



Citation: *TV v Minister of Employment and Social Development*, 2025 SST 540

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: T. V.

Respondent: Minister of Employment and Social Development
Representative: Andrew Kirk

Decision under appeal: General Division decision dated October 3, 2024
(GP-23-1917)

Tribunal member: Neil Nawaz

Type of hearing: Videoconference

Hearing date: May 14, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: May 23, 2025

File number: AD-25-24

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension.

Overview

[2] The Appellant is a 63-year-old former self-employed blind installer and cleaner with a history of hip and back problems. She stopped working in September 2021 and underwent right hip replacement surgery in April 2024.

[3] In April 2022, the Appellant applied for a CPP disability pension. In her application, she claimed that she could no longer work because of chronic back pain that made it difficult for her to lift blinds.¹

[4] Service Canada, the Minister's public-facing agency, refused the application after determining that the Appellant did not have a severe and prolonged disability during her CPP disability coverage period, which it determined had ended no later than January 31, 2021.² Among other things, it noted that the Appellant's family doctor did not advise her to stop working until November 2021.

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal. The Tribunal's General Division held a hearing by videoconference and dismissed the appeal. It found that, while the Appellant might be disabled now, there wasn't enough medical evidence to show that she was regularly incapable of substantially gainful employment as of January 31, 2021.

[6] The Appellant then applied for permission to appeal to the Appeal Division. In January, one of my colleagues granted the Appellant permission to appeal. Earlier this month, I held a hearing to discuss the Appellant's disability claim in full.

¹ See Appellant's application for the CPP disability pension dated April 19, 2022, GD2-77.

² See Service Canada's reconsideration refusal letter dated August 25, 2023, GD2-4. See also the Minister's reconsideration adjudication summary dated August 25, 2023, GD2-110.

Issues

[7] For the Appellant to succeed, she had to prove that, more likely than not, she had a severe and prolonged disability during her CPP disability coverage period or, as it is more formally known, the minimum qualifying period (MQP).

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.³ 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.⁴ The disability must be expected to keep the claimant out of the workforce for a long time.

[8] Based on her record of earnings and contributions, the Appellant's regular MQP ended on December 31, 2020.⁵ Because she also had modest contributions in 2021, that qualified her for the proration provision, which extended her coverage to January 31, 2021.⁶ In this appeal, my task was to decide whether the Appellant had a severe and prolonged disability as of the latter date.

Analysis

[9] I have applied the law to the available evidence and concluded that the Appellant is not entitled to the CPP disability pension. The Appellant suffers from chronic back and hip pain, but there wasn't enough evidence to show that it prevented her from working before January 31, 2021.

³ See *Canada Pension Plan*, section 42(2)(a)(i).

⁴ See *Canada Pension Plan*, section 42(2)(a)(ii).

⁵ Under section 44(2) of the *Canada Pension Plan*, an MQP is established by making threshold contributions to the CPP. According to the formula used to calculate the MQP, disability claimants get six years of coverage for their last four years of valid contributions. See the Appellant's record of earnings and contributions at GD2-83.

⁶ Section 44(2.1) of the *Canada Pension Plan* exempts claimants from the full contribution requirement if they can show that what would have been their final year of valid contributions was cut short because of their disability.

The Appellant's impairments became severe after her coverage period

[10] Claimants for disability benefits bear the burden of proving that they had a severe and prolonged disability during their coverage period.⁷ I have reviewed the record, and I have concluded that the Appellant did not meet that burden according to the test set out in the *Canada Pension Plan*. While the Appellant had medical problems before January 31, 2021, the evidence shows that they dramatically worsened well after that date.

– The Appellant admitted she could work after her coverage period

[11] In her application for benefits, the Appellant said that she owned and operated a blind cleaning business for 24 years. She also said that she did painting and house cleaning on the side for the construction industry.⁸ She claimed that she became disabled from all work in September 2021.

[12] At her hearing, the Appellant testified that she has always had migraine headaches and back problems but that they didn't start to feel truly "yucky" until late 2021. She started her career in the payroll office of a company that manufactured electric motors but gave that up to start her own business in 1997. For the next two decades, she installed, repaired, and cleaned blinds in Langley, B.C.

[13] In 2018, she moved several hours away to X, a much smaller community, where she attempted to establish a similar business. It was hard building up a new client base from scratch, so she took a part-time job painting fascia board to be installed on house exteriors. When the COVID-19 pandemic hit, her business suffered, but she carried on painting.

[14] Sometime in the fall of 2021, her back condition suddenly got worse, although she's not sure why. She can't recall any specific incident or injury that might have led to the deterioration but, before long, she became increasingly unsteady on her feet. She felt unsafe climbing ladders, which was a real problem in her line of work.

⁷ See *Canada Pension Plan*, section 44(1).

⁸ See the Appellant's CPP disability application dated April 19, 2022, GD2-77.

[15] At around the same time, she started to feel pain in her left hip, although she didn't mention it to her doctor until early 2022. It progressed quickly, and she began to suffer falls. She was placed on a waiting list for hip replacement surgery and finally underwent the procedure in April 2024. It has relieved her pain, but her recovery has been slow, and her physical capacity is now a fraction of what it used to be. She hasn't worked since 2021, but she still does the odd cleaning job.

[16] In writing and in testimony, the Appellant has consistently said that her health was essentially good until late 2021. She had long experienced back pain but successfully managed it with heat pads and over the over-the-counter pain medications. Her admits her condition took a sudden turn for the worse in September 2021, but by then her coverage period was eight months in the past.

[17] While the Appellant may be disabled now, her own words suggest that she was still regularly capable of substantially gainful employment as of January 31, 2021.

– The medical evidence before January 31, 2021 doesn't point to serious health problems

[18] A CPP disability claimant must provide objective medical evidence supporting a claimed mental or physical disability, including reports about its nature, extent, and prognosis.⁹ At least some of the evidence must relate to the claimant's coverage period.

[19] In this case, the available medical evidence doesn't point to a severe disability before January 31, 2021:

- In February 2020, Dr. Enns, family physician, reported that the Appellant was complaining of migraine headaches and poor sleep.¹⁰ Dr. Enns noted that the Appellant reported increased stress because she was looking for work, moving to a new home, and grieving the deaths of her two brothers. Dr. Enns prescribed the Appellant with amitriptyline for her migraines and

⁹ In *Warren v Canada (Attorney General)*, 2008 FCA 377, the Federal Court of Appeal said there must be some objective medical evidence of a disability. See also *Canada (Attorney General) v Dean*, 2020 FC 206.

¹⁰ See clinical note dated February 26, 2020 by Dr. Alexandra Enns, family physician, GD2-128.

anxiety. Two months later, the Appellant told Dr. Enns that she was finding the amitriptyline helpful.¹¹

- In December 2020, the Appellant informed Dr. Enns that she had been experiencing left hip pain since a fall five years earlier.¹² She found Advil helpful. Dr. Enns noted nothing unusual in the x-rays but nevertheless recommended physiotherapy and corticosteroid injections.
- In an clinical note from January 2021, only a few weeks before the end of the coverage period, Dr. Gilbank, filling in for Dr. Enns, renewed the Appellant's amitriptyline at an increased dose.¹³ However, there was nothing in the note, or the ones immediately preceding it, to suggest that the Appellant's health had drastically declined to the point where she could no longer work.
- The next entry was three months later. In April 2021, the Appellant saw Dr. Enns for prescription renewals and a medical checkup, which was normal.¹⁴ Over the next six months, the Appellant consulted with Dr. Enns six times, mainly about intermittent left breast pain and other passing complaints.¹⁵
- The Appellant didn't mention hip or back pain again until November 2021, when she described a "burning" quality around the anterolateral hip, and sometimes into the buttock and down the leg.¹⁶ Subsequent x-rays showed findings consistent with scoliosis and age-related degenerative disc disease.¹⁷
- It wasn't until February 2022, well after the MQP, that the Appellant was referred to a specialist. Dr. De Wet, who runs a pain management clinic, diagnosed the Appellant with chronic intermittent back pain and ordered lidocaine injections.¹⁸ His history made it clear that the Appellant's pain did

¹¹ See Dr. Enns' clinical note dated April 30, 2020, GD2-130.

¹² See Dr. Enns' clinical notes dated December 9, 2020 (GD2-132) and December 11, 2020 (GD2-133).

¹³ See clinical note dated January 11, 2021 by Dr. Jacqueline Gilbank, general practitioner, GD2-135.

¹⁴ See Dr. Enns' clinical note dated April 14, 2021, GD2-136.

¹⁵ See Dr. Enns' clinical notes dated April 23, 2021, April 29, 2021, May 13, 2021, May 28, 2021, June 2, 2021, and August 19, 2021, GD2-137 to GD2-142.

¹⁶ See Dr. Enn's clinical note dated November 19, 2021, GD2-143.

¹⁷ See Dr. Enns' clinical note dated December 1, 2021, GD2-144.

¹⁸ See report dated February 25, 2022 by Dr. Guy Antony De Wet, pain specialist, GD2-165.

not become acute until after the coverage period: “[She] has been struggling with intermittent back pain for the past five years or so that has become constant over the past year. She bent over to pick up something last August and felt acute pain in her [left] lower back/lumbosacral junction. She had severe back pain for a few days that settled down. After a few months it began to radiate down into her [left] groin and lateral thigh to her knee.”

- In May 2022, Dr. Enns completed a medical questionnaire to accompany the Appellant’s CPP disability application.¹⁹ Dr. Enns diagnosed the Appellant with chronic pain syndrome, degenerative disc disease, and migraines and noted that she had difficulty with physically demanding work, as well as prolonged sitting and standing. She said that she had advised the Appellant stop working as of November 1, 2021.
- However, this opinion doesn’t align with what Dr. Enn was saying in her clinical notes over the preceding year. As noted, there were the 11 months between December 2020 and November 2021 in which the Appellant apparently didn’t mention back or hip pain to her family doctor, despite seeing her many times during that period. And if Dr. Enns advised the Appellant to stop working in November 2021, there was no mention of it in her clinical notes from around that time. In any event, November 2021 was several months after the end of the coverage period.
- In February 2023, another family physician, Dr. Lepage, noted that the Appellant’s left hip pain had progressed over “at least a year-and-a-half,” again suggesting that her condition did not become acute until after her coverage period. Dr. Lepage noted that, although the Appellant’s x-ray appeared normal, she probably had osteoarthritis and was a suitable candidate for hip replacement.²⁰

¹⁹ See Dr. Enns’ CPP Disability Medical Report dated May 11, 2022, GD2-155

²⁰ See Letter dated February 23, 2023 by Dr. Philippe Lepage, family physician, GD2-123.

[20] On the whole, there is no objective medical evidence on file to suggest that the Appellant experienced significant functional impairments prior to January 31, 2021. There's no question that the Appellant has a history of back and hip pain. However, she rarely mentioned back pain to Dr. Enns in 2020–21, and she did not disclose any hip pain until December 2020 — only two months before the coverage period ended. Even then, the Appellant reported mere “tenderness” in her hip that was addressed with subdural injections.²¹ It wasn't until the following year that the Appellant reported debilitating pain that might have interfered with her ability to work, had she been still working. In short, the Appellant's condition deteriorated well after her MQP.

– The Appellant worked after her coverage period

[21] The Appellant's testimony and her medical evidence suggest that she was functional before January 31, 2021. But there is also the fact that she earned a substantially gainful amount after that date.

[22] Section 68.1 of the *Canada Pension Plan Regulations* associates “substantially gainful” with a specific dollar value, depending on the year. Any amount earned over the maximum annual amount that a person can receive as a disability pension is deemed to be substantially gainful. In 2021, that amount was \$17,025.

[23] In her application for benefits, the Appellant said that worked until September 2021 in two different positions — 16 hours per week painting and cleaning houses and eight hours per week running her blind business.²² In testimony, the Appellant confirmed that she continued to work well into 2021. That year, she reported earnings totalling \$18,690, although she wasn't sure how much of that amount came from business, employment, or some other source.²³ Those earnings exceeded the maximum allowable amount for the year.

[24] Unfortunately, there is nothing in the law that permits me to characterize above-threshold earnings as anything other than substantially gainful. I understand that the

²¹ See Dr. Enns' clinical note dated December 11, 2020, GD2-133.

²² See the Appellant's CPP disability application dated April 19, 2022, GD2-77.

²³ See the Appellant's 2021 T1 income tax return (GD2-51) and her 2021 notice of assessment (GD2-73).

Appellant may have been working through pain, but the fact remains that, well into 2021, she sustained two jobs that, between them, were reasonably well paying. 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; 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.

I don't have to consider whether the Appellant has a prolonged disability

[25] A disability must be severe **and** prolonged.²⁴ Since the Appellant has not proved that her disability is severe, there is no need for me to assess whether it is also prolonged.

Conclusion

[26] The Appellant's back and hip condition may be severe now, but there wasn't enough evidence to show that it was severe on January 31, 2021, the last time she had CPP disability coverage. The Appellant's medical file indicates that her back pain was mild and intermittent well into 2021. It also suggests that her hip pain did not become acute until the following year. The Appellant admitted that she managed to keep working until late 2021, and that is borne out by her above-threshold earnings for the year.

[27] The appeal is dismissed.



Member, Appeal Division

²⁴ See *Canada Pension Plan*, section 42(2)(a).