



Citation: *DS v Minister of Employment and Social Development*, 2025 SST 538

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: D. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 27, 2024 (issued by
Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: May 21, 2025

Hearing participant: Appellant

Decision date: May 23, 2025

File number: GP-24-1463

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. S., stopped being disabled as of January 2022. She was only eligible for a Canada Pension Plan (CPP) disability pension when she was disabled. The disability pension payments that she got after she stopped being disabled are considered an overpayment (debt) that is owed to the Minister of Employment and Social Development (Minister).

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant applied for a disability pension on March 29, 2016, based on angioedema (swelling under the skin), poor mental health, and injuries from a car accident.¹ The Minister refused her application. The Appellant appealed to the Social Security Tribunal's General Division. On August 23, 2018, the Tribunal decided that she became disabled in December 2014. Her payments started as of April 2015.²

[5] On October 25, 2022, the Minister decided that the Appellant had stopped being disabled as of April 2022. The Minister stopped paying her a disability pension. The Minister also required her to pay back the payments that she got after April 2022.³

[6] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[7] The Minister says the Appellant's recent medical evidence supports that she is no longer disabled. More importantly, she successfully returned to work. It doesn't matter that her work consisted of contract positions that she got through a staffing agency as opposed to a permanent job with a single employer.⁴

¹ See GD2-884 to 893.

² See GD2-342 to 346.

³ See GD2-117 to 119.

⁴ The Minister's submissions are at GD3, GD10, and GD13.

[8] The Appellant says she continues to face various health challenges. She says she only went back to work (at jobs well below her skillset) because she needed the money. She doesn't consider her contract work to be real work because her employer is benevolent. She doubts that she will be able to find the same type of flexible, remote contract work now that the Covid-19 pandemic is over.⁵

What I have to decide

[9] I have to decide whether the Appellant stopped being disabled. If she stopped being disabled, then I also have to decide when.

[10] According to the law, an appellant stops being disabled when one of two things happens:

- Their disability stops being severe.
- Their disability stops being prolonged.

[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.⁶

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

[14] To stop paying a person a disability pension, the Minister must prove that the person stopped being disabled. The Minister must prove this on a balance of probabilities. This means the Minister must show that it is more likely than not the Appellant stopped being disabled.⁸

⁵ The Appellant's written submissions are at GD1-4, 9 to 11, GD4, and GD6. She also made oral submissions at the hearing.

⁶ 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.

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

⁸ See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

[15] I can only consider whether the Appellant stopped being disabled after August 23, 2018. This is because the Tribunal allowed her appeal and granted her a disability pension on that date.⁹

[16] To decide whether the Appellant stopped being disabled, I have to look at the Minister's evidence supporting its decision that the Appellant can work. 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.

[17] If I decide that the Appellant stopped being disabled, then she isn't eligible for a disability pension anymore. The Minister may also require her to pay back any payments that she got after she stopped being disabled.

Reasons for my decision

[18] I find that the Appellant stopped being disabled as of January 2022. That is when her disability stopped being severe.

Was the Appellant's disability severe?

[19] The Appellant's disability stopped being severe as of January 2022. I reached this finding by considering several factors. I explain these factors below.

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

[20] The Appellant's original application was approved based on angioedema, poor mental health, and injuries from a car accident. But I can't focus on her diagnoses.¹⁰ Instead, I must focus on whether she has functional limitations that get in the way of her

⁹ See *Kinney v Canada (Attorney General)*, 2009 FCA 158; and *SM v Minister (Employment and Social Development)*, 2022 SST 182.

¹⁰ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

earning a living.¹¹ When I do this, I must look at **all** of her medical conditions (not just the main one) and think about how they affect her ability to work.¹²

[21] I find that the Appellant still had functional limitations that affected her ability to work as of the hearing date.

– **What the Minister says about the Appellant’s functional limitations**

[22] The Minister’s submissions focus on the Appellant’s efforts to work. However, the Minister does note that her poor mental health is being managed with diet, exercise, and cognitive self-therapy.¹³ The Minister points to a May 2022 medical report from her family doctor which only gives fatigue and poor focus as limitations.¹⁴ In the Minister’s opinion, these limitations don’t amount to a severe disability.

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

[23] The Appellant says her angioedema used to be under control, but not anymore. Angioedema attacks impact how long she can sit, stand, and walk. She is forgetful and has trouble thinking of the right words to say. She has had more panic attacks in the last couple years. She now only leaves the house to go to the doctor and to buy groceries. She has diabetes and her back pain is worse.¹⁵

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

[24] The medical evidence supports that the Appellant’s functional limitations improved from September 2018 to the end of 2022. I don’t need to evaluate her functional limitations after 2022 because I believe that she stopped being disabled in January 2022.

[25] **Before September 2018**, the Appellant experienced episodes of angioedema throughout her body. She was anxious and depressed. Her mood and energy suffered. She was unfocused and forgetful. She also sustained injuries in a car accident. As a

¹¹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹² See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

¹³ See GD9-76.

¹⁴ See GD2-291.

¹⁵ See GD1-4, 9 to 11, GD4, GD6, and the hearing recording.

result, she had to take a 5-minute stretching break after every 30 minutes of sitting or standing.¹⁶

[26] **From September 2018 to the end of 2022**, the Appellant's overall health improved. The medical evidence shows that most of her medical appointments were to see her family doctor regarding cold symptoms and her blood pressure, which was mildly high.¹⁷ An annual physical in July 2020 noted that the Appellant had **no** headaches, dizziness, blurry vision, stomach pain, vomiting, diarrhea, urinary issues, muscle or joint aches, tenderness, or mobility restrictions.¹⁸ The Appellant had episodes of angioedema related to the removal of skin lesions and some dental work. These lasted about 10 days each time. Otherwise, she had only mild flares of angioedema caused by stress, and they responded well to antihistamines.¹⁹

[27] In July 2021, a gastroenterologist diagnosed the Appellant with mild irritable bowel syndrome (IBS).²⁰ This supports that any related symptoms were mild, too.

[28] In April 2022, the Appellant told her family doctor that she felt anxious and depressed, so he changed her medications.²¹ At the time, he didn't mention any functional limitations in his notes. Later, in a CPP medical report, he said these conditions cause fatigue and difficulty focusing.²²

– **My findings about the Appellant's functional limitations**

[29] I find that the Appellant's limitations from September 2018 to the end of 2022 included:

- needing access to a bathroom in case of any IBS flares
- fatigue

¹⁶ See the Appellant's original disability pension application at GD2-884 to 893.

¹⁷ See GD2-447 to 449 and 452 to 459.

¹⁸ See GD2-454.

¹⁹ See GD9-70 to 74.

²⁰ See GD9-63.

²¹ See GD2-449.

²² See GD2-291.

- difficulty focusing and remembering things

[30] Despite these limitations, the Appellant was regularly capable of doing substantially gainful work as of January 2022. Ultimately, it is a person's ability to work that determines whether they are disabled under the *Canada Pension Plan*.

– **My findings about the Appellant's ability to work**

[31] I find that the Appellant could work in the real world as of January 2022. That is when her disability stopped being severe. To explain how I came to this conclusion, I will first describe her work history.

– **The Appellant's work history**

[32] From 2002 to 2014, the Appellant worked for X as an IT business operational analyst. Sometimes she worked from home. She stopped working because she had an allergic reaction resulting in angioedema.²³

[33] In 2021, the Appellant decided to see if she could go back to work. She wanted to start by taking on a short-term contract. She connected with N, which is a placement agency for contract workers. She accepted three contracts to do data entry and clerical work in person on a full-time basis:²⁴

- from August 30 to September 2, 2021
- from September 30 to October 1, 2021
- from October 14 to December 3, 2021

[34] The last contract was supposed to last three months. But the Appellant didn't finish it because she found it too stressful. However, I note that she accepted another

²³ See GD2-884 and 885.

²⁴ See GD2-301 to 319 and the hearing recording.

contract position less than two weeks later with a different staffing agency called Y. She worked for Y:²⁵

- from December 13, 2021, to February 20, 2022
- from March 16, 2022, to July 2023
- from December 2023 to February 2024
- from November 2024 to March 2025

[35] These contracts allowed her to work from home. She could choose when she worked, as long as she worked 37.5 hours per week. She was only required to interact with a few people, mostly by email.²⁶

[36] Now, I will explain how the Appellant's work history shows that she stopped being disabled in January 2022.

– **The Appellant's income was substantially gainful**

[37] The Appellant's income in 2022 and 2023 was substantially gainful. She earned \$43,266 in 2022 and \$32,956 in 2023.²⁷ By comparison, a substantially gainful income was \$17,610.06 in 2022 and \$18,508.36 in 2023.²⁸

– **The Appellant was regularly capable of working**

[38] The Appellant doesn't consider herself to be regularly capable of working. She says she doesn't know how she will feel from one day to the next. And she doesn't work the same schedule every day, all year long. Rather, she works on a contract basis and her hours aren't the same every day.

[39] It doesn't matter whether the Appellant's work is regular. What matters is whether she is regularly capable of doing that work.²⁹

²⁵ See GD2-301 to 319. Elsewhere, the Appellant's start date is given as December 31, 2021 (GD2-162 to 164). The Appellant explained that this was her first pay day.

²⁶ See GD2-162 to 164, 301 to 319, GD5, and the hearing recording.

²⁷ See GD12-3, 4, and GD13-3.

²⁸ See section 68.1 of the *Canada Pension Plan Regulations*.

²⁹ See *Canada (Minister of Human Resources Development) v Scott*, 2003 FCA 34.

[40] The Appellant's work history shows that she was regularly capable of working full-time throughout 2022 and 2023 whenever she had a contract. Y completed a questionnaire for Service Canada on July 19, 2022.³⁰ At that time, the Appellant had worked for Y for about half a year. The questionnaire says she had no absences for medical reasons. I understand that she was able to arrange her workday so that she could attend medical appointments. But she still managed to consistently put in full-time hours.

– **The Appellant's employer isn't benevolent**

[41] The Appellant says Y is a benevolent employer. I disagree.

[42] Determining whether an employer is benevolent requires asking these questions:³¹

- Was the Appellant's work productive?
- Was her employer satisfied with her performance?
- Was she expected to do significantly less than other employees?
- Did her employer accommodate her beyond what would be required in the competitive marketplace?
- Did her employer experience hardship as a result of those accommodations?

[43] Based on the answers to these questions, I cannot conclude that the Appellant's employer from 2022 to the present—namely Y—is benevolent.

[44] **First, the Appellant's work is productive.** In broad terms, she does data entry and clerical work. She argues that this type of work is well below her skillset. That may be. But it is still productive work. It is work that must be done. If she didn't do it, Y would likely hire someone else to do it. Y and its clients aren't creating work simply to keep the Appellant employed.

³⁰ See GD2-162 to 164.

³¹ See *Canada (Attorney General) v Ibrahim*, 2023 FCA 204.

[45] **Second, Y is satisfied with the Appellant's performance.** The questionnaire indicates that the quality of her work was satisfactory. She works independently, which suggests that Y trusts her to manage her own work.³² Y has hired the Appellant for multiple contract positions, indicating that it is pleased with the work that she does. In fact, Y has even reached out to her to offer her contracts.³³

[46] **Third, the Appellant wasn't expected to do significantly less than other employees.** I see no evidence that Y's expectations of the Appellant differed in any way from Y's expectations of other contract employees in terms of productivity.

[47] **Fourth, Y didn't accommodate the Appellant beyond what would be required in the competitive marketplace.** She didn't require any special equipment or help from co-workers.³⁴

[48] The Appellant was allowed to work from home and to choose when she worked, provided that she still worked full-time hours. She says she needed this flexibility partly because of her medical conditions themselves and partly because she had to attend medical appointments. She testified that no other organization would allow her to work under these conditions. However, neither the Appellant nor I am in a position to conclude that no other organization would offer these work conditions. Being able to work from home and to choose one's hours doesn't strike me as an accommodation, even if not all employers or jobs would permit this arrangement. Y may be a flexible employer, but that is different from being a benevolent employer.

[49] **Fifth, Y didn't experience hardship as a result of any accommodations.** Given the type of work that the Appellant did (data entry and clerical work that required minimal interaction with others, mostly by email), I don't see how Y or its clients would experience hardship by letting her work from home on her own schedule. Indeed, there is no evidence of such hardship.

³² See GD2-162 to 164.

³³ The Appellant said this at the hearing.

³⁴ See GD2-162 to 164.

– **I don't need to consider the Appellant's personal characteristics**

[50] When I am deciding whether the Appellant can work, I generally have to consider factors like her:

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

[51] 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.³⁵

[52] I don't have to consider the Appellant's personal factors in this case because she has already shown that she is regularly capable of doing substantially gainful work in the real world. Her disability stopped being severe in January 2022, when she started working for Y.³⁶

The Appellant's other arguments

[53] The Appellant says she had to work because her husband's income was negatively impacted by the Covid-19 pandemic and she needed money to pay for dental procedures. But this doesn't change the fact that she is regularly capable of doing substantially gainful work. Eligibility for a disability pension isn't based on financial need.

[54] The Appellant questions how the Minister could stop paying her a disability pension and at the same time refuse to let her participate in a government-sponsored retraining program when she asked to do so in 2020 or 2021. My decision is about the requirements to be eligible for a disability pension, not the requirements to participate in a retraining program.

³⁵ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

³⁶ Technically, the Appellant started working for Y on December 13, 2021. But her first month of full-time work was January 2022.

[55] The Appellant says the type of work she did in 2022 and 2023 is no longer available. At least a portion of that work involved submitting claims for Covid-19 government benefits. The Covid-19 pandemic is over. In her view, this also means more employers are requiring their employees to attend work in person.

[56] I don't find this argument convincing. Y continues to offer the Appellant contracts to work from home. Those contracts are shorter than they used to be. But I can't conclude that this is due to the end of the pandemic as opposed to any number of other economic factors. Furthermore, it is not clear to me that the Appellant has asked for more or longer contracts. Her last two contracts were related to year-end paperwork and resulted from Y reaching out to **her**, not the other way around.³⁷ And the Federal Court says I can't consider labour market conditions in making my decision.³⁸

[57] Once I find that an appellant has stopped being disabled, I can't decide whether they have become disabled again. If the Appellant believes that she became disabled again since January 2022—whether due to a change in the availability of suitable work or in her medical conditions—she can reapply for a disability pension. The Minister (that is, Service Canada) will decide the application.

Conclusion

[58] The Minister has proven that the Appellant stopped being disabled as of January 2022 and is no longer entitled to a disability pension.

[59] This means the appeal is dismissed.

James Beaton

Member, General Division – Income Security Section

³⁷ The Appellant said this at the hearing.

³⁸ See *Canada (Minister of Human Resources Development) v Rice*, 2002 FCA 47.