



Citation: *GC v Minister of Employment and Social Development*, 2025 SST 870

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: G. C.

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

Decision under appeal: General Division decision dated February 4, 2025
(GP-24-1504)

Tribunal member: Neil Nawaz

Type of hearing: In person

Hearing date: July 30, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: August 15, 2025

File number: AD-25-138

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 49-year-old man with a history of chronic pain and depression. He was employed as a cleaner for the Toronto Transit Commission (TTC) until 2002 and, except for short-lived jobs as a property manager and self-employed caterer, he hasn't worked since.

[3] The Appellant applied for a CPP disability pension in December 2023.¹ He claimed that he had been unable to work since July 2022 because of pain, dizziness, and loss of concentration.

[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 his CPP disability coverage period, which it determined had ended on December 31, 2004. Among other things, Service Canada found that many of the Appellant's medical conditions didn't become serious until well after that date.

[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 currently disabled, there wasn't enough medical evidence to show that he was regularly incapable of substantially gainful employment by the end of his coverage period.

[6] The Appellant then applied for permission to appeal to the Appeal Division. In March, one of my colleagues granted him permission to appeal. Last month, I held a hearing to discuss his disability claim in full.

¹ See the Appellant's application for the CPP disability pension dated December 7, 2023, GD2-71.

Issue

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

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.² 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.³ The disability must be expected to keep the claimant out of the workforce for a long time.

[8] The parties agreed that the Appellant's MQP ended on December 31, 2004.⁴ As a result, I had to decide whether the Appellant had a severe and prolonged disability as of that date and whether he has had one ever since.

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 now suffers from a variety of medical conditions, but there isn't enough evidence to show that they prevented him from working before December 31, 2004.

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

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

⁴ Under section 44(2) of the *Canada Pension Plan*, an MQP is established by making threshold contributions to the CPP. The Appellant's CPP contributions are listed on his record of earnings at GD2-98.

The Appellant didn't have a severe disability during his MQP

[10] Claimants for disability benefits bear the burden of proving that they had a severe and prolonged disability during their MQP.⁵ 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*.

[11] In his application for benefits, the Appellant said that he hadn't been able to work since July 2022. He said that he was unable to lift or bend. He said that he was dizzy. He said that he was unable to concentrate because of body pain. He rated many of his physical, behavioural, and emotional capacities as "fair" or "poor."

[12] The Appellant testified that many of his problems began as a teenager. He was working as an apprentice electrician when he fell off a ladder and injured his knees. Although he largely recovered, he has suffered from knee pain ever since.

[13] In 1999, he got a job with the TTC cleaning streetcars on the night shift. He enjoyed the job, which also required him to operate the streetcars within the maintenance yard. However, his wife was not enthusiastic about his work hours, particularly when they had their first child. That caused tension in the marriage, and he became depressed. Matters weren't helped by a decline in his mother's health. She was diagnosed with lymphoma and died in 2003.

[14] At work, he was plagued by low energy. He had trouble getting up every day and going to work. Once there, he couldn't stay awake. He went on sick leave, and after about a year, he resigned. He insists he wasn't fired.

[15] After leaving the TTC, he didn't even try to get a job. He gave up. His mental condition was terrible. He stayed at home and did nothing. He stopped seeing his family doctor.

⁵ See *Canada Pension Plan*, section 44(1).

[16] Years passed. Eventually, he realized that he had to challenge his depression. He had always had a passion for cooking, so he thought he would try to earn money as a caterer. Around 2018, he started cooking meals for small dinner parties, no more than 50 people. He did it all himself and never employed anyone else. It was an all-cash business. In 2019, he made around \$11,900. He reported everything he made on his income taxes.

[17] The Appellant said that he would probably still be working as a caterer if the pandemic hadn't put an end to it. His bookings dried up overnight. In early 2022, he got a job as a property manager. He worked for a businessman who owned six industrial properties. His job was to drive his boss around and take care of problems on the premises whenever they arose. But he started not to feel good again. His depression kicked in, and he started to not show up for work. After six months, he was let go. He then had a series of short-lived jobs as a delivery driver.⁶ He was fired from every one of them for missing time.

[18] While the Appellant may be unable to hold a job now, that doesn't mean he had a severe and prolonged disability as of December 31, 2004. The Appellant says that he has been disabled for more than 20 years, but I can't base my decision on just his subjective view of his capacity at that time.⁷ I also have to look at the available medical evidence and, in this case, it is lacking.

– The medical evidence doesn't point to debilitating health problems during the MQP

[19] A CPP disability claimant must provide objective medical evidence supporting a claimed mental or physical disability, including reports about its nature, extent, and prognosis.⁸

⁶ See also employer questionnaires from Rufino Coffee Corp. dated April 22, 2025 (AD6-2); Koolatron Corp. dated April 18, 2025 (AD6-8); and Visco Industrial Inc. dated April 8, 2025 (AD6-12).

⁷ See section 68(1) of the *Canada Pension Plan Regulations*.

⁸ 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.

[20] The Appellant insists he was disabled before December 31, 2004, but there wasn't enough medical evidence to back up that claim. There are only a few doctors' reports on file from the relevant period. Three of them are dated well before the period between 1999 and 2002, when the Appellant had a well-paying job at the TTC.

[21] In October 1992, the Appellant was assessed by a physiatrist and physiotherapist for right knee and low back pain after falling down a staircase.⁹ He told his examiners that his knee pain had essentially resolved and that his back pain was 50 percent better. The examiners noted that the x-rays were normal and failed to show any evidence of osteoarthritis. They diagnosed the Appellant with soft tissue injuries and cleared him to return to work.

[22] In January 1995, the Appellant saw a respirologist after a five-day episode of coughing and shortness of breath.¹⁰ Pulmonary testing showed a reversible terminal airway obstruction in keeping with asthma or bronchitis. In April 1995, the Appellant saw two specialists for a stuffy nose and congestion, which he said he had been experiencing over the previous three weeks.¹¹ Both the rheumatologist and ear, nose, and throat specialist diagnosed the Appellant with chronic sinusitis, for which they prescribed him with antihistamines and antibiotics.

[23] The Appellant testified that depression forced him to stop working in 2002, but the only evidence about his mental health from that period are two psychiatric reports.¹² In November 2002, Dr. Caplan wrote that the Appellant presented with depression secondary to stress at work and home, as well as some legal difficulties. He noted that the Appellant faced charges related to a minor assault following an argument with his wife. However, he said that the relationship had since improved and that the couple were expecting a baby. Dr. Caplan noted that the Appellant was taking Imovane, a sleep medication, and he prescribed him with Paxil, an antidepressant. Three months

⁹ See report dated November 4, 1992, by Dr. M. Kleinman, physiatrist, and Carolyn McKelvie, physiotherapist, GD2-120.

¹⁰ See report dated January 27, 1995 by Dr. Stanley Kolber, respirologist, GD2-124.

¹¹ See reports dated April 7, 1995 by Dr. Michael Belcon, rheumatologist (GD2-127), and April 13, 1995 by Dr. Andre Tan, fellow on behalf of Dr. David Ellis, otolaryngologist (GD2-129).

¹² See report dated November 4, 2002 by Dr. Joseph Caplan, psychiatrist, GD2-130.

later, Dr. Caplan reported that the Appellant continued to be depressed and had been off work since November 2002.¹³ He noted that the Appellant had apparently been treated at Thistle town, a children's mental health hospital, suggesting that he had difficulties even as a child. Dr. Caplan prescribed the Appellant with Celexa, another antidepressant.

[24] Although Dr. Caplan wrote that he would follow up in two- or three-weeks time, there is nothing to indicate that the Appellant ever saw Dr. Caplan, or any other mental health professional, again. Indeed, the only medical evidence on file for the next 17 years is a sleep investigation from 2005–06. In October 2005, a respirologist saw the Appellant for snoring and restless sleep.¹⁴ He diagnosed the Appellant with hypertension, chronic bronchitis, and sleep apnea and advised him to stop smoking, lose weight, and exercise. Later, a chest x-ray was normal, a pulmonary function test showed mild airflow obstruction, and a sleep study revealed moderate sleep apnea.

[25] The Appellant's medical record resumed in 2022, when he began to be seen for a variety of ailments following a slip and fall injury. In November 2023, the Appellant's longtime family physician, Dr. Zaremba, completed a questionnaire to accompany his patient's CPP disability application, listing, among other diagnoses, type 2 diabetes, kidney stones, hypertension, major depressive disorder, back and shoulder pain, and a torn cartilage in his right knee.¹⁵ Dr. Zaremba stated that the Appellant's medical conditions interfered with his activities of daily living, but he did not recommend that the Appellant stop working.

[26] In any event, Dr. Zaremba's report was prepared well after the Appellant's MQP, and many of his listed diagnoses were non-issues 20 years ago. Indeed, the Appellant's medical conditions at that time appeared to be relatively mild and treatable, either with medication or lifestyle changes. I note that the Appellant himself declared in his application for benefits that he didn't become disabled until July 2022.

¹³ See Dr. Caplan's report dated March 18, 2003, GD2-132.

¹⁴ See report dated October 19, 2005 by Dr. E.L. Ritcey, respirologist, GD2-133.

¹⁵ See the initial CPP medical report dated November 10, 2023 by Dr. M.G. Zaremba, family physician, GD2-154.

[27] To be sure, the Appellant had health problems before December 31, 2004, but they weren't serious enough to affect his ability to work. He may have become totally disabled years later, but that doesn't help him get a CPP disability pension in this instance.

– The Appellant has not complied with recommended medical treatment

[28] Another factor working against the Appellant was his failure to seek treatment for his mental health condition for many years. This matters because there might be scope for his condition to improve.

[29] A case called *Lalonde* says that disability claimants must do what they can to alleviate their impairments by following medical recommendations.¹⁶ *Lalonde* also requires decision-makers to consider whether a claimant's refusal of recommended treatment is unreasonable and, if so, what impact that refusal is likely to have on the claimant's disability.¹⁷

[30] The Appellant testified that Dr. Caplan prescribed him with Paxil in 2002 but, rather than making him better, it made him worse: "I lost interest in everything." After that experience, he didn't want to take any more antidepressants. He couldn't risk feeling that bad again. Asked why he stopped seeing Dr. Caplan, he replied that the Paxil wasn't working, and he didn't think the psychiatrist's treatment was going anywhere. He also stopped seeing Dr. Zarembo.

[31] I don't find the Appellant's decision to discontinue all mental health treatment reasonable. According to the Appellant, he was laid low by a depression that cost him a good job, yet he refused all antidepressant medication and did not seek help for his psychological problems for more than two decades.

¹⁶ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

¹⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48.

[32] The Appellant experienced unpleasant side effects with Paxil, but there are dozens of anti-depressants on the market, all of them with different efficacy and risk profiles. It is well known that individuals don't necessarily respond to specific psychotropic drugs in the same way, and it can take time to find a drug, or combination of drugs, that are optimally suited to a patient's psychology and physiology. Here, the Appellant barely gave the pharmacological option a chance.

[33] The Appellant's failure to seek treatment may have cost him an opportunity to get better. This can be seen by what happened after Dr. Zaremba urged the Appellant to reconsider his opposition to antidepressants. Two years ago, he finally agreed to a trial of Sertaline, and it appears to be working: "It keeps me balanced."

[34] The Appellant should be commended for changing his mind, but this reversal only reinforces my view that he didn't do everything reasonably possible to address his mental health problems years ago. He gave up on antidepressants too hastily, and he didn't pursue counselling. And he failed to offer adequate reasons for waiting years to act on medical advice.

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

[35] A disability must be severe **and** prolonged.¹⁸ Since the Appellant has not proved that his disability was severe as of December 31, 2004, there is no need for me to assess whether it was also prolonged.

¹⁸ See *Canada Pension Plan*, section 42(2)(a).

Conclusion

[36] The Appellant had medical problems during his MQP, but they didn't amount to a severe disability at the time. He injured his knees as a teenager, but there's nothing in the medical evidence to indicate that they prevented him from working as of December 31, 2004. He developed mental health problems in the early 2000s, but his psychiatrist suggested that his depression was largely situational — the product of stress at home. Whatever the cause, the larger issue is that the Appellant did not persist with treatment, giving up on antidepressants after only a single trial and failing to seek medical help for nearly 20 years.

[37] When deciding whether a disability claimant can work, I have to consider, not just his medical evidence, but all circumstances, including his age, level of education, and work and life experience.¹⁹ At the end of his MQP, the Appellant's medical conditions were relatively minor, and they were treatable. He was only 28 years old at the time and, although he didn't graduate from high school, he was young enough to either upgrade his education or, failing that, look for a low-skilled job.

[38] For these reasons, I am not satisfied that the Appellant was regularly incapable of substantially gainful employment as of December 31, 2004.

[39] The appeal is dismissed.



Member, Appeal Division

¹⁹ See *Villani v Canada (Attorney General)* 2001 FCA 248.