



Citation: *BM v Minister of Employment and Social Development*, 2026 SST 137

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: B. M.

Respondent: Minister of Employment and Social Development
Representative: Daniel Crolla

Decision under appeal: General Division decision dated June 13, 2025
(GP-25-642)

Tribunal member: Neil Nawaz

Type of hearing: Teleconference

Hearing date: February 10, 2026

Hearing participants: Appellant
Respondent's representative

Decision date: February 25, 2026

File number: AD-25-583

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 32-year-old former construction worker and snow plow operator. He was injured in an April 2021 car accident, and he has worked only intermittently since then.

[3] The Appellant applied for a CPP disability pension in June 2024.¹ He claimed that he could no longer work because of ongoing neck and back pain.

[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.²

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal. The Tribunal's General Division conducted a hearing in writing and dismissed the appeal. It found that, although the Appellant had some physical limitations, he still had the capacity to regularly perform substantially gainful employment. It also found that he had not made sufficient effort to find suitable alternative employment within his limitations.

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

¹ See the Appellant's application for CPP disability benefits dated June 11, 2024, GD2-38.

² See the Minister's initial refusal letter dated October 17, 2024 (GD2-24) and reconsideration decision letter dated January 17, 2025 (GD2-9).

Issue

[7] For the Appellant to succeed, he had to prove that, more likely than not, he became disabled during his coverage period. Under the *Canada Pension Plan*, a disability must be severe and prolonged:

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.³ 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.⁴ 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 CPP disability coverage period ended on December 31, 2024.⁵ As a result, I had to assess the Appellant's condition as of that date and decide whether he had functional limitations that will prevent him from earning a living for a long time.

Analysis

[9] I have applied the law to the available evidence and concluded that the Appellant did not have a severe and prolonged disability as of December 1, 2024. The Appellant had medical problems, but they won't prevent him from regularly pursuing substantially gainful employment over the long term.

³ See section [42\(2\)\(a\)\(i\)](#) of the *Canada Pension Plan*.

⁴ See section [42\(2\)\(a\)\(ii\)](#) of the *Canada Pension Plan*.

⁵ Under [section 44\(2\)](#) of the *Canada Pension Plan*, a "minimum qualifying period" is established by making threshold contributions to the CPP. The Appellant's CPP contributions are listed on his record of earnings at GD2-45.

The Appellant had a severe disability

[10] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.⁶ I have reviewed the record, and I have concluded that the Appellant met that burden according to the test set out in the *Canada Pension Plan*.

[11] In his application for benefits, the Appellant said that he has been impaired by chronic pain since his April 2021 car accident.⁷ He said that prolonged walking, sitting, or standing makes his pain worse, as does repetitive lifting, twisting, pushing, and pulling. He has trouble carrying things and doing housekeeping. He has problems with his ability to remember, focus, and learn. He has vision problems and he is anxious and depressed.

[12] At the hearing, the Appellant testified that his main problem is soft tissue damage to his neck and back. He feels a constant burning sensation and occasional sharp stabbing pain. He hears a cracking sound whenever he moves his neck. He experiences headaches and prolonged episodes of vertigo. He often requires weeks of bedrest.

[13] Sitting or standing for extended periods increases his pain. He can walk around, but he'll feel it afterward. He can perform light tasks, but he has to push through pain to complete them.

– The medical evidence rules out physical work

[14] The Appellant has been diagnosed with whiplash injuries and chronic pain, but I can't focus on diagnoses.⁸ Instead, I have to ask whether the Appellant had functional limitations that prevented him from earning a living during his coverage period.⁹

[15] The Appellant experiences neck and back pain, and there's no question that it interferes with his ability to work. The available medical evidence suggests that, at the

⁶ See [section 44\(1\)](#) of the *Canada Pension Plan*.

⁷ See the Appellant's CPP disability application, GD2-39,

⁸ See [Ferreira v Canada \(Attorney General\), 2013 FCA 81](#).

⁹ See [Klabouch v Canada \(Attorney General\), 2008 FCA 33](#).

very least, the Appellant's condition prevents him from carrying on a physically demanding job.

[16] The Appellant saw his family physician, Dr. Capello, in May 2021, about two weeks after his car accident.¹⁰ He described striking the right side of his head in the collision, with no loss of consciousness. He didn't experience any symptoms at first but went to emergency a few days later with headaches and neck pain radiating to his shoulders and upper arms. In addition to pain, he also reported dizziness and lack of focus, aggravated by using a phone or watching television. Dr. Capello diagnosed the Appellant with a whiplash injury, concussion, and myofascial pain. He advised him to remain off work for a few weeks and continue physiotherapy, while avoiding physical activity and excess screen time. Over the next three years, Dr. Capello documented the Appellant's persistent pain complaints:

- In July 2021, Dr. Capello reported that the Appellant had found physiotherapy and massage helpful, although the pain returned after cracking his neck.¹¹ He had difficulty finding a comfortable position but had no focal weakness, leg pain, numbness or facial symptoms.
- In September 2021, the Appellant said that his condition varied from day to day.¹² He had recently felt well enough to play frisbee catch but then had a flare-up of pain in his upper/mid back for the next two weeks.
- In November 2021, Dr. Capello noted that the Appellant continued to report pain in his neck, shoulder girdle, and across his back.¹³ Nevertheless, he continued to do light chores and light lifting. On examination, the Appellant exhibited tenderness across his neck and back but no restriction of movement.

¹⁰ See office note dated May 7, 2021, by Dr. Tim Capello, family physician, GD2-76.

¹¹ See Dr. Capello's office note dated July 8, 2021, GD2-77.

¹² See Dr. Capello's office note dated October 5, 2021, GD2-78.

¹³ See Dr. Capello's office note dated November 8, 2021, GD2-78.

- In March 2022, Dr. Capello reported that cyclobenzaprine (a muscle relaxant marketed under the trade name Flexeril) was helping the Appellant sleep.¹⁴ He continued to do light chores at home — lifting up to 10 pounds with some neck and back discomfort.
- In April 2022, the Appellant reported feeling worse, with additional neck pain and limitations.¹⁵ On examination, he displayed normal neck and shoulder movement, with no muscle wasting or weakness.
- In December 2022, Dr. Capello noted improved range of motion to the Appellant's neck, with no weakness or numbness.¹⁶ He was doing light exercises, and had returned to work driving a snow plow. Physical examination revealed normal gait and normal neck and shoulder range of motion, with no weakness in the limbs.
- In May 2023, the Appellant told Dr. Capello that his neck pain was worse after he had recently started going back to the gym.¹⁷ Dr. Capello recommended physiotherapy, exercise, and a gradual work hardening program.
- In February 2024, the Appellant reported neck pain, cracking, and dizziness. He also complained of body pains, low libido, poor balance, and sleeplessness.¹⁸ On examination, the Appellant moved his neck tentatively, but his range of motion was normal. His gait was steady, and his strength normal.
- In April 2024, Dr. Capello reported that the Appellant was frustrated by his ongoing pain.¹⁹ Nevertheless, he was sleeping okay and not waking up with pain. He said that he performed light chores and activities and was able to sit or stand for 30 minutes before needing to move to alleviate pain.

¹⁴ See Dr. Capello's office note dated March 1, 2022, GD2-79.

¹⁵ See Dr. Capello's office note dated April 4, 2022, GD2-79.

¹⁶ See Dr. Capello's office note dated December 9, 2022, GD2-80.

¹⁷ See Dr. Capello's office note dated May 11, 2023, GD2-81.

¹⁸ See Dr. Capello's office note dated February 28, 2024, GD2-82.

¹⁹ See Dr. Capello's office note dated June 17, 2024, GD2-82.

[17] In June 2024, Dr. Capello completed a medical questionnaire in support of the Appellant's CPP disability application. He said that the Appellant was unable to work because of myofascial neck pain, which he said impaired his ability to do heavy lifting and remain in a static position for prolonged periods. However, he added that the Appellant was still able to exercise and perform light chores, as well as sit or stand up to 30 minutes without needing to change position. He also expected that the Appellant's condition would likely improve and that he would return to light, physically undemanding work within six to 12 months.²⁰

[18] The Appellant's diagnostic testing results don't demonstrate any severe pathology:

- In May 2022, an MRI of the cervical spine revealed only mild degenerative changes, including osteophytes, multilevel neural foraminal narrowing, and a small right protrusion at C6-7.²¹
- In April 2025, another cervical spine MRI indicated a tiny right C6-7 protrusion, possible nerve root irritation, and early central canal stenosis (narrowing) at C6-7.²²

[19] In February 2025, a physiotherapist wrote that for two years she had been treating the Appellant for whiplash injuries, including sprains to his cervical, thoracic, and lumbar spines.²³ She listed diagnoses of post-concussion syndrome and vision and vestibular impairment. On examination, the Appellant demonstrated good postural awareness and an ability ambulate on even and uneven surfaces without assistive devices. His responses to questionnaires revealed perceptions of moderate to severe impairment, but he displayed normal upper and lower extremity strength. He demonstrated some weakness in his neck and core muscles, but testing did not show any neurological signs. Cranial nerve and vision screening were unremarkable. The

²⁰ See Dr. Capello's CPP medical report dated June 25, 2024, GD2-66 .

²¹ See MRI of the cervical spine dated May 19, 2022, GD2-84.

²² See MRI of the cervical spine dated April 19, 2025, GD3-3.

²³ See progress report dated February 22, 2025, by Trina Ferrer, physiotherapist, GD1-15.

physiotherapist recommended reassessments every three months and lifelong interventions in the event of acute pain exacerbations.

[20] In March 2025, the Appellant was seen in emergency for pain and numbness in his right arm and fingers.²⁴ He told the attending physician that he had experienced chronic pain since his car accident and was feeling anxious due to a lack of improvement. He reported using THC for sleep and pain, along with Naproxen and cyclobenzaprine as needed. He attended physiotherapy weekly and had previously attended a pain clinic but did not return after he experienced a sudden drop in blood pressure during treatment. Nonetheless, the Appellant said that he had been recently referred to a pain management clinic and was awaiting an appointment. On examination, the Appellant appeared to be in no acute distress. He showed no overt tenderness in his cervical spine, and his strength was normal in the upper extremities. The attending physician advised the Appellant to try Lyrica, continue physiotherapy, and attend the pain clinic when scheduled.

[21] In August 2025 and again the following month, the Appellant's new family physician, Dr. Usoroh, wrote two notes declaring him unable to work for, respectively, two and four weeks.²⁵

[22] In November 2025, the Appellant saw a neurosurgeon for axial neck pain and occasional radicular pain.²⁶ After reviewing imaging and physically examining the Appellant, the neurosurgeon concluded that neuromodulation (implantation of a device to inhibit nerve pain) was an option for the neck pain. He also discussed possible cervical disc replacement, but he wanted to see a nerve conduction study first. Once that was done, he would schedule a follow up appointment to discuss surgery further.

²⁴ See ED Provider report dated March 17, 2025, by Dr. Dorota Nowodorski, general practitioner, GD1-13.

²⁵ See letters dated August 7, 2025 (AD1-11) and September 5, 2025 (AD1-12) by Dr. Nsikak Usoroh, family physician.

²⁶ See report dated November 4, 2025, by Dr. Alan Chalil, neurosurgeon, AD4-2.

[23] In all, the medical evidence suggests that the Appellant is no longer capable of physically demanding work. But it remains unclear whether he is similarly incapable of sedentary work.

[24] Imaging reports indicate mild degenerative changes to the Appellant's spine, and he himself acknowledges that he sustained only "soft tissue" injuries as a result of his car accident. For the most part, his physical examinations showed good range of motion and normal, or near-normal, strength in his neck muscles. The Appellant probably can't return to construction, but he may still be capable of a desk job.

– **The Appellant has attributes that help his employability**

[25] When deciding whether a CPP disability claimant can work, I can't just look at their medical conditions. I must also consider factors such as their 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 claimant can work in the real world.²⁷

[26] In this case, the Appellant suffers from ongoing neck pain, but he also has several assets that help him when he looks for work. He is a native English-speaker. He is a high school graduate. He was only 31 years old at the end of his coverage period — a prime age for many prospective employers.

[27] The Appellant's background and personal characteristics highlight no fundamental obstacles to his finding employment. To date, he appears to have little difficulty in getting a job. The question is whether his medical conditions indefinitely prevent him from keeping one.

– **The Appellant has attempted to keep working**

[28] A Federal Court of Appeal decision called *Inclima* says that disability claimants must do what they can to find alternative employment that is better suited to their impairments:

²⁷ See [Villani v Canada \(Attorney General\) 2001 FCA 248](#).

Consequently, an applicant who seeks to bring himself within the definition of severe disability must not only show that he (or she) has a serious health problem but where, as here, there is evidence of work capacity, must also show that efforts at obtaining and maintaining employment have been unsuccessful by reason of that health condition.²⁸

[29] This passage suggests that CPP disability claimants must make a reasonable attempt to find alternative employment that is within their capabilities.

[30] To his credit, the Appellant has done his best to keep working, despite his neck pain. He testified that, after graduating from high school, he worked in hardscaping — mostly laying interlocking pavers. Later, he worked as a self-employed tow truck operator. It was a full-time occupation that frequently saw him working 18-hour shifts. It was also a physically demanding job that required him to lift and position 40-pound dollies under stalled vehicles.

[31] The COVID pandemic forced him off the road for a while, so he supplemented his income by going into construction. At the time of his car accident in April 2021, he had just started a job as a carpenter. After more than a year of recovery and on the advice of his family doctor, he took a job as a snow plow operator, thinking that it would be easier on his neck and back. The job involved a lot of driving around, and he found himself having to get out and stretch every 30 minutes or so. Fortunately, he didn't have to turn his neck too much because he was mostly plowing large parking lots in straight sweeps.

[32] Still, he gave up the job after one season because it aggravated his pain. Last summer, he tried another job, one that he thought would be easier on his back. An acquaintance who runs a construction company hired him to be a trainee estimator. It was an office job, 20 to 30 hours per week, and it required him to sit at a computer and cost construction drawings. His boss knew that he was injured and went as far as to buy

²⁸ See [Inclima v Canada \(Attorney General\), 2003 FCA 117](#).

him a \$600 orthopedic chair. He used a heating pad and was allowed to get up when needed.

[33] The Appellant insists that he gave the job a solid try. However, he said that his pain started to compound. He would get at home at night feeling very weak and fatigued and go to bed. After a couple of months, his new family physician, Dr. Usoroh, advised him to go off work.

[34] I am satisfied that the Appellant has done his best to remain employed, but I'm not sure, as he maintains, that his medical condition completely rules out light work.

– The Appellant has followed treatment advice but options remain

[35] Case law says that disability claimants must take reasonable steps to alleviate their impairments by following medical recommendations.²⁹

[36] The Appellant says that he has tried to get better but is still in pain. He stopped taking Naproxen because it made him nauseous, and he now relies on cannabis for pain relief. His insurance company stopped funding his physiotherapy, but he still goes two or three times a month, paying for it out of his own pocket. He has also tried trigger point injections, but their efficacy only lasts a day or so.

[37] The Appellant appears to have done his best to comply with medical advice. However, the advice he has been given to date has been conservative. His previous family physician was content to refer him to physiotherapy and prescribe him with pain medication. However, his new family physician immediately referred him to a neurosurgeon who has more aggressive measures in mind.

[38] In his initial consultation with the Appellant this past November, Dr. Chalil discussed neuromodulation as a treatment option. He also raised the possibility of disc surgery and sent the Appellant for further investigations before deciding what course to

²⁹ See [Lalonde v Canada \(Minister of Human Resources Development\), 2002 FCA 211](#).

take. At his hearing, the Appellant said that his nerve conduction study was scheduled for the following week.

[39] It's obviously not the Appellant's fault that he hadn't previously explored neuromodulation or surgery. After all, these options weren't brought to his attention until recently. To his credit, the Appellant appears receptive to Dr. Chalil's treatment plan and is doing his part to carry it out. But now that it is on the table, the plan makes me wonder whether the Appellant's impairments are indeed prolonged.

The Appellant does not have a prolonged disability

[40] I am satisfied that the Appellant had a severe disability as of December 31, 2024. However, I'm not sure it was prolonged.

[41] Under the *Canada Pension Plan*, a disability must be severe **and** prolonged. As noted, a prolonged disability is one that is likely to be long continued and of indefinite duration or likely to result in death. The courts have held that to be prolonged, disability can't be temporary or for a "closed" period.

[42] A period is closed if it has a reasonably foreseeable end date. In a case called *Henderson*, a claimant was scheduled for surgery that his doctors believed would probably improve his condition and enable him to work. The Federal Court of Appeal found that it was wrong to find that his disability was prolonged.³⁰

[43] In another case, *Litke*, the Pension Appeals Board found that the disability was not prolonged, because it was of a definite duration. The Federal Court of Appeal agreed with the Board that the evidence showed the claimant was capable of returning to work following her cancer treatment, despite the fact that she had other health issues.³¹

[44] These cases suggest that the prolonged test requires an assessment of whether further treatment exists, when it might happen, and how likely it is to produce an

³⁰ See [Canada \(Minister of Human Resources Development\) v Henderson, 2005 FCA 309](#).

³¹ See [Litke v Canada \(Human Resources and Social Development\), 2008 FCA 366](#).

improvement.³² The present case is slightly different in that, unlike *Henderson* or *Litke*, the Appellant does not yet have a definite timeframe as to when he might receive the more aggressive treatments — neuromodulation and surgery — that his neurosurgeon is considering.

[45] However, Dr. Chalil's November 2025 report suggests that he is moving quickly. He appears to think that more can be done to relieve the Appellant's pain, and although he does not offer any odds of success for procedures under consideration, one can assume that he wouldn't be proposing them if he didn't think they were likely to produce a net benefit.

[46] Dr. Chalil's treatment plan is consistent with the relatively optimistic outlook adopted by the Appellant's other treatment providers before and after the end of his coverage period. In June 2024, Dr. Capello expected that the Appellant's condition would likely improve and that he would return to light, physically undemanding work within six to 12 months. The Appellant did take on a light, physically undemanding job, but when he left it after a couple of months, his new family physician suggested that the break would be only temporary.

[47] This was all before the neurosurgery referral and the promise of more comprehensive treatment. I note also that the Appellant has yet to complete pain management therapy (he is currently on a waiting list) or enrol in a work hardening program.

[48] In sum, there remain treatment options that have a reasonable prospect of restoring the Appellant to the point where he could manage a desk or counter job. For this reason, I'm not convinced that the Appellant's disability is likely last indefinitely.

³² The Federal Court of Appeal has more recently confirmed that disability claimants must **continue** to be disabled from the end of the coverage period to when the disability is assessed. See [Milner v Attorney General of Canada, 2024 FCA 4](#) and [Brown v Attorney General of Canada, 2022 FCA 104](#).

Conclusion

[49] The Appellant suffers from ongoing neck pain, and I'm satisfied that he's no longer capable of the kinds of physically demanding jobs he had previously as a tow truck driver and construction worker. However, I don't think he's permanently disabled from more sedentary forms of employment. He recently had to quit a desk job as a cost-estimator, but he is now seeing a neurosurgeon who has developed a treatment plan that offers a good prospect of restoring some of his functionality. For now, the Appellant's condition may be severe, but I don't agree it's prolonged.

[50] The appeal is dismissed.



Member, Appeal Division