Citation: *Minister of Employment and Social Development v EL*, 2025 SST 1060

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Minister of Employment and Social Development
Representative:	Rebekah Ferriss
Respondent:	E. L.
Representative:	Geoffrey Hume

Decision under appeal:	General Division decision dated February 10, 2025 (GP-24-466)

Tribunal member:	Neil Nawaz
Type of hearing:	Videoconference
Hearing date:	September 16, 2025
Hearing participants:	Appellant's representative Respondent Respondent's representative
Decision date:	October 16, 2025
File number:	AD-25-351

Decision

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

Overview

[2] The Respondent is a 46-year-old personal support worker (PSW). She was injured in a car accident in 2015 and was later diagnosed with anxiety, depression, and fibromyalgia. She continues to work, but only for a single client a few hours per week.

[3] The Respondent applied for a CPP disability pension in July 2023.[1] In her application, she said that she could no longer work as of December 2022 because of anxiety, fatigue, brain fog, and generalized pain, especially in her neck and back.

[4] Service Canada, the Minister's public-facing agency, refused the application after finding that the Respondent did not have a severe and prolonged disability. While it acknowledged that the Respondent was no longer capable of strenuous activities, such as heavy lifting, it found that she was still likely capable of sedentary, part-time work.[2]

[5] The Respondent appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by videoconference and allowed the appeal. It found that the Respondent was incapable regularly of substantially gainful employment as of December 31, 2024, the last time she had CPP disability coverage. It accepted that the Respondent was in pain and vulnerable to stress. It found that her ongoing part-time job was not an indicator of capacity.

[6] The Minister then applied for permission to appeal to the Appeal Division. Last May, one of my colleagues on the Appeal Division granted the Minister permission to appeal.[3] Earlier this month, I held a new hearing to discuss the merits of the Respondent's disability claim.

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[1] See the Respondent's application for CPP disability benefits dated July 23, 2023, GD2-39.
[2] See the Minister's reconsideration decision letter dated October 18, 2022, GD2-75
[3] See the Appeal Division's notice granting leave to appeal dated May 21, 2025.

[7] During the hearing, it emerged that the Respondent had additional medical documents in her possession that she had never submitted to the Tribunal. I gave her an opportunity to submit new relevant material after the hearing, and she did so within the specified deadline.[4]

Issues

[8] Even though this is the Minister's appeal, the burden of proof continues to be on the Respondent. In other words, it is up to her to prove that she is disabled according to the definition set out in the *Canada Pension Plan*.

[9] For the Respondent to succeed, she had to show that, more likely than not, she has a **severe** and **prolonged** disability during her coverage period.

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.[5] 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.[6] The disability must be expected to keep the claimant out of the workforce for a long time.

[10] The parties agreed that the Respondent's coverage period will now end on December 31, 2025.[7] Since that lies in the future, I had to decide whether the Respondent had a severe and prolonged disability as of the hearing date.

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[4] The Respondent submitted to the Tribunal a package of medical and other documents on October 2, 2025 — see AD7. The Minister filed a response on October 14, 2025 — see AD8.
[5] See *Canada Pension Plan*, section 42(2)(a)(i).
[6] See *Canada Pension Plan*, section 42(2)(a)(ii).
[7] Under section 44(2) of the *Canada Pension Plan*, a "minimum qualifying period" (MQP) is established by making valid contributions to the CPP. When the General Division heard the Respondent's case last May, her MQP was determined to have ended on December 31, 2024. The Respondent has now registered an additional year's worth of valid contributions, extending her MQP to December 31, 2025. See the Respondent's updated record of earnings and contributions at AD4-14.

Analysis

[11] I have applied the law to the available evidence and concluded that the Respondent doesn't have a severe and prolonged disability. I'm not satisfied that the Respondent's medical conditions prevent her from regularly pursuing substantially gainful employment.

The Respondent doesn't have a severe or prolonged disability

[12] In her application for benefits, the Respondent said that the main thing preventing her from working was fibromyalgia, accompanied by anxiety, depression, and generalized pain. She also said that she suffered from fatigue, brain fog, and an inability to manage multiple tasks.[8]

[13] However, despite her reported pain, the Respondent rated her ability to perform certain physical activities as "good," "very good." or excellent":

- Remaining on her feet for at least 20 minutes
- Walking a block on flat ground
- Kneeling or squatting and getting back up again
- Sitting for at least 20 minutes in a straight back chair
- Staring at a computer screen for at least 20 minutes

[14] The Respondent added that she couldn't stand for long on cement floors or in damp conditions. She emphasized that she had "good days and bad days."

[15] Despite her reported anxiety, the Respondent still described some of her behavioural abilities as "very good":

- Working in a team
- Dealing with people she didn't not know
- Controlling her temper when dealing with others
- Do what people in authority asked her to do

[8] See the Respondent's CPP disability pension application dated July 10, 2023, GD2-39.

[16] She added that she was starting to get panic attacks and felt easily overwhelmed. Nevertheless, and somewhat confusingly, she also rated her ability to manage anxiety as “fair.”

[17] At the hearing, the Respondent explained why she felt she was disabled. She testified that she went back to school as an adult to train as a personal support worker, graduating in 2013. She worked as a PSW full time until 2015, when she injured her back in a car accident. She returned to part-time hours, first at X, then at Y, but found herself under increasing stress. She was bullied by a co-worker, but that wasn’t the main thing. There was too much computer work. Her job title kept changing. Nothing was consistent.

[18] There was no particular incident that led to her departure. She kept messing up reports and, on one occasion, she forgot to give a client medication, for which she was formally reprimanded. She felt overwhelmed, and her family physician told her that she needed to stop working. Eventually, she resigned, but if she hadn’t done so, she probably would have been fired. She could see which way things were going.

[19] The Respondent said that she was diagnosed with fibromyalgia five years ago, but she has been dealing with its symptoms since 2015. She likened it to permanently having the flu. She added that mental health is a “huge” component of her disability.

[20] She continues to see Dr. Nzeadi regularly — maybe four or five times in the past year. She couldn’t remember her psychiatrist’s name and wasn’t sure why she stopped seeing him, but she recalled him saying that she had “issues” — such as her CPP application — that needed to be resolved. He advised her to come back when her mind was more settled. She has not seen him since.

[21] In late 2023, she returned to work, but only on a very limited basis. She has one client — an elderly woman living with dementia in a respite home. Until recently, she was visiting her three times a week — Monday, Wednesday, Friday — for sessions lasting three hours each. Her client has physical, but not mental, capacity. She gives the client her meds, takes her for walks, washes her laundry, warms her meals, and

watches TV with her. She does not get the client out of bed, get her dressed, or otherwise perform any physically demanding tasks. She does not have to use computers or do paperwork.

[22] Still, she finds even this modest job physically, though not mentally, taxing. She recently reduced the frequency of her visits to twice a week for a total of six hours per week. Her attendance has been pretty good, although she has missed some days. Her client will soon be moved to a care home (she's on a waiting list), and when that happens, she won't take on any more work.

[23] I understand that the Respondent feels disabled. However, I have to base my decision on more than just her subjective view of his capacity.[9] I must look at the evidence as whole, not just the Respondent's testimony, but also her medical evidence. In the end, I found that evidence less than compelling.

The medical evidence doesn't rule out all forms of work

[24] A CPP disability claimant must provide objective medical evidence supporting a claimed mental or physical disability, including reports about its nature, extent, and prognosis.[10]

[25] The Respondent insists that she can no longer work because of anxiety and generalized pain. However, there simply wasn't enough medical evidence to back that claim up. There is no doubt that the Respondent has problems, but the available medical evidence did not point to a significant disability.

[26] In July 2023, the Respondent's family physician, Dr. Nzeadi, completed a medical report to accompany his patient's CPP disability application. He listed her diagnoses as fibromyalgia, anxiety, and depression. He said that she had difficulty

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[9] A CPP disability claimant has to provide a report of any physical or mental disability, including its nature, extent and prognosis; the findings upon which the diagnosis and prognosis were made; any limitation resulting from the disability, and any other pertinent information. See section 68(1) of the *Canada Pension Plan Regulations.*

[10] 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.

performing strenuous tasks and maintaining focus. However, Dr. Nzeadi expected the Respondent to return to modified work in the future.[11] He also indicated that her depression was stable on Escitalopram (an anti-depressant marketed under the brand name Cipraex) and Clonazepam (a sedative used in the treatment of anxiety). She had reported a mild benefit for her fibromyalgia with Pregabalin (an anti-epileptic drug, marketed as Lyrica, that is also used to treat neuropathic pain).

[27] In December 2022, a physiotherapist said that the Respondent was experiencing high stress, which could "directly exacerbate her fibromyalgia symptoms." He recommended that she take leave from work.[12]

[28] The following month, Dr. Nzeadi reported that the Respondent had gone off work after being harassed by a co-worker. Dr. Nzeadi noted that, although she was under stress, the Respondent was "not physically unwell," and he issued the first of a series of medical certificates declaring her unable to work for specified periods.[13] In June 2023, Dr. Nzeadi completed a form in support of the Respondent's Disability Tax Credit (DTC) application, identifying difficulties with walking, anxiety, depression, and poor concentration.[14]

[29] These reports suggest that the Respondent left her job at Y, not because of physical factors, but because of stress related to a particular situation at work — a situation from which she quickly removed herself. In August 2023, the Respondent began seeing psychiatrist Dr. Gangdev, who relayed much the same story. In their initial consultation, the Respondent told the Dr. Gangdev that she experienced stress after a co-worker began bullying her in the summer of 2022.[15] When she complained to management, they blamed her, rather than supporting her, and presented her with a written warning the next day. She went on leave and later quit the job altogether. She was also anxious about her health, finances, and relationships. Dr. Gangdev concluded

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[11] See the initial CPP medical report dated July 2, 2023 by Dr. Chetanna Nzeadi, family physician, GD2-88.
[12] See report dated December 21, 2022 by Justin McCulloch, physiotherapist, GD2-95.
[13] See Dr. Nzeadi's report dated January 16, 2023, GD2-125.
[14] See Disability Tax Credit application form completed by Dr. Nzeadi on June 2, 2023, GD2-100.
[15] See report dated August 17, 2023 by Dr. Prakesh Gangdev, psychiatrist, GD8-9.

that the Respondent had experienced a stress-related mood disturbance arising from her current stressors. He recommended that she re-engage with friends and resume recreational activities and attend therapy.

[30] Over the next few months, Dr. Gangdev saw the Respondent six more times. In September 2023, he noted that the Respondent felt relieved since quitting her job: "I feel like I am out of prison… people notice that I look refreshed."[16] However, he said that she "remained bitter, resentful, and feeling betrayed and let down." In October 2023, the Respondent reported she was approved for the DTC and had secured a part-time job at nine hours per week. She said that she found it difficult to let go of anger and resentment but that she was "better than before."[17] The following month, Dr. Gangdev described the Respondent as "discontent but somewhat [in a] better mood."[18]

[31] In August 2023, the Respondent was referred to a physiatrist for chronic neck and pain.[19] She told Dr. Reardon that the pain from 2015 car accident had neither worsened nor improved significantly. However, she said that she had been experiencing intense right leg pain since her COVID-19 vaccination two years earlier, which prevented her from sitting, standing or walking for prolonged periods. On examination, Dr. Reardon noted good range of motion in the neck, upper back and hips, with diffuse tenderness in the lower back and hips. Dr. Reardon recommended daily aerobic exercises and a consultation with a physiotherapist for an exercise program geared toward strengthening the core and hip muscles.

[32] In November 2023, the Respondent was taken to Emergency after complaining of chest pain, breathlessness, dizziness, and nausea. After possibly exhibiting slurred speech and drooping features, she was examined by a neurologist, who detected no stroke symptoms. A CT scan of the head revealed no acute stroke or any sign of early

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[16] See Dr. Gandev's report dated September 18, 2023, GD8-17.
[17] See Dr. Gandev's report dated October 17, 2023, GD8-19.
[18] See Dr. Gandev's report dated November 6, 2023, GD8-21.
[19] See report dated August 29, 2023 by Dr. Rachel Reardon, specialist in physical medicine and rehabilitation, GD8-13.

ischemic changes. She was discharged with a diagnosis “epigastric pain NYD [not yet determined].”[20]

[33] A November 2023, MRI scan of the lumbar spine revealed no significant neural foraminal narrowing or nerve impingement.[21] The following month, a pain management specialist, Dr. Okusanya, saw the Respondent for an eight-year history of neck and low back pain.[22] On examination, she was tender over the greater trochanters and sacroiliac joints on both sides but otherwise displayed no sensory abnormalities. Dr. Okusanya concluded that the Respondent had mechanical back pain and hip pain and recommended she start rehabilitation.

[34] In February 2024, Dr. Reardon reported that the Respondent was unchanged since the initial consultation.[23] She continued to experience neck and low back pain with occasional right knee pain and pain in the right fourth toe. Since her last appointment, she had resumed work, providing respite care to a client nine hours per week. Dr. Reardon concluded that the Respondent’s symptoms were most consistent with fibromyalgia and advised her to exercise regularly, gradually increasing the intensity and duration of her routine over time.

[35] In October 2024, Dr. Okusanya again noted the Respondent’s ongoing back pain complaints and again recommended rehabilitation, suggesting that, after nearly a year, this particular treatment option had yet to be explored.[24]

[36] In the most recent available medical report, dated February 2025 , Dr. Nzeadi wrote that the Respondent was disabled due to mental and physical conditions, including anxiety, depression, fibromyalgia, and spinal arthropathy compounded with job-related stress.[25] However, at the hearing, the Respondent testified that her current

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[20] See Emergency report dated November 17, 2023 (GD8-24) and consultation note dated November 17, 2023 by Dr. Sebastian Fridman, neurologist (GD8-35).
[21] See MRI of the lumbar spine dated November 25, 2023, GD8-29.
[22] See report dated December 27, 2023 by Dr. Olanrewaju Okusanya, specialist in pain management, GD8-38.
[23] See Dr. Reardon’s report dated February 27, 2024, GD8-54.
[24] See Okusanya’s clinical notes dated October 24, 2024 (AD7-5) and January 27, 2025 (AD7-7).
[25] See Dr. Nzeadi’s letter dated February 16, 2025, GD7-2.

part-time job was not particularly stressful, raising doubts about his familiarity with his patient's work status.

[37] Under the *Canada Pension Plan*, it is a claimant's capacity to work, and not their diagnoses, that determine whether they have a "severe" disability.[26] While the Respondent experiences anxiety, depression, and pain, that doesn't necessarily mean she is disabled.

[38] The evidence shows that the Respondent left her last significant job largely because of an interpersonal conflict. At the time, her family doctor did not believe that she would be off work indefinitely, and he described her psychological condition as "stable" on medication.

[39] I also detected inconsistencies in her evidence. In August 2023, the Respondent told her physiatrist that she had been experiencing "intense" leg pain for two years. However, in her application for benefits, completed only a month earlier, she reported no significant problems with prolonged standing and walking, kneeling or squatting. The Respondent supposedly quit her job because of psychological factors, but her psychiatrist ended treatment soon after finding her mood had improved with treatment. The Respondent has said that she had a stroke, but there was nothing to substantiate that claim in the reports documenting her November 2023 ER admission.

[40] In all, the available medical evidence suggests that the Respondent still had capacity to earn a living.

The Respondent hasn't complied with recommended medical treatment

[41] A Federal Court of Appeal case called *Lalonde* says that disability claimants must do their best to follow medical recommendations.[27] *Lalonde* also requires decision-makers to determine whether a claimant's refusal of recommended treatment is

[26] See *Klabouch v Canada (Minister of Social Development)*, 2008 FCA 33.
[27] See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211.

unreasonable and, if so, consider what impact that refusal is likely to have on their disability.[28]

[42] In this case, the Respondent neglected to take a basic step to improve her condition. She left her regular job in December 2022 because she had difficulty handling the stress that came with it. Soon after, she was referred to both a psychiatrist and physiatrist. In August 2023, Dr. Gangdev recommended adjustments to her medication. Later that month, Dr. Reardon suggested increasing the dose of her escitalopram and changing her pregabalin her pregabalin from 75 mg once a day to 50 mg twice daily.[29]

[43] Dr. Gangdev noted that the Respondent's initial response was to "wait and see." In his subsequent reports, he noted that the Respondent had refused his offers to review her medications.

[44] Ultimately, the Respondent's pregabalin dose was adjusted according to Dr. Gangdev's recommendation.[30] However, her escitalopram dose has remained unchanged.

[45] I asked the Respondent why her family physician had not followed her psychiatrist's medication recommendations. She replied that Dr. Nzeadi regularly reviewed her drug regimen and did not find it necessary to alter it. I found that surprising given the fact that it had been Dr. Nzeadi who had referred the Respondent to Dr. Gangdev and Dr. Reardon in the first place. His patient was claiming to be disabled by a mental health condition and a pain condition that is widely known to be aggravated by psychological factors. Why would a family doctor ignore the expressed recommendations of specialists, who presumably have more expertise in the field of pain management than he?

[46] For that matter, why hadn't the Respondent sought a medication adjustment on her own initiative? I put that question to her, and she replied that she found her current escitalopram dose to be effective. I was surprised to hear that answer, given the fact

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[28] See *Sharma v Canada (Attorney General)*, 2018 FCA 48.
[29] See Dr. Reardon's report dated August 29, 2023, GD8-13.
[30] See the Respondent's current prescriptions, AD7-3.

that much of her disability application was based on anxiety and depression and that she had earlier testified that mental health was a “huge” part of her disability.

[47] The Respondent maintained that her fibromyalgic pain continued to prevent her from doing any kind of substantially gainful job, but even here, I doubted that she had taken all reasonable steps to mitigate her condition. The Respondent said that Dr. Okusanya, the pain specialist, didn’t know what to do about her fibromyalgia and had raised the possibility of her getting Cortisone shots. However, the Respondent appeared to rule out that option, saying she wasn’t interested, because she knows that pain blockers don’t last, and she would worry about getting her hopes up.

[48] In the end, I concluded that the Respondent failed to optimize her medications. Her explanation for that failure did not make sense to me, and couldn’t understand why, if she was impaired by depression and anxiety, neither she nor her family doctor followed up on her specialists’ very specific recommendations. It appears that Dr. Nzeadi bears some of the blame for maintaining the status quo , but so does the Respondent, who could have pushed him to vary her prescriptions in the hope that it might improve her ability to cope with stress.

[49] The Respondent did not do everything reasonably possible to get better, as required by *Lalonde*. As a result, I have no way of knowing whether, with the help of an optimized medication regimen, her functionality might have improved. That leads me to doubt whether her impairment is, in fact, prolonged.

The Respondent’s background and personal characteristics don’t affect her employability

[50] Based on the foregoing evidence, I am not persuaded that the Respondent is regularly incapacitated from substantially gainful work. I am reinforced in this belief when I look at her background and personal characteristics.

[51] When deciding whether the Respondent can work, I can’t just look at her medical conditions. I must also consider factors such as her age, level of education, language abilities, and past work and life experience. Employability is not to be assessed in the

abstract, but rather in light of "all of the circumstances." These circumstances help me decide whether the Respondent can work in the real world.[31]

[52] The Respondent experiences degrees of pain, depression, and anxiety, but she also has several assets that would help her in a search for alternative work. She is a native-born English speaker with a lengthy work history. She has a college education and, even if she is no longer physically capable of working as a PSW, she has shown herself capable of retraining for a lighter job. Above all, she is still only in her mid-forties — many years from the usual age of retirement.

[53] The Respondent continues to work on limited basis, minding an elderly woman for only six hours a week. By itself, this job doesn't mean she has capacity, but it doesn't mean she lacks capacity either. She insists she can barely manage her relatively undemanding part-time job, but that is not obvious to me, given the bulk of the medical evidence.

Conclusion

[54] The Respondent has suffered from chronic pain and depression since a car accident in 2015. She left her regular job as a PSW in 2022, but none of her treatment providers have ruled out a return to work, she has not fully complied with treatment advice, and her background and personal characteristics highlight no fundamental obstacles to her continued employment. They, along with her uneven medical record, suggest that she still has capacity to perform a substantially gainful occupation.

[55] The appeal is allowed.

Member, Appeal Division

[31] See *Villani v Canada (Attorney General)* 2001 FCA 248.