdonald, said she didn't recommend that the Appellant stop working until April 2023, which was after she had already stopped working.⁴⁵

The Appellant didn't become disabled in her second coverage period

[42] I find that the Appellant didn't become disabled during her second coverage period (January 1 to June 30, 2024), for three reasons.

[43] First, the Appellant believes that she became disabled in December 2022, when she stopped working.⁴⁶

[44] Second, her family doctor recommended that she stop working in April 2023.

[45] Third, there is no contemporaneous medical evidence from 2024 to support that she became disabled during her second coverage period. The only medical evidence from this period is a letter from Dr. Sorensen and a letter from Dr. Macdonald.

Dr. Sorensen had not seen the Appellant since November 2018.⁴⁷ And Dr. Macdonald's letter talks generally about the Appellant's health, not about her medical conditions from January to June 2024 specifically.⁴⁸

Conclusion

[46] I find that the Appellant isn't eligible for a CPP disability pension because she doesn't have a disability that became severe and prolonged during either of her coverage periods. This means the appeal is dismissed.

James Beaton

Member, General Division – Income Security Section

⁴⁴ See GD2-11 to 13.

⁴⁵ See GD2-142 to 147.

⁴⁶ See GD2-82 and 83.

⁴⁷ See GD2-107.

⁴⁸ See GD3-2.