



[TRANSLATION]

Citation: *ÉS v Minister of Employment and Social Development*, 2025 SST 194

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: É. S.

Respondent: Minister of Employment and Social Development
Representative: Lucky Ingabire and Érélegna Bernard

Decision under appeal: General Division decision dated
May 22, 2024 (GP-23-2104)

Tribunal member: Jude Samson

Type of hearing: Videoconference

Hearing date: December 13, 2024

Hearing participants: Appellant
Respondent's representatives

Decision date: March 5, 2025

File number: AD-24-540

Decision

[1] I am dismissing the appeal of the Applicant, É. S. She isn't eligible for a Canada Pension Plan (CPP) disability pension.

Overview

[2] The Applicant applied for a CPP disability pension. She was a care worker. In March 2011, she injured her right shoulder while trying to hold back a client who was falling. Also, the Applicant says that other medical conditions prevent her from working. These medical conditions include the following: depression; anxiety; tachyarrhythmia, that is, a heart rate that is too fast; spasms of the Oddi sphincter; and bowel disease mainly affecting the liver and pancreas.

[3] The Minister of Employment and Social Development (Minister) refused the Applicant's application. It found that she hadn't had a severe and prolonged disability by December 31, 2013—the last day of her coverage period.¹

[4] The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division. The General Division dismissed the appeal.

[5] The Applicant then appealed the General Division decision to the Appeal Division. I gave her permission to appeal and took a fresh look at the case.² But I find that she isn't eligible for a disability pension.

Issue

[6] Did the Applicant have a severe and prolonged disability by December 31, 2013?

¹ The coverage period is formally known as the minimum qualifying period.

² See section 58.3 of the *Department of Employment and Social Development Act*.

Analysis

[7] To be eligible for a CPP disability pension, you have to prove that you had a severe and prolonged disability by the end of your coverage period. The Applicant's coverage period ended in December 2013.³

[8] The end of the coverage period is very important in this case because the Applicant was involved in a serious road accident in November 2016. Given the eligibility requirements of the CPP, I can't consider the after-effects that she had to deal with after this road accident.

[9] You are considered to have a severe disability if you are incapable regularly of pursuing any substantially gainful occupation. The severity test has to be analyzed in a real-world context.⁴ This means that, when deciding whether your disability is severe, I have to consider your overall condition and factors like age, level of education, language abilities, and past work and life experience.⁵

[10] I also note this important information from the Federal Court of Appeal:

- The severity of the disability isn't based on the applicant's incapacity to perform their regular job, but rather any substantially gainful occupation.⁶
- It is the capacity to work that determines the severity of the disability under the *Canada Pension Plan*—not the diagnosis or description of the illness.⁷
- In cases where there is evidence of work capacity, the applicant has to show that they have made efforts to find and keep a job, but that those efforts were unsuccessful because of health conditions.⁸

³ See GD5-19 to GD5-23.

⁴ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

⁵ See *Bungay v Canada (Attorney General)*, 2011 FCA 47 at para 8.

⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248; and *Patterson v Canada (Attorney General)*, 2009 FCA 178.

⁷ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

⁸ See *Inclima v Canada (Attorney General)*, 2003 FCA 117 at para 3.

The Applicant didn't have a severe disability by December 31, 2013

– The Applicant had functional limitations before December 2013

[11] At the hearing, I heard the testimony of the Applicant and her witnesses, who all described the functional limitations that she had experienced from 2011 to 2013. The witnesses were the following:

- Dr. Dawn-Marie Martin Ward, the Applicant's family doctor since 1999
- M. M., the Applicant's spouse
- C. S., the Applicant's friend

[12] The Applicant testified about the hardships she had faced while trying to manage multiple medical conditions. Some of these conditions had been unpredictable and had led to acute attacks. She also had insomnia and significant family responsibilities.

[13] The Applicant said that she was a strong, proud, and courageous woman, but that the March 2011 accident had turned her life upside down—leaving her unable to function.

[14] After the March 2011 accident, Dr. Martin Ward referred the Applicant to Dr. Frenette because she had ongoing pain in the right shoulder area.⁹ This orthopedic surgeon diagnosed her with tendinopathy and right shoulder impingement syndrome. He found that she shouldn't do work requiring repetitive movements of the right arm above shoulder level.

[15] According to Dr. Martin Ward, the Applicant also had significant medical conditions that weren't related to the March 2011 accident.¹⁰ For example, she was hospitalized for a pancreatitis attack, and her digestive issues could trigger

⁹ See Dr. Frenette's report at GD2-147.

¹⁰ See also Dr. Martin Ward's letter at AD1-11.

unpredictable flare-ups. Her episodes of tachyarrhythmia were also impossible to predict and required periods of rest.

[16] All of these issues also had a negative impact on the Applicant's mental health, causing her to be depressed, anxious, and unhappy.

[17] Dr. Martin Ward said that the Applicant is right-handed and that the pain in her shoulder prevented her from getting a good night's sleep, affecting her energy and mood even more.¹¹

[18] The other witnesses also noted how the March 2011 accident significantly impacted the Applicant's lifestyle:

- The Applicant's spouse said that he slept in a separate room to avoid disturbing his wife's sleep.
- The Applicant's spouse said that her digestive issues were unpredictable, caused her severe pain, and led to embarrassing and discouraging situations.
- The Applicant's spouse and friend said that her medical condition prevented her from doing housework, pursuing her hobbies, leaving the house, and taking care of herself.

[19] So, I recognize that the Applicant had some medical conditions before the March 2011 accident. But she was able to manage those conditions without them significantly affecting her capacity to work.

[20] The March 2011 accident caused the Applicant chronic pain, some limitations in the use of her right arm, and sleep problems. Also, both her digestive issues and irregular heart rate caused occasional—but unpredictable—attacks. These attacks worsened her mental health issues and affected her capacity to work to some extent.

¹¹ Listen to the hearing recording for Dr. Martin Ward's testimony, and see her letter at AD1-11.

– **Contemporaneous medical evidence is inconsistent with the presence of a severe disability before December 2013**

[21] Regardless of the above findings, the contemporaneous medical evidence is ample and consistent: The Applicant retained some capacity to work. Also, the courts have noted the importance of medical evidence in a case like this one.¹²

[22] The following is a summary of the medical evidence on record:

- The Applicant saw a cardiologist in May 2012 because she had experienced four episodes of tachycardia in one year.¹³ These episodes occurred when she was exerting herself and especially when she was under a lot of stress. But the cardiologist didn't impose any restrictions on her because of this medical condition.
- In April 2013, Dr. Frenette found that the Applicant could work as long as it didn't require repetitive movements with her arms above shoulder level.¹⁴ He also offered some treatment options, but she refused them because of her phobias.
- In May 2014, the Applicant completed a multidisciplinary assessment that WorkSafeNB had requested.¹⁵ No permanent restrictions were identified during this assessment. It was noted in the report that she had a history of recurrent depression and generalized anxiety disorder. But a psychiatrist found that she was managing her symptoms well, that her mental health was stable, and that there was no psychiatric reason preventing her from going back to work. Also, the General Division gave her a score of 71 to 80 on the Global Assessment of Functioning Scale. This score meant that her symptoms were minimal across all areas.¹⁶

¹² See, for example, the Federal Court decision in *Canada (Attorney General) v Dean*, 2020 FC 206.

¹³ See report at GD2-238.

¹⁴ See GD2-146.

¹⁵ See report at GD2-337.

¹⁶ See GD2-364.

- In July 2014, Diane Boudreau reviewed the above multidisciplinary assessment and found that the Applicant was fit to go back to work. She based this finding on the fact that she was able to care for her son and herself, do the activities of daily living, and go to the gym.
- By December 2014, the Applicant was still refusing the additional treatments that Dr. Frenette had proposed. But the doctor agreed with her that she should switch to a sedentary job and work about 20 hours per week.¹⁷
- In May 2016, the Applicant completed a functional capacity assessment. Alex Corbin, an occupational therapist, found that she had the capacity to do work activities at a sedentary and light level for full days.

[23] I recognize that the Applicant challenges the findings that Alex Corbin came to after the assessment. But this assessment is just one of many, and all of them have led to the same conclusion.

[24] I also recognize that Dr. Martin Ward now supports the Applicant's application for disability benefits, saying that she has had a severe disability since December 2013 at the latest.¹⁸ But Dr. Martin Ward's previous statements suggest that the Applicant retained the capacity to work.

[25] Dr. Martin Ward said in multiple reports that the Applicant was ready to go back to work part-time and to take on a sedentary job suited to her limitations.¹⁹

[26] I give more weight to Dr. Martin Ward's previous statements—made between 2011 and 2015—than to those made 10 years later. I find that the previous statements more accurately reflect the Applicant's medical condition toward the end of her coverage period.

¹⁷ See GD2-147.

¹⁸ See Dr. Martin Ward's letters at GD1-8 and AD1-11.

¹⁹ See, for example, GD2-234, GD2-244, GD2-299, GD2-321 to GD2-324, GD2-333, GD2-670, and GD2-804.

[27] According to Dr. Juéry, medical advisor and witness for the Minister, there is no medical information on record that justifies Dr. Martin Ward's new finding.

[28] Also, the Minister pointed out the medical report that Dr. Martin Ward had completed in support of the Applicant's application for benefits.²⁰ The Minister argues that this report confirms that the November 2016 road accident is the main reason why she is unable to work.

[29] At the hearing before me, Dr. Martin Ward said that WorkSafeNB had been pressuring the Applicant to go back to work. The doctor was concerned that the Applicant's benefits would be cut if she didn't try to go back to work. Also, she hadn't known about the issue of the coverage period when she had completed the medical report that was submitted with the Applicant's application for benefits.

[30] I don't doubt the Applicant's needs. But Dr. Martin Ward's justifications suggest that she is looking after her patient's interests—to the point of tailoring her statements to meet the eligibility criteria for the benefit in question.

[31] In addition, other medical reports also lead me to believe that the November 2016 road accident had a much greater impact on the Applicant's medical condition than the March 2011 work injury.²¹ But the road accident occurred after her coverage period had ended, so I can't consider it.

[32] Based on ample and consistent medical evidence, I find that the Applicant retained the capacity to work a sedentary job in December 2013, suited to her limitations.

²⁰ See Dr. Martin Ward's report at GD2-134.

²¹ See, for example, GD2-167, GD2-175, and GD2-804.

– **The Applicant didn't try to go back to work in a job suited to her limitations**

[33] I recognize that the Applicant tried to go back to her previous job as a care worker in 2012. She says that her attempt was unsuccessful because of her medical condition.

[34] But I find that this attempt doesn't support severe disability because of two main reasons.

[35] First, the evidence shows that the Applicant's condition improved over time. In April 2013, Dr. Frenette was one of the first to find that she was fit to go back to work. But she didn't try to go back to work after that date.

[36] Also, the Applicant tried to go back to her previous job as a caregiver. I understand that she tried to go back to work gradually. But this attempt wasn't well suited to her limitations. For example, she testified that she worked for five days a week. Instead, it was recommended that she start with a more sedentary job and work fewer hours.²²

[37] The medical evidence on record and the lack of any attempt to go back to work in a job better suited to the Applicant's limitations lead me to find that she hasn't shown, on a balance of probabilities, that she was incapable regularly of pursuing any substantially gainful occupation.

[38] In addition, the Applicant's age, level of education, language abilities, and past work and life experience didn't affect her capacity to work in December 2013. At that time, she was 47 years old, spoke French, had almost completed high school, had a long employment history—namely as a receptionist—and had shown a capacity to retrain.

[39] In short, I find that the Applicant didn't have a severe disability by December 2013. So, she isn't eligible for a CPP disability pension.

²² See letters at GD2-147, GD2-251, and GD2-324.

[40] Based on this finding, I don't have to consider whether the Applicant's disability was prolonged.

[41] I sympathize with the Applicant's situation. She clearly needs help. But I have no choice but to apply the very restrictive definition of severe disability under the *Canada Pension Plan*. Unfortunately, this definition doesn't allow all individuals with severe and prolonged impairments to receive a disability pension.²³

Conclusion

[42] I am dismissing the Applicant's appeal. She isn't eligible for a CPP disability pension.

Jude Samson
Member, Appeal Division

²³ See *Atkinson v Canada (Attorney General)*, 2014 FCA 187 at para 3.