



Citation: *RM v Minister of Employment and Social Development*, 2025 SST 301

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

**Appellant:** R. M.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Nathan Beck

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**Decision under appeal:** General Division decision dated August 22, 2024  
(GP-23-2156)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Teleconference

**Hearing date:** March 25, 2025

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

**Decision date:** March 31, 2025

**File number:** AD-24-782

## Decision

[1] I am dismissing this appeal. The Appellant ceased to be disabled after returning to work. She stopped being entitled to a Canada Pension Plan (CPP) disability pension as of January 2020.

## Overview

[2] The Appellant is a 60-year-old former bookkeeper with a history of depression, anxiety, and post-traumatic stress disorder (PTSD). In December 2000, she applied for a CPP disability pension, claiming that she was no longer capable of work. Service Canada, the Minister's public facing agency, approved the Appellant's application after determining that she had a severe and prolonged disability.<sup>1</sup>

[3] In October 2010, the Appellant got a part-time job as a bookkeeper for a X franchisee. She disclosed the job to a Service Canada official, who told her that it would maintain her pension as long as her hours and her earnings did not become substantially gainful.<sup>2</sup> For the next nine years, the Appellant earned between \$7,000 and \$12,000 annually.

[4] In September 2019, the Appellant got a new job as an accounts receivable clerk for a ventilation equipment supplier. It was also a part-time position, but it paid more than her previous job. In the following years, the Appellant earned between \$26,000 and \$30,000 annually.

[5] The Appellant did not report her new job or her higher earnings to Service Canada. In February 2022, Service Canada received information from the Canada Revenue Agency (CRA) that the Appellant had been earning substantially gainful amounts.<sup>3</sup> Following an investigation, it determined that the Appellant was no longer disabled and terminated her pension as of July 2022. It also demanded repayment of

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<sup>1</sup> See Service Canada's disability summary sheet dated February 9, 2001, GD2-171.

<sup>2</sup> See Service Canada case summary reports dated November 12, 2010 (GD2R-159) and December 6, 2012 (GD2R-157).

<sup>3</sup> See Service Canada's case summary report dated February 15, 2022, GD2R-116.

money that the Appellant had received going back to May 2021 — an amount totalling nearly \$11,000.<sup>4</sup>

[6] The Appellant appealed Service Canada's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal after finding that the Appellant stopped being disabled as of May 2021. In particular, it found that the Appellant's earnings after that date were substantially gainful. It also found insufficient evidence that the Appellant was working for a so-called "benevolent employer."

[7] The Appellant then applied for permission to appeal to the Appeal Division. Last November, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. Earlier this month, I held a hearing to discuss her case in full.

## **What I have to decide**

[8] My task is to decide whether the Appellant stopped being disabled and, if so, when.

[9] When Service Canada approved the Appellant's disability application in 2000, it accepted that she had a disability that was severe and prolonged. Under the *Canada Pension Plan*, these words have a very specific meaning:

- A disability is severe if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>5</sup> A claimant isn't entitled to a disability pension if they are regularly able to do some kind of work that allows them to earn a living.
- A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>6</sup> The disability must be expected to keep the claimant out of the workforce for a long time.

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<sup>4</sup> See Service Canada's letter dated April 14, 2023, GD2R-105.

<sup>5</sup> See section 42(2)(a)(i) of the *Canada Pension Plan*.

<sup>6</sup> See section 42(2)(a)(ii) of the *Canada Pension Plan*.

[10] When the Minister terminates benefits that he had previously approved, he carries the burden to prove, on a balance of probabilities, that the recipient's disability is no longer severe and prolonged.<sup>7</sup>

[11] In this case, the Minister had to prove that the Appellant's post disability earnings (i) were substantially gainful; (ii) indicated a capacity to pursue regular employment; and (iii) did not come from a so-called "benevolent employer."

## **Analysis**

[12] I have applied the law to the available evidence. I am satisfied that the Minister met the burden of proving that the Appellant ceased to have a severe and prolonged disability. I don't doubt that the Appellant continues to have residual health problems. However, the fact remains that she managed to sustain substantially gainful employment after she was found disabled.

### **The medical evidence does not rule out work**

[13] The Appellant was granted a CPP disability pension in 2000 because of mental health conditions, including depression, anxiety, and PTSD. She continues to suffer from these conditions and had been receiving regular psychological counselling for many years.

[14] In 2017, her longtime psychotherapist wrote that the Appellant was capable of working on a reduced schedule but not in full-time position: "[She] has limited abilities for all life events but does find ways to cope as best she can for periods of time."<sup>8</sup>

[15] In 2020, not long after the Appellant changed jobs, her psychotherapist reiterated that that the Appellant was incapable of a full-time job — "20 hours week seems to be her maximum capacity."<sup>9</sup> He added that, although she had tried to become self-sufficient, she still had difficulties:

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<sup>7</sup> See *Boudreau v Canada (Minister of Human Resources and Development)* (July 26, 2000), CP 11626 (PAB) and *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

<sup>8</sup> See reported dated March 9, 2017 by Bill Campbell, registered psychotherapist, GD2R-90

<sup>9</sup> See Bill Campbell's letters, both dated July 7, 2020, GD2R-87 and GD2R-89.

- She was frustrated by people
- She was uncomfortable in group settings
- She was easily confused
- She sometimes made poor decisions
- She was forgetful in high stress situations
- She became anxious if her routine varied
- She was emotionally dependent on others
- She had trouble focusing and was easily distracted
- She had trouble finishing tasks

[16] More recently, the Appellant has been diagnosed with attention deficit hyperactivity disorder and Crohn's disease. She was hospitalized for a partial bowel blockage and underwent surgery in May 2023, but she continues to experience frequent loose motions.<sup>10</sup>

[17] The available medical evidence indicates that the Appellant continues to experience various symptoms, including anxiety and emotional dysregulation. However, those symptoms did not prevent her from returning to work. I find it notable that, in recent years, none of her doctors have declared her incapable of work or advised her to stop working for the good of her health.

[18] The Appellant's ability to maintain part-time employment does not by itself disqualify her from CPP disability benefits. She worked at a X franchise for many years without attracting attention from Service Canada, but then she took a higher paying job. The main question is this appeal is whether her earnings from that job were substantially gainful and whether they flowed from regular employment.

### **The Appellant's earnings exceeded the substantially gainful threshold**

[19] In September 2019, the Appellant took a part-time job as an accounts receivable clerk at X, a firm that sells and installs ventilation systems in the Maritimes. She testified

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<sup>10</sup> See report dated November 29, 2023 by Dr. David Wong, pediatrician, GD1-32. See also report dated December 13, 2023 by Dr. Brent MacDonald, family physician, GD1-24.

that her job mainly involved collections — she sent out reminder notices to clients who were late in paying their bills and followed them up with telephone calls. It was a stressful job because her bosses expected her to strike a balance between getting money the firm was owed and not alienating potential repeat customers while doing so. She said that her workload increased over the years.

[20] Her starting salary was \$26,000, and she had at least two raises in subsequent years.<sup>11</sup> During the pandemic, she worked from home and, after it was over, she was permitted to continue working remotely, setting her own hours. Last year, the firm purchased one of its competitors, and the accounting department suddenly had too many people. She was let go in November 2024.

[21] The Appellant emphasized that she struggled to perform her duties during the five years she worked at X. She said that it was a high-pressure job with a lot of expectations. She insisted that she got through it only with the help of Lorazepam, an anti-anxiety medication.

[22] Despite her mental health problems, the Appellant earned what appear to be substantially gainful amounts while receiving the CPP disability pension. The *Canada Pension Plan Regulations* associates “substantially gainful” with a specific dollar value, depending on the year. Any amount earned over a certain threshold — the maximum annual amount that a person can receive as a disability pension — is deemed to be substantially gainful.<sup>12</sup>

[23] According to CRA records, the Appellant earned the following amounts in recent years:<sup>13</sup>

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<sup>11</sup> See letter dated July 25, 2022 by C. G., Vice President Sales and Operations, X. GD2R-84.

<sup>12</sup> See Section 68.1 of the *Canada Pension Plan Regulations*, which has been in effect since 2011.

<sup>13</sup> See the Appellant’s earnings detail generated by Service Canada on March 26, 2025, AD18-2. I accepted this document, which the Minister submitted after the hearing, because it contained new information that was relevant to the Appellant’s disability claim.

Year*	Reported income	Maximum disability amount
2019	\$16,301	\$16,348
2020	\$26,693	\$16,652
2021	\$29,318	\$17,964
2022	\$27,582	\$17,610
2023	\$29,238	\$18,508
2024	\$28,255	\$19,281

\* The Appellant worked at X Ltd. from September 2019 to November 2024.

[24] The table shows that the Appellant consistently recorded earnings that significantly exceeded the maximum disability amount in every year from 2019 to 2024. Unfortunately for the Appellant, there is nothing in the law that permits me to characterize an above-threshold amount as anything other than substantially gainful.

[25] I understand that the Appellant earned her income under increasing psychological hardship, but the fact remains that she nevertheless maintained a reasonably paying job for several years. According to the philosophy that governs the CPP, claimants are either regularly capable of a substantially gainful occupation or they are not. The legislation makes no allowances for how difficult a claimant finds their job or how tired they may be after coming home from work; it only cares about whether the claimant is able to perform the job on a sustained basis and whether that job earns them some kind of living.

### **The Appellant was capable of regular employment**

[26] As the Appellant rightfully points out, above-threshold employment income is not determinative.<sup>14</sup> The Minister had to do more than just show the Appellant had substantially gainful earnings. The Minister also had to show that those earnings came from **regular** employment. In my view, the Minister fulfilled that obligation.

[27] The Appellant was continuously employed by X on a part-time basis for five years. Her boss confirmed that she worked part-time as an accounts receivable representative.<sup>15</sup> He also said that, Since COVID, she had worked at home and could keep her own hours: “The nature of the position does not require her to be present

<sup>14</sup> See *Canada (Attorney General) v Ibrahim*, 2023 FCA 204.

<sup>15</sup> See C. G.’s letter dated July 25, 2022, GD2R-84.

during any specific workday hours, this has allowed her to take the time she needs to rest and go to doctors' appointments, while still being able to work 20 hours per week.”

[28] The Appellant was able to work that many hours and sometimes more, week after week, year after year, for half a decade. That suggests to me that the Appellant is capable of “regular” employment. She said that, even though she worked from home, she kept a regular routine. She worked all her hours between Tuesday and Friday — her boss didn’t care when she worked so long as she did the work. She sometimes had trouble finishing tasks but that wasn’t a problem because she could come back and finish them another time.

[29] Add to that the fact that her employer was generally happy with her performance, even if she occasionally felt overwhelmed and had to take time off. When that happened, her boss would typically say something like, “That’s fine — you have sick days, vacation days. Go ahead and take some if you want.”

[30] The Federal Court of Appeal has said that the capacity of a disability claimant to regularly engage in remunerative employment is the “very antithesis” of a severe and prolonged disability.<sup>16</sup> The Appellant’s work activity cannot be fairly characterized as sporadic or intermittent. She may have pushed herself to her limit while working at X, but she nevertheless sustained a reasonably remunerative job on a fairly consistent schedule between 2019 and 2024.

### **The Appellant didn’t have a benevolent employer**

[31] If a claimant has a so-called “benevolent employer,” they can argue that they are not actually capable of pursuing a substantially gainful occupation, despite reported income above the threshold and after the coverage period.

[32] In a case called *Atkinson*, the Federal Court of Appeal held that a finding of “benevolence” depended on a number of relevant criteria, including:

- (i) whether the claimant’s work is productive;

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<sup>16</sup> See *Miller v Canada (Attorney General)*, 2007 FCA 237.



- (ii) whether the employer is satisfied with the claimant's work performance;
- (iii) whether the claimant has received accommodations that go beyond what is required of an employer in a competitive marketplace;
- (iv) whether the work expected of the claimant is significantly less than the work expected of other employees; and
- (v) whether the employer has experienced hardship as a result of those accommodations.

[33] Even though the Minister has the overall burden of proof, there is a presumption, valid until proven otherwise, that an employer is getting something like fair value in return for money they pay to their employees.<sup>17</sup> Put another way, it is up to disability claimants to show that their employers are benevolent.

[34] In this case, there wasn't enough evidence to substantiate the Appellant's claim that her job was akin to charity. Ultimately, I wasn't convinced that the Appellant was paid more than what her labour was worth.

[35] I saw and heard nothing to indicate that the Appellant was anything less than productive in her job. She clearly had a challenging position, much of which involved emailing and calling clients to pay their bills on time, yet X kept her on for five years, which suggests that her performance was satisfactory. The Appellant testified that she was eventually let go, not because of the quality of her work, but because X bought another company, and her job was made redundant.

[36] Nor did I see any evidence that X had extended the Appellant any special accommodations. The Appellant testified that her bosses didn't know anything about her mental history. She "masked" her psychological illnesses to get and keep her job. She occasionally took a "mental health day," but otherwise adopted a philosophy of "faking it until you make it." At the hearing, the Appellant flatly admitted that "X didn't do anything to accommodate me."

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<sup>17</sup> See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

[37] In March 2020, the Appellant was permitted to work from home, not because X wanted to accommodate her, but because the COVID-19 pandemic forced it to send many of its employees home. In a letter to Service Canada, the Appellant's boss wrote that he allowed her to keep on working remotely after the pandemic was over because "[s]he showed that she could work from home and keeping [sic] her own hours."<sup>18</sup> This to me suggests that the Appellant had **earned** the right to continue working from home, presumably by meeting targets and deadlines and by otherwise fulfilling her employer's productivity expectations. In any case, working from home can no longer be considered an extraordinary accommodation in a post-pandemic world, one in which many employers have discovered that remote employees can be no less productive than their on-site colleagues.

[38] In all, I saw nothing to indicate that X experienced any economic hardship by employing the Appellant as an accounts receivable clerk. I found it hard to believe that a small business, one not run by a friend or family member, would consistently pay the Appellant nearly \$30,000 per year unless it was receiving something like fair value in return.

### **The Appellant's disability was not prolonged**

[39] Under the *Canada Pension Plan*, disability must be severe and prolonged. I have already found that the Appellant's disability ceased to be severe when she began earning significantly more than the substantial gainful threshold in 2019. Although it is not, strictly speaking, necessary for me to do so, I find that her disability was not prolonged either. To be prolonged, a disability must be of indefinite duration; the Appellant's disability came to a definite end when she took on a job — even a part-time job — that brought her substantially gainful earnings.

### **Conclusion**

[40] It is unfortunate that the Appellant must return several years of benefits, and I regret that my decision will cause her financial hardship. However, she received those

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<sup>18</sup> See C. G.'s letter dated July 25, 2022, GD2R-84.

benefits after she ceased to be disabled. She knew, or should have known, that she was obliged to report her increased earnings to Service Canada.<sup>19</sup> She did not meet that obligation. Years later, when the Minister learned of the Appellant's above-threshold earnings, he had the right to investigate whether she had regained her ability to work, and he had the right to terminate her pension once he decided that her disability was no longer severe and prolonged. I am satisfied that, in doing so, the Minister acted in compliance with the law.

[41] I am dismissing this appeal. I don't doubt that the Appellant has limitations, but they did not prevent her from regularly making a substantially gainful living for five years. I find that the Appellant ceased to be disabled as of September 2019, the month she started her job at X and accepted the significant boost in pay that came with it. Taking into account a four-month work trial period, that means her disability pension should be properly terminated as of January 2020.<sup>20</sup>



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Member, Appeal Division

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<sup>19</sup> See section 70.1 of the *Canada Pension Plan Regulations*.

<sup>20</sup> When the Minister and, later, the General Division, found that the Appellant had ceased to be disabled, they both recognized a four-month work trial period. While such a period may reflect a Ministerial policy or guideline, it has no basis in law. Nevertheless, I am willing to recognize a four-month work trial period as well, since to do otherwise might disincentivize or penalize other disability recipients from attempting to re-enter the workforce.