



Citation: *LG v Minister of Employment and Social Development*, 2025 SST 808

**Social Security Tribunal of Canada**  
**General Division – Income Security Section**

## **Decision**

**Appellant:** L. G.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated May 24, 2024 (issued by  
Service Canada)

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**Tribunal member:** Wayne van der Meide

**Type of hearing:** Teleconference

**Hearing date:** August 5, 2025

**Hearing participants:** Appellant  
Appellant's witness

**Decision date:** August 7, 2025

**File number:** GP-24-1459

## Decision

[1] The appeal is allowed in part.

[2] The Appellant, L. G., isn't eligible for a Canada Pension Plan (CPP) disability pension. She is eligible for a CPP post-retirement disability benefit (PRDB). Payments start as of January 2023.

[3] This decision explains why I am allowing the appeal in part.

## Overview

[4] The Appellant started working as a postal clerk in 2009. There is conflicting evidence about when she stopped working. I will talk more about that later. She turned 60 in September 2021. She started to receive a CPP retirement pension in October 2021.<sup>1</sup>

[5] On February 11, 2023, she applied for a CPP disability pension.<sup>2</sup> Because the Appellant was getting a CPP retirement pension, the Minister of Employment and Social Development (Minister) also considered whether she was eligible for a PRDB.

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

[7] The Minister says that the Appellant isn't eligible for a disability pension because she applied for it more than 15 months after her retirement pension started. The Minister also says that the Appellant isn't eligible for a PRDB because her disability wasn't severe.

[8] The Appellant says that isn't capable of working because of because of chronic and severe fatigue and brain fog.

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<sup>1</sup> See GD2R-4.

<sup>2</sup> See GD2R-59 to GD2R-62.

## What I have to decide

[9] I have to decide if the Appellant is eligible for a CPP disability pension or a PRDB.

## Reasons for my decision

### The Appellant isn't eligible for a CPP disability pension

[10] The Appellant isn't eligible for a CPP disability pension because she applied more than 15 months after she started getting her CPP retirement pension.

[11] The law says that a person who is receiving a CPP retirement pension can't get a CPP disability pension at the same time.<sup>3</sup> They can cancel their retirement pension so that they can receive a disability pension instead. They can only do this if they became disabled before the month when payment of the retirement pension began.<sup>4</sup>

[12] But the law also says that the earliest a person can be considered to be disabled is 15 months before they applied for the disability pension.<sup>5</sup>

[13] This means the CPP doesn't allow a person to cancel a retirement pension in favour of a disability pension if they applied 15 months or more after the retirement pension started to be paid.

[14] The Appellant began receiving a CPP retirement pension in October 2021. She applied for a CPP disability pension in February 2023. The earliest she could be considered to have become disabled was 15 months before that, in November 2021. November 2021 is **after** she began receiving a CPP retirement pension. So, regardless of her medical condition, it isn't possible for her to be found disabled before she began receiving her retirement pension.

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<sup>3</sup> See sections 44(1)(b) and 70(3) of the *Canada Pension Plan*.

<sup>4</sup> See section 66.1(1.1) of the *Canada Pension Plan*.

<sup>5</sup> See sections 42(2)(b) and 60(6) of the *Canada Pension Plan* and section 43(1) of the *Canada Pension Plan Regulations*.

[15] The law doesn't allow the Appellant to cancel her CPP retirement pension in favour of a CPP disability pension. As a result, I find that she isn't eligible for a CPP disability pension.

## **The Appellant is eligible for a PRDB**

### **- The Appellant's minimum qualifying period for a PRDB**

[16] If a person applies for a disability pension more than 15 months after they start getting a retirement pension, they might qualify for a PRDB instead. To qualify for a PRDB, a person must be disabled and be 60 to 64 years old. And they must have made enough recent years of valid contributions to the CPP.<sup>6</sup>

[17] There are two ways of figuring out if the Appellant made enough recent years of valid contributions to the CPP. This is because the rules changed on May 5, 2023.

[18] The Minister says that, based on the new rules, the Appellant's minimum qualifying period (when she had coverage under the CPP) ended on May 4, 2023.<sup>7</sup> I don't understand why the Minister says this. I find that under both sets of rules the Appellant's minimum qualifying period ended on December 31, 2022. Regardless, in this case I find that the Appellant had a severe and prolonged disability as of September 2022, which is before both dates.

## **What is a "severe" and "prolonged" disability**

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

[20] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.<sup>8</sup>

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<sup>6</sup> The law calls this making "base contributions for not less than the minimum qualifying period" or "MQP." See section 44(1)(h) of the *Canada Pension Plan*.

<sup>7</sup> See GD3.

<sup>8</sup> 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.

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

[22] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>9</sup>

[23] 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.

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

[25] I find that the Appellant had a severe and prolonged disability as of November 2021. She continues to be disabled.

### **Was the Appellant's disability severe?**

[26] The Appellant's disability was severe. I reached this finding by considering several factors. I explain these factors below.

#### **– The Appellant's functional limitations affected her ability to work**

[27] The Appellant has multiple sclerosis. She had back surgery in 2011. Two doctors have said that she may have long-Covid.

[28] However, I can't focus on the Appellant's diagnoses.<sup>10</sup> Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.<sup>11</sup> When

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<sup>9</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

<sup>10</sup> See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

<sup>11</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.<sup>12</sup>

[29] I find that the Appellant has functional limitations that affected her ability to work.

– **What the Appellant's husband said about her functional limitations**

[30] The Appellant's husband testified at the hearing. He said she is sleeping more and is very "scatter brained." He said she is not the same person she was three years ago. He said she would love to go back to work but isn't able to.

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

[31] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work.

[32] The Appellant testified at the hearing. She said that she has severe fatigue which has stopped her from doing many of the things she used to do, including working. Her life is very basic. If she goes grocery shopping with her husband, she comes home exhausted. Because of her fatigue, even going to the bathroom can sometimes be a chore. She cannot concentrate and gets muddled. She gets anxious if she has to go out, even to a doctor's appointment, because she worries about how her fatigue and brain fog will affect her.

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

[33] The Appellant must provide some medical evidence to support that her functional limitations affected her ability to work no later than December 31, 2022.<sup>13</sup>

[34] The medical evidence supports what the Appellant says.

[35] In March 2023, Dr. Nazal (a family doctor) completed a medical report.<sup>14</sup> He diagnosed the Appellant with:

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<sup>12</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>13</sup> See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>14</sup> See GD2R-114 to GD2R-122.

- multiple sclerosis since 1996
- back surgery in October 2011
- fatigue since September 2022

[36] The doctor said that the Appellant was experiencing extreme fatigue, weight loss and loss of appetite after an upper respiratory tract infection. Dr. Nazal said that there were no impairments related to the Appellant's multiple sclerosis or back surgery, but did say that she should avoid physically demanding work. Dr. Nazal said that the Appellant should be able to return either to her usual work or modified work within one to two years.

[37] In November 2022 the Appellant went to an emergency department.<sup>15</sup> The assessment noted that she had a history of high blood pressure, high cholesterol and inflammation of the lining of her bronchial tubes. The assessment also noted that she had bronchitis five weeks earlier and that although it had improved with medication she continued to have severe fatigue, decreased appetite, decreased urine output and a two-week history of diarrhea. The emergency department doctor diagnosed her with fatigue (cause not yet determined).

[38] In February 2024 the Appellant saw Dr. N. Alohalo (neurologist) to assess her multiple sclerosis.<sup>16</sup> The neurologist conducted an Expanded Disability Status Scale assessment. Her score was 1.5 which shows minimal impairment.

[39] This minister says that this shows that the Appellant doesn't have a severe disability. I disagree. Dr. Alohalo was assessing the Appellant's multiple sclerosis, not her fatigue and brain fog. And Dr. Alohalo **also** noted that the Appellant had been experiencing:

- worsening fatigue
- worsening balance
- a sensation that her legs felt heavier

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<sup>15</sup> See GD2-121 to GD2-122.

<sup>16</sup> See GD2-101.

- changes in her vision
- slowed processing speed
- cognitive challenges

[40] The neurologist didn't believe that the Appellant's symptoms were explained by worsening multiple sclerosis. **But** the doctor noted that the start of her symptoms coincided with a bronchial illness and evidence of changes to her liver function. The doctor wondered whether the Appellant had a systemic disease such as long-COVID or chronic bronchitis.

[41] In a letter from August 2024, the Appellant's family doctor, Dr. Nazal, said that the Appellant continued to suffer from chronic fatigue, a chronic cough and "most likely chronic covid."<sup>17</sup> The doctor said he had started the Appellant on antidepressant medication in May 2024 and that an appointment for cognitive behavioural therapy was pending.

[42] The medical evidence supports that the Appellant's chronic fatigue and brain fog, most likely related to long-Covid, prevent her from working as a postal clerk.

[43] I now have to decide whether the Appellant can regularly do other types of work. To be severe, the Appellant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.<sup>18</sup>

– **The Appellant can't work in the real world**

[44] 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

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<sup>17</sup> See GD1-6.

<sup>18</sup> See *Klabouch v Canada (Social Development)*, 2008 FCA 33.



- past work and life experience

[45] 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.<sup>19</sup>

[46] I find that the Appellant can't work in the real world.

[47] Although the Appellant speaks English fluently, has a high school diploma and good work experience as a postal clerk, she was 61 years old when she stopped working. Her age suggests that she wouldn't be able to get a new job.

[48] Regardless, her limitations (fatigue and brain fog) are too severe for her to work in any job.

**- When the Appellant's disability became severe**

[49] In her application the Appellant said that she hasn't worked or been able to work since November 2021. **But** at the hearing she said that she stopped working in September 2022. She said she knows that because that is when she had bronchitis. She also told me that she gets confused about when she stopped working.

[50] I find that the Appellant's disability became severe in September 2022. I say this for three reasons. First, this is when her family doctor said that her fatigue started.<sup>20</sup> Second, an emergency doctor assessment on November 15, 2022, said that the Appellant had bronchitis five weeks earlier which is close to September 2022.<sup>21</sup> Third, at the hearing the Appellant's husband said she hasn't been the same for three years.

**Was the Appellant's disability prolonged?**

[51] The Appellant's disability was prolonged.

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<sup>19</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>20</sup> See GD2R-118.

<sup>21</sup> See GD2-121 and GD2-122.

[52] The Appellant's conditions began in September 2022. These conditions have continued since then.<sup>22</sup> This tells me that her disability is long continued.

[53] The Appellant's conditions will more than likely continue indefinitely. It has been about three years since the Appellant's functional limitations began. Unfortunately, her treating professionals haven't made a firm diagnosis of the cause of her limitations although they suspect she has chronic or long-Covid. Treatments haven't improved her conditions.

[54] I find that the Appellant's disability was prolonged as of September 2022.

### **When payments start**

[55] The Appellant's disability became severe and prolonged in September 2022.

[56] There is a four-month waiting period before payments start.<sup>23</sup> This means that payments start as of January 2023.

### **Conclusion**

[57] I find that the Appellant is eligible for a PRDB because her disability was severe and prolonged.

[58] This means the appeal is allowed in part.

Wayne van der Meide

Member, General Division – Income Security Section

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<sup>22</sup> In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that an appellant has to show a severe and prolonged disability no later than the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

<sup>23</sup> Section 69 of the *Canada Pension Plan* sets out this rule.