



Citation: *SM v Minister of Employment and Social Development*, 2025 SST 871

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** S. M.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Ian McRobbie

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**Decision under appeal:** General Division decision dated January 8, 2025  
(GP-24-965)

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**Tribunal member:** Janet Lew

**Type of hearing:** Teleconference

**Hearing date:** July 8, 2025

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** August 15, 2025

**File number:** AD-25-60

## Decision

[1] I am dismissing the appeal. The Appellant, S. M. (Claimant), is not entitled to a Canada Pension Plan disability pension.

## Overview

[2] This is an appeal of the General Division decision by Claimant. The General Division determined that the Claimant did not have a severe disability by the end of her minimum qualifying period of December 31, 2021.<sup>1</sup> As a result, the General Division found that she was ineligible for a Canada Pension Plan disability pension.

[3] The Claimant appealed the General Division decision to the Appeal Division, arguing that the General Division made a legal error. The Appeal Division granted leave (permission) to appeal the General Division decision. After the Appeal Division grants leave, the appeal goes ahead as a new hearing, without any consideration for the General Division's decision. I held a new hearing on July 8, 2025.

[4] The Claimant testified that she has not worked since December 2021. She claims that she has been unable to work since then because of attention-deficit/hyperactivity disorder (ADHD) and anxiety and depression. She claims that she has tried to look for work on Indeed and Kijiji, in Canada and Texas. When she visits her parents in her home province for a month, she looks for work she can do there for a couple of months or so.

[5] But she has been unable to find work. She says no one is interested in anyone who does not have a Grade 12 education and is unable to read or write. Stressors, her job search efforts, and the inability to find work worsen her anxiety and depression. She asks the Appeal Division to allow her appeal.

[6] The Respondent, the Minister of Employment and Social Development (Minister), argues that the Claimant did not have a severe disability by the end of her minimum

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<sup>1</sup> The end of the minimum qualifying period is the date by which a claimant has to prove that they have a severe and prolonged disability for the purposes of the *Canada Pension Plan*. The minimum qualifying period is based on a claimant's contributions to the Canada Pension Plan.

qualifying period. The Minister argues that the medical evidence does not prove that the Claimant had any severe functional limitations by the end of her minimum qualifying period. The Minister argues that the Claimant has residual capacity and that she is therefore required to attempt other work. The Minister argues that the Claimant has failed to try other jobs. The Minister asks the Appeal Division to dismiss the appeal.

## Issue

[7] Did the Claimant have a severe and prolonged disability under the *Canada Pension Plan*, by the end of her minimum qualifying period on December 31, 2021?

## Analysis

[8] A claimant has to prove that, more likely than not, they had a severe and prolonged disability by the end of their qualifying period.

- A disability is severe if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>2</sup>
- A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>3</sup>

[9] When assessing whether a disability is severe, one has to consider the “real world” context.<sup>4</sup> This means considering a claimant’s particular circumstances, such as their age, education level, language proficiency, and past work and life experience.

[10] This “real world” context also means considering whether a claimant has pursued all reasonable treatment recommendations, whether any refusal is unreasonable and what impact that refusal might have on that claimant’s disability status should the refusal be considered unreasonable.<sup>5</sup>

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<sup>2</sup> See section 42(2)(a)(i) of the *Canada Pension Plan*.

<sup>3</sup> See section 42(2)(a)(ii) of the *Canada Pension Plan*.

<sup>4</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 38.

<sup>5</sup> See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

[11] Medical evidence will still be needed, as will evidence of employment efforts and possibilities.<sup>6</sup>

### **General background history**

[12] The Claimant had been operating a home-based daycare since 1994. When the pandemic hit, the Claimant was able to continue operating, but her business suffered. She had fewer clients. She had to provide a safer environment. Plus, there were more regulations.

[13] She had to provide a bathroom on the first floor of her business. She also had to provide \$10 per day daycare. These requirements were too costly for her to continue operating. So, she decided that she would not run a daycare anymore. She closed her business in about September 2021.

[14] After that, until about December 2021, the Claimant worked as a cleaner. When she filled out an application form for Canada Pension Plan disability benefits, she said that she stopped working at this job because she was unable to focus and concentrate on a daily basis.<sup>7</sup>

[15] The Claimant had really enjoyed taking care of children. So when she had to close down her daycare, she became depressed. She did not think that she could go out and find other work. She says that she cannot read or write because of her ADHD and learning disabilities. She is embarrassed that she is unable to read or write and does not want to have to tell prospective employers. It causes her a lot of anxiety to think about looking for work.

[16] Besides, the Claimant says she has few options. She did not finish high school. She believes that she may have gone up to Grade 10 only. In her application for Canada Pension Plan disability benefits, she stated that she has a Grade 12 diploma. (She also told her psychiatrist that she has a Grade 12 diploma.) But the Claimant says

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<sup>6</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 50.

<sup>7</sup> See Claimant's application for Canada Pension Plan disability benefits, at GD2-69.

this is inaccurate, based on what her mother recently told her. The Claimant does not believe that she even attended Grade 11.

[17] The Claimant testified that she was diagnosed with ADHD when she was in Grade 1. She says that she is unable to read or write and that her spelling is terrible. She found it rough going through school. She was placed in a special education program. Other students teased her.

[18] The Claimant tried to get into Sylvan Learning, but it was too expensive. Also, she would have had to drive there but she was too young to drive then. She tried correspondence classes. She also looked into other training, such as getting into hairdressing school, before she decided on operating her own daycare. She says that she has not been able to pursue training in other areas, or apply for job opportunities because of her ADHD.

[19] She claims that she is unable to read or complete application forms. She testified that she always gets help when filling out forms and applications. Her partner, for instance, helped her complete the application form for a Canada Pension Plan disability form. She testified that he read the questions to her and wrote out her responses for her to copy them onto the form.<sup>8</sup>

[20] The Claimant testified that after she closed her business, she has tried looking for work in other areas, including as a hotel room attendant. But she says that no one is hiring at the moment. She says that no one is interested in her application or in hiring her because she does not have a Grade 12 education. This depresses her.

– **The Claimant applied for Canada Pension Plan disability benefits in 2023**

[21] The Claimant testified that she could no longer work as of December 31, 2021, due to depression, anxiety, and ADHD.

[22] The Claimant applied for the Canada Pension Plan disability pension in 2023. She stated in her application that she felt that she could no longer work as of

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<sup>8</sup> At approximately 20:48 of the audio recording of the Appeal Division hearing.

December 2022 because of her medical conditions. The Claimant testified that she made a mistake and says that it is a reflection of her inability to read and write and that she meant to write December 2021.

[23] Yet, the Claimant had testified that her partner helped her with the application form. I find that she was simply mixed up between 2021 and 2022 at the time. I accept that she meant to write December 2021.

[24] In the application, the Claimant rated her physical abilities as mostly fair or poor. For instance, she checked off “poor” when asked whether she could pick up two bags of groceries and walk a block.<sup>9</sup> She now says that she does not have some of the limitations that she claimed to have in the application form. The Claimant testified that some of her responses are inaccurate. She blames her poor reading skills for the inaccurate responses. Yet, she also testified that her partner read out the form to her.

[25] The Claimant rated her behaviours and emotional abilities, communication and thinking abilities, and daily abilities as mostly poor.<sup>10</sup>

[26] The Claimant has trouble with squatting because of her right knee. She testified that she also has problems with driving a car. But that has to do with her ADHD, not any physical issues. The Claimant testified that she has problems with driving as she has trouble with being able to read street signs or maps. She also claims that she has problems focussing on the road.

**– The Claimant’s mood – her family doctor put her on anti-depressants in 2021**

[27] The medical records show that the Claimant spoke with her family doctor in May 2021. She told him that she was not feeling herself. In the previous month, she was not able to concentrate or focus. She felt depressed and was not sleeping well. She was sleeping a lot. The doctor diagnosed her with a major depressive disorder. He added Abilify to the medications that she was already taking.<sup>11</sup>

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<sup>9</sup> See Claimant’s application for Canada Pension Plan disability benefits, at GD2-63.

<sup>10</sup> See Claimant’s application for Canada Pension Plan disability benefits, at GD2-64 to 66.

<sup>11</sup> See family doctor’s records for May 17, 2021, at GD2-114.

[28] The family doctor spoke with the Claimant again later that month. She reported that she felt better and had more energy. Her anxiety was down but she reported that she was still in the dumps.<sup>12</sup>

[29] The Claimant spoke with her family doctor again in late June 2021. She felt that Abilify was working well. She was not sleeping as much, and she had more energy. She felt that her anxiety was better than before. The medication seemed to be working well. The doctor confirmed a diagnosis of major depressive disorder and general anxiety disorder.<sup>13</sup>

– **2021: The Claimant responded well to medications**

[30] It was more than eight months later before the Claimant spoke with her family doctor again about her anxiety and depression. On March 9, 2022, the Claimant reported that she had not been taking her medications for the last six months. When she had been on them, she was fine. The Claimant testified that she thought that, as she was feeling better, she did not need to take them anymore.<sup>14</sup> Besides, she said that she could not afford to take them. The plan was to restart her on Effexor, and reestablish that before going back on Abilify.<sup>15</sup>

[31] The Claimant spoke with her family doctor again on June 21, 2022. She felt anxious. She was on a high dosage of Effexor. She was going to try to go back on Abilify.<sup>16</sup> The Claimant testified that she had responded well to the medication. She felt better and was able to concentrate more. But every time she looked for work, she began to feel anxious. She testified that she would freeze and be sick to her stomach, as she knew that she could not read or write.

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<sup>12</sup> See family doctor's records for May 27, 2021, at GD2-113.

<sup>13</sup> See family doctor's records for June 28, 2021, at GD2-113.

<sup>14</sup> At approximately 32:13 of the audio recording of the Appeal Division hearing.

<sup>15</sup> See family doctor's records for March 9, 2022, at GD2-111.

<sup>16</sup> See family doctor's records for June 21, 2022, at GD2-109.

[32] The Claimant denied being able to look after children again or work for another daycare operator. She says that she would not be able to read books to children, as she says that she is probably at only a Grade 3 reading level.

– **January 2023: The Claimant asked for a referral to a psychiatrist**

[33] The Claimant spoke with her family doctor again in January 2023. Her mood was low, although she was on anti-depressants.<sup>17</sup> She wanted to see a psychiatrist whom she had seen 10 years ago. She described that she felt better when she saw him before.<sup>18</sup> She asked her family doctor for a referral.

[34] The Claimant explained that she did not need to see the psychiatrist before 2023 because she was doing relatively well. She did not have the pressure of doing an everyday job after 2021.

[35] According to the records, the Claimant does not appear to have seen or spoken with her family doctor again about any mental health issues after January 2023, other than to refill her medications in June 2023 and in October 2023.

– **The Claimant began seeing a psychiatrist in mid-2023**

[36] The psychiatrist wrote a report dated June 29, 2023. He had assessed the Claimant on June 21, 2023. He wrote, “Her mood was described as being sad, down and felt this way for some months’ time.”<sup>19</sup> He also wrote that the Claimant spent half of the year in Florida with her partner, that they were both retired, and that she has a Grade 12 education. He diagnosed her with major depressive disorder and probable ADHD, with a global assessment of functioning (GAF) score of 55.

[37] The GAF scale measures how much a person’s symptoms affect their day-to-day life on a scale of 0 to 100. The higher a score, the better one is able to handle daily

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<sup>17</sup> See family doctor’s records for January 9, 2023, at GD2-106.

<sup>18</sup> See family doctor’s referral letter dated March 23, 2023, at GD2-105.

<sup>19</sup> See psychiatrist’s consultation report of June 29, 2023, at GD2-115 to 117 (and at GD2-146 to 148).



activities. A score between 51 and 60 suggests moderate symptoms or moderate difficulty in social, occupational, or social functioning.

[38] The psychiatrist adjusted some of the Claimant's medications. They talked about the possible need for counselling, which they would discuss at future visits. There is no indication that the psychiatrist discussed this issue again.

[39] The Claimant says that she continued seeing the psychiatrist twice a year, though in his Canada Pension Plan medical report, dated November 6, 2023, the psychiatrist noted that he had seen her four times that year. I do not find that anything turns on this discrepancy about whether the Claimant saw the psychiatrist two or four times a year.

[40] The Claimant last saw the psychiatrist in late 2024. However, there are no psychiatrist's medical reports or records after November 6, 2023. (This is likely because the Claimant and her partner travelled to Texas for half the year after this, so there were few visits to see him in late 2023 or into 2024.)

[41] The psychiatrist noted in his report of November 6, 2023, that the Claimant had presented with depressed mood, hypersomnia, fatigue, decreased concentration, short-term memory, and excessive worry. She had difficulty with interpersonal relationships and attending to activities of daily living.

[42] The psychiatrist diagnosed her with major depressive disorder. He expected that her condition was likely to improve in more than one year. He expected her to experience a full recovery when her medications were fully adjusted. Her mood had improved and had been stable ever since he had adjusted her medications.

[43] Finally, the psychiatrist noted that he had never discussed with her whether she should stop working.<sup>20</sup> He did not offer any opinion about her overall functionality and whether she was capable of working or regularly pursuing a substantially gainful occupation.

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<sup>20</sup> See Canada Pension Plan Medical Report dated November 6, 2023, at GD 2-137 to 2-145.

[44] Apart from seeing the psychiatrist, the Claimant has not seen a psychologist or counsellor. She says that she has not been able to afford to see one.

– **The Claimant says the psychiatrist's reports are full of mistakes**

[45] The Claimant states that the psychiatrist's reports are full of mistakes and should not be relied upon. She says the psychiatrist was wrong to write or suggest that:

- Her mood has improved. She denies that there has been any improvement. She notes that she continues to have to take anti-depressants.
- She and her partner spend half the year in Florida. She denies that she regularly spent half the year in either Florida or Texas. She says that she went to Texas only once, for six months. She says that she went to Florida just once, for two weeks. She claims that her partner can no longer afford to travel for lengthy periods.
- She takes marijuana daily. She claims that she uses marijuana only once every six or seven months.

[46] The Claimant says that she only uses marijuana when needed. She denies using it regularly. She uses it to calm her down, when her anxiety is "through the roof," such as when there is a family issue or there is chaos happening. She went through a divorce. The psychiatrist noted that there are psychosocial issues involving a sister. Her daughter moved. The Claimant also moved out of the province, which she says was particularly hard. This meant moving away from her family, and she considers herself, "the family rock."

[47] The Claimant testified that there is "always something that's going on" within her life. She says that she cannot control her moods and that her head is constantly spinning. She says that she is unable to function because she feels overwhelmed with pressure or demands to do things.

[48] Despite feeling that her life is always chaotic, she says that she does not need to regularly take marijuana to keep calm. She says that she can usually rely on

medications. They have helped her most of the time. She only needs to use marijuana when her anxiety is really high, as she finds it more effective than anti-depressants.

[49] In short, the Claimant suggests her evidence should be preferred over the psychiatrist's reports. She says the psychiatrist's evidence and opinions are unreliable because they are based on factual errors.

[50] The psychiatrist took detailed notes of the Claimant's history. There is no indication that the psychiatrist was motivated to exaggerate how often or how long the Claimant travelled to the southern United States, or how often she used marijuana. I do not know if the Claimant had been unclear or if the psychiatrist simply misunderstood the Claimant. I do not see, however, that anything necessarily turns on this evidence, as any trips or consumption of marijuana took place after the end of the minimum qualifying period had passed.

– **There are no medical records or reports after January 2024**

[51] Apart from getting her prescriptions refilled in June 2023 and October 2023 (just before she was about to leave on a six-month trip to Texas), the records suggest that the Claimant has not seen or spoken with her family physician since January 2023. In fact, her family doctor told her in June 2023 that she should get her prescriptions refilled by the psychiatrist as he was now following her.<sup>21</sup>

[52] Even so, in January 2024, the Claimant phoned her family doctor for a report. The report does not address the Claimant's functionality or limitations or her employability.<sup>22</sup> I do not find this report to be very useful as it merely repeats what the clinical records say.

[53] The only specific complaint for 2021 in the family doctor's 2024 report is of the Claimant's right knee pain, which could be traced back to a skiing accident in 2010.

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<sup>21</sup> See family doctor's records for June 22, 2023, at GD2-105.

<sup>22</sup> See family doctor's records for January 18, 2024, at GD2-102.

– **The Claimant's current medical treatment**

[54] In December 2024, the Claimant and her partner moved to another province. She does not have a family doctor at the moment. She is on a waiting list. She uses a walk-in clinic for now, to renew her medications. She says that she is unable to see any specialists, such as psychiatrists, because she needs to get a referral from a family doctor.

– **Other medical issues**

[55] Most of the 2021 and 2022 medical records deal with the Claimant's right knee. The Claimant had surgery for her knee in 2019. She had an injection for knee pain in July 2021. The Claimant also had swelling and pain in her right ankle in July and August 2022, and an injury to her left foot in about September 2022. The Claimant says that neither her right knee nor issues with her lower extremities are relevant to her application for Canada Pension Plan disability benefits.

– **The Minister's evidence: Dr. Woodend**

[56] The Minister produced Dr. Woodend as a witness to give evidence on its behalf. Dr. Woodend is a family doctor.

[57] Dr. Woodend testified that the Claimant likely had functional limitations involving her right knee in January 2021. For instance, the Claimant likely would have had difficulty changing directions or pivoting at that time. However, Dr. Woodend did not expect that those limitations would be long-term. Dr. Woodend noted that none of the medical records mentioned any knee pain in 2022.

[58] Dr. Woodend noted that the Claimant's medical file did not include any formal diagnosis for ADHD, but agreed that there had probably been a psychoeducation assessment when she was a child. In other words, she accepted that the Claimant has ADHD.

[59] Dr. Woodend testified that that ADHD can affect academic performance and affect people's ability to learn. She is of the opinion that there are many treatments

available for ADHD, including medications and cognitive behavioural therapy. Titration of ADHD medications might be needed for some. She is of the opinion that these medications tend to work very well to get people back on track.

[60] Dr. Woodend is also of the opinion that the Claimant's ADHD and learning disabilities were likely manageable, despite her claims otherwise. The Claimant had a high school education (though the Claimant disputes that she has a Grade 11 or 12 education) and she was able to do correspondence.

[61] Dr. Woodend noted that the Claimant also ran a daycare. She also got her driver's licence. She would have needed to pass both written and road tests. However, the Claimant testified that she was only able to officially pass these tests because of a friend who worked at the drivers' testing locations. She claims that her friend relaxed the road test requirements. She also claims that her friend helped her with the written portion by reading the questions to her. The Claimant acknowledged that she had prepared for the written test by reading a driver's handbook study guide.

[62] Dr. Woodend noted that the Claimant was dealing with both depression and ADHD in 2021. She testified that both conditions can affect concentration and cognition. She noted that the Claimant's family physician added Abilify to boost the effect of an anti-depressant. She also noted that it is sometimes used "off label" for ADHD. In other words, it is used but has not been approved for that specific use.

[63] Dr. Woodend testified that, with these types of medications, a patient is expected to perhaps show a little bit of improvement in their mental health in a couple of weeks. The full effects would not be seen until six to eight weeks. Dr. Woodend was of the opinion that the records showed that the Claimant "actually had a really good treatment effect."<sup>23</sup> She noted that by June 2021, the family physician was of the view that the medication was working well. He did not plan on changing any medications.

[64] Dr. Woodend noted the Claimant had a reoccurrence of her mood symptoms after December 2021. This was seen by March 2022. This was due to the fact that the

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<sup>23</sup> At approximately 1:20:39 of the audio recording of the Appeal Division hearing.

Claimant had stopped taking her medications. So, the Claimant was restarted on Effexor and then Abilify was added later on. But the medications did not work as well as the Claimant wanted. So, she asked to be referred to the psychiatrist whom she had not seen in years.

[65] Dr. Woodend noted that the psychiatrist adjusted the Claimant's medications. And by the time he prepared his last report, there was some improvement in the Claimant's mood symptoms. She also noted that the psychiatrist expected the Claimant would experience a full recovery. But, as the Claimant was going away for half a year, Dr. Woodend could not determine where the Claimant was with titration of the medications.

[66] Dr. Woodend is of the opinion that the Claimant did not have any medical conditions by the end of her minimum qualifying period that left her unable to work. If, as the Claimant says, she had pressing mental health issues, Dr. Woodend notes that the Claimant had improved from taking medications—to the point that she felt that she did not need to take them any longer. Physically, Dr. Woodend did not see any issues.

### **The Claimant's real-world circumstances**

[67] The definition of a severe disability under the *Canada Pension Plan* includes an employability component. So, when assessing the severity of a claimant's disability, I also have to consider their "real world" circumstances.

[68] This means considering things such as their age, education level, language proficiency, and past work and life experience. That is because these types of considerations have some bearing on the scope of what is suitable substantially gainful occupations for a claimant. As the Federal Court of Appeal set out in *Villani*, a middle-aged applicant with an elementary school education and limited English or French language skills would not normally include work as an engineer or doctor.

[69] The Claimant was 46 years old in December 2021. She attended high school, although there is conflicting evidence from her about whether she has a Grade 12 diploma. She filled out an application form and told her psychiatrist that she has a

Grade 12 education. Her mother recently told her that she did not attend Grade 12. The Claimant's psychiatrist describes her as having average intelligence.<sup>24</sup>

[70] Most of the Claimant's working life involved running a home-based daycare. She ran a daycare for over 25 years. After she closed her business, she worked as a cleaner. But that lasted for only three months. She has not worked since.<sup>25</sup> She does not have any other recent work experience. There does not appear to be anything remarkable or significant about the Claimant's life experiences that would enhance the Claimant's employability.

[71] The Claimant has fewer employment options open to her because of her education and work experience. But she is not without any work experience, and she is years from retirement age. She is fluent in English and is of average intelligence. She responded appropriately to questions. She was able to express herself well.

[72] The Claimant's personal characteristics suggest that her employment options are primarily limited to jobs that do not require a post-secondary education and do not involve higher-level reading or writing.

### **The evidence does not prove that the Claimant was severely disabled by her minimum qualifying period**

[73] The evidence indicates that the Claimant would have been able to continue operating her home-based daycare had the pandemic not happened. The pandemic meant a drop in business. New laws and requirements made it hard for the Claimant to continue running her business.

[74] Closing her business was unrelated to the Claimant's medical issues. The Claimant's ADHD, anxiety and depression did not contribute to nor cause the Claimant to be incapable regularly of pursuing any substantially gainful occupation. It was external factors that led her to close her business. In fact, the Claimant had been able to

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<sup>24</sup> See psychiatrist's consultation report of June 29, 2023, at GD2-116 (and at GD2-147).

<sup>25</sup> I accept the Claimant's evidence that she mistakenly wrote in her application that she last worked until December 2022. The earnings history shows that she did not have any employment income after 2021.

work for over 25 years with ADHD. And in part of those 25 years, on top of her ADHD, the Claimant dealt with anxiety and depression for which she required psychiatric care.

[75] The Claimant says that she became severely disabled by the end of 2021, after she closed her daycare business. Closing her business was a big loss because she really enjoyed looking after children. And she says that she got really depressed and anxious over even thinking about looking for work again. She says that she was unable to focus or concentrate. She feared that her poor reading and writing ability would be exposed. She says that her anxiety and depression got so bad, combined with her ADHD, that she was unable to regularly pursue any substantially gainful occupation.

[76] The Claimant worked as a cleaner after she stopped operating her daycare. She says that she could not continue after three months. She says it was no longer safe to work as she could not focus on her job.

[77] The Claimant suggests that the fact that she has not worked since December 2021 and was referred to and saw a psychiatrist in 2023 means that she had been continuously struggling with her mental health since May 2021. But the fact that the Claimant eventually had to see a psychiatrist for treatment and has not worked since December 2021 does not necessarily mean that her disability was severe by the end of 2021, even if, as she says, she was struggling with her mental health.

[78] There is no medical evidence for late 2021 that shows what impact, if any, the Claimant's anxiety and depression, ADHD, or learning disabilities had on her functionality and capability regularly of pursuing a substantially gainful occupation.

[79] The evidence shows that the Claimant was having problems with her mental health by as early as May 2021. She was unhappy and having problems with her focus and concentration. She was sleeping a lot. She was started on medications that month.

[80] The evidence also shows that she responded to the medications and that there was improvement in her anxiety and depression.



[81] The Claimant saw her doctor three times regarding her mental health issues in 2021: on May 17, May 27, and on June 28, 2021.

[82] After June 28, 2021, there is no mention of the Claimant's mental health issues in any of the medical records—until about eight months later in early March 2022. This despite the fact that she continued to see her family doctor and other medical practitioners for a number of other reasons, including getting a vaccine shot and a TB skin test.

[83] Although the Claimant saw her family doctor throughout 2021, and although she alleges that she became really depressed and anxious and was having problems with her mood, focus, and concentration, she did not bring up the issue of her mental health with any doctors again later that year.

[84] If, as the Claimant alleges, her anxiety and depression were getting really bad towards the end of 2021, one would have expected that she would have mentioned her mood again when she saw her doctors in late 2021.

[85] It becomes clear why the Claimant did not mention her mood again in the latter half of 2021. When she mentioned her mood again, in March 2022, she told her doctor she had been feeling fine in 2021 when she took the medications. She told him that she had stopped taking them for the past six months.<sup>26</sup> She stopped taking them, in part because of their cost, but also because, as she testified, she did not think that she needed to take them anymore.

[86] Although the Claimant had seen her family doctor in late 2021, she did not mention then that she felt that she needed to restart taking anti-depressants. This suggests that her anxiety and depression could not have been that bad at the end of 2021. It suggests that her anxiety and depression improved to the point that her mental health issues no longer interfered with her functionality by the end of her minimum qualifying period.

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<sup>26</sup> See family doctor's records for March 9, 2022, at GD2-111.

[87] There is no doubt that the Claimant's mental health began to deteriorate after she stopped taking the anti-depressants. But the medical evidence is lacking in showing when it began to deteriorate, what that deterioration looked like, and what impact, if any, her mental health had on her functionality by the end of her minimum qualifying period. I simply cannot infer that the Claimant's mental health deteriorated to the point that her disability was severe by the end of her minimum qualifying period, given the lack of medical evidence addressing these issues for late 2021.

[88] The Claimant saw her doctor one more time in 2022 for her mood, in June 2022. Other visits to doctors for the rest of the year mostly related to her right ankle and left foot. She had by now resumed taking anti-depressants.

[89] In January 2023, the Claimant sought a referral to a psychiatrist. She was sleeping a lot, had excessive feelings of worry as well as possible guilt and some suicidal ideation.

[90] The psychiatrist prepared two reports. He confirmed a diagnosis of major depressive disorder. In one of his reports, he expressed the view that the Claimant was likely to improve and that she could experience a full recovery once her medications had been fully adjusted.

[91] The Claimant argues that I should give little weight to the psychiatrist's report as it is full of mistakes. The Claimant did not see the psychiatrist in 2021 or in 2022. He did not comment or provide any opinion on the Claimant's condition in 2021. He also states that he and the Claimant never discussed whether she should stop working. So the psychiatrist's reports and opinions are of limited assistance in assessing whether the Claimant had a severe disability by the end of her minimum qualifying period.

[92] The Claimant argues that she had to have been severely disabled by the end of her minimum qualifying period if she should have been continuing to take anti-depressants. That would show that she had medical issues that needed to be addressed. But the measure of severity is not based on whether someone is on medications or should be taking medications.

[93] In fact, as I have noted above, there is an obligation on a claimant to pursue reasonable treatment options. This is to try to alleviate their condition and to try to restore or improve their functionality and capability.

[94] If anything, the Claimant was preoccupied with her right knee for most of 2021. She had had surgery for her knee and was still experiencing pain with prolonged sitting, doing stairs, and squatting.<sup>27</sup> But, as Dr. Woodend testified, she did not expect these limitations to be long-term. And, after the Claimant got a cortisone injection of her knee in July 2021, Dr. Woodend noted that there were no further complaints of knee pain in 2022.

[95] Even though the Claimant downplays her right knee issues, I accept what the records say about her knee. I accept that she had ongoing knee pain with limitations, likely into December 2021. These limitations included pivoting, prolonged sitting, doing stairs, and squatting.

[96] I also accept that the Claimant has ADHD and that it somewhat interfered with her ability to regularly pursue substantially gainful occupations, in that it limited what occupations were open to her. As Dr. Woodend testified, ADHD affects executive functioning, which affects learning. But she also testified that there are options such as stimulants and cognitive behavioural therapy that she says typically work very well to get people back on track. These have yet to be explored (though through no fault of the Claimant).

[97] Both the Claimant's right knee and ADHD impacted her ability to pursue certain but not all substantially gainful occupations. While she faced some physical and cognitive impairments, given her real-world circumstances and personal characteristics, she was not incapable of regularly pursuing a substantially gainful occupation, such as in caring for children.

[98] The Claimant says that she misses looking after children. She disputes, however, that she can ever return to caring for children. She thinks that she would be expected to

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<sup>27</sup> See referral of July 7, 2021, to sports medicine doctor, at GD2-130.

read to them, and she has trouble reading. This was the only limitation that she identified with her ADHD and learning disabilities. But this did not serve as a barrier before and there is nothing to suggest that the Claimant's reading ability or ADHD has deteriorated or gotten worse after 2021.

[99] The Claimant testified that she rates herself at a Grade 3 reading level. This would be an appropriate level for reading to younger children. In other words, her reading skills would not pose a barrier to this type of employment.

[100] But the Claimant states that she was also responsible for older children outside the daycare setting. She stated that she looked after older children before school started and after school ended. However, there is little likelihood that a pre- or after school monitor for older students would need to read storybooks to them. (And, as the Minister points out, the state of technology is such now that a computer can read aloud to these students, if need be.)

[101] Apart from reading, the Claimant has not pointed out any other limitations that her ADHD, learning disabilities, or knee condition together would have imposed on her ability to regularly pursue a substantially gainful occupation (such as providing daycare), by the end of her minimum qualifying period. I have also considered that she had some measure of anxiety and depression at the end of 2021, alongside her ADHD, learning disability and knee condition. But given the Claimant's medical history, the anxiety and depression were unlikely to have been significant enough to contribute much, if anything, to the Claimant being incapable regularly of pursuing a substantially gainful occupation.

[102] I also note that none of the Claimant's health caregivers have ever recommended that she stop working or suggested that she was unable to work.

[103] Given the minor scope of the Claimant's limitations and her personal characteristics, there may have been and continue to be other basic, entry-level type occupations or ones with some physical demands that are suitable for the Claimant.

[104] She testified that she has looked for work on Indeed. This includes painting or working as a hotel room attendant. However, as the Claimant states, there is little work in these areas currently.

[105] While that may be, the courts have consistently said that economic or labour market conditions are irrelevant. Disability under the *Canada Pension Plan* refers to the capability of an individual to regularly pursue any substantially gainful occupation,<sup>28</sup> not to the ability of a claimant to find employment suitable to their limitations.

[106] Here, the Claimant's complaints are of limitations involving ADHD and mental health issues, rather than of any physical limitations. She demonstrated an ability to participate in the working world in spite of these reading and writing limitations and mental health issues. She had these same limitations in the past, but managed to work through them throughout much of her working life.

[107] The Claimant had residual work capacity at the end of 2021. She had few physical limitations, and her other issues were not that severe that they left her incapable regularly of pursuing a substantially gainful occupation.

[108] Where there is work capacity, a claimant must show that they tried to find and maintain employment, as well as show that any efforts have been unsuccessful by reason of their health condition.<sup>29</sup>

[109] As the Minister points out, there is no physical evidence of any job search or of unsuccessful work efforts. The Minister argues that the Claimant appears to be self-limiting by claiming that work is not available for someone with her profile who has trouble reading and writing and lacks a Grade 12 education.

[110] The Claimant testified that she considered working as a hotel attendant or doing waitressing, but says these jobs require reading. She says that she would not be able to

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<sup>28</sup> *Minister of Human Resources Development v Rice*, 2002 FCA 47 at para 13.

<sup>29</sup> See *Inclima v Canada (Attorney General)*, 2003 FCA 117 at para 3.

take orders, for instance, because she cannot read well. She says she is capable of painting houses, but these are not long-term jobs or work is unavailable.

[111] I accept that the Claimant conducted job searches on different websites, and that she considered other occupations other than caring for children. She limited her efforts because she was discouraged from applying for or considering opportunities due to her education and reading and writing abilities.

[112] Given her residual capacity, I find that her efforts were inadequate. The evidence falls short in showing that the Claimant was unable to find and maintain employment because of her medical conditions.

**I do not have to consider whether the Claimant had a prolonged disability by the end of her minimum qualifying period**

[113] A disability must be both severe and prolonged. The Claimant has not proven that her disability was severe by the end of her minimum qualifying period. Therefore, I do not have to consider whether her disability was prolonged by the end of her minimum qualifying period.

**Conclusion**

[114] The medical records simply do not support the Claimant's arguments that her ADHD and anxiety and depression affected her functionality and capability of regularly pursuing any substantially gainful occupation by the end of her minimum qualifying period. Indeed, the Claimant was able to regularly pursue a substantially gainful occupation for several years with ADHD and learning disabilities, and at times, with anxiety and depression that required psychiatric treatment.

[115] The appeal is dismissed.

Janet Lew  
Member, Appeal Division