



Citation: *FC v Minister of Employment and Social Development*, 2026 SST 160

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

Decision

Appellant: F. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated April 9, 2025 (issued by
Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: In Writing

Decision date: March 5, 2026

File number: GP-25-1213

Decision

[1] The appeal is dismissed.

[2] The Appellant, F. C., isn't eligible for a Canada Pension Plan (CPP) disability pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is 58 years old. She owned and operated a retail shop. She had also worked in a retail store for several years prior to opening a store. She stopped working when her shop closed near the end of 2018. At that time, she had a diagnosis of fibromyalgia.

[4] The Appellant applied for a CPP disability pension on September 29, 2023. The Minister of Employment and Social Development (Minister) refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says the combination of her various medical conditions causes functional limitations that prevent her from working in any capacity. She says her conditions have continued to worsen over time. She says she has a disability that is severe and prolonged.

[6] The Minister says the Appellant had capacity for work, and continued to work after December 31, 2017. It argues that this evidence shows her condition wasn't severe and prolonged.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2017. In other words, **no later than** December

31, 2017. This date is based on her CPP contributions.¹ This is the Appellant's minimum qualifying period (MQP). She must also prove that she continues to be disabled.²

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

[9] A disability is **severe** if it makes an appellant incapable regularly of pursuing any substantially gainful occupation.³

[10] This means I must look at all the Appellant's medical conditions together to see what effect they have on her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or "real world" picture of whether her disability is severe.

[11] If the Appellant was regularly capable of doing some kind of work that she could earn a living from after December 31, 2017, then she isn't entitled to a disability pension.

[12] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.⁴

[13] This means the Appellant's disability can't have an expected recovery date. The disability must be expected to keep the Appellant out of the workforce for a long time.

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

¹ Service Canada uses an appellant's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*. The Appellant's CPP contributions are on GD2-139.

² In *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that the appellant must show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

³ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability. Section 68.1 of the *Canada Pension Plan Regulations* says a job is "substantially gainful" if it pays a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension.

⁴ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Matters I have to consider first

The appeal took place in writing

[15] The Tribunal Regulations say that the Appellant chooses the method of hearing for her appeal.⁵ The Appellant chose a hearing in writing.

[16] I asked the Tribunal staff to reach out to the Appellant for her to reconsider her decision, and to attend an oral hearing by telephone or videoconference. I had questions for the Appellant, and believe it was in her best interest for me to explain the law and ask my questions orally.

[17] The Appellant refused the request for an oral hearing. She said she wanted the hearing in writing so she could have the time to read through her notes to help her.⁶ My questions were sent to her in writing.

[18] I asked the Appellant to confirm the medications she was taking regularly between June and December 2017. I asked this question because it is the relevant time right before the end of her MQP.

[19] I also asked this question because the Appellant provided a detailed list of hospitalizations, medical testing, and treatments dating back over 30 years in her application form with approximate dates.⁷ For her listed medications, she didn't provide any dates.

[20] It was important for me to understand which medications the Appellant was regularly taking at the time she is required to prove she was disabled by.

[21] The Appellant also suggested that there has been an emphasis on "loopholes" such as her CPP contributions and MQP, and information relating to her work activities. She believes the focus should be on her medical conditions.⁸

⁵ Section 2(1) of the *Social Security Tribunal Regulations* sets out this rule.

⁶ See GD7-1.

⁷ See GD2-75 to GD2-84.

⁸ See GD12-9.

[22] The questions I had for the Appellant were meant to fill in gaps that I saw in the evidence. Most of those gaps related to the Appellant's training and work experience, because that information isn't in her medical records.

[23] The questions don't reflect bias, or a focus on "loopholes". They are relevant questions that allow me to decide what medications the Appellant was taking at the relevant time for this appeal; and her level of education, skills, training, and her work activity before and after her MQP.

[24] This information is relevant because the issue of whether a disability is severe under the CPP is directly related to an appellant's ability to work at any job, not just their last job.

I'm not able to consider the worsening of the Appellant's medical condition after December 31, 2017

[25] The law says that I can only consider the Appellant's medical condition at the time of her MQP.⁹

[26] I can only consider conditions that she has **medical evidence** to confirm were present before that date. I also can't consider any worsening of her existing medical condition that happened after that date.

[27] The Appellant was diagnosed with additional medical conditions after her MQP. They include depression, celiac disease, Hashimoto's thyroiditis, long COVID, wrist tendinitis, and migraines. Since there is no medical evidence to show that these conditions were present and caused functional limitations prior to the Appellant's MQP, I can't consider them.

[28] The Appellant made submissions that her conditions were present for several years before she was formally diagnosed. I reviewed the medical evidence before her

⁹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

MQP to see what her symptoms were. There is no medical evidence to show that she had symptoms related to these conditions before December 31, 2017.

Reasons for my decision

[29] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2017. I reached this decision by considering whether her condition was severe.

Was the Appellant's disability severe?

[30] The Appellant's disability wasn't severe by December 31, 2017. I reached this finding by considering several factors. I explain these factors below.

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

[31] The Appellant has fibromyalgia.

[32] However, I can't focus on the Appellant's diagnosis.¹⁰ Instead, I must focus on whether she has functional limitations that got in the way of her earning a living.¹¹ When I do this, I have to look at **all** of the Appellant's medical conditions (not just the main one) and think about how they affected her ability to work.¹²

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

– What the Appellant says about her functional limitations in December 2017

[34] The Appellant says that her medical condition resulted in functional limitations that affect her ability to work. She says:

- She has difficulty staying in the same position for more than 15 minutes. She needs to change positions regularly.
- Some days it feels painful to be touched because of muscle pain.

¹⁰ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

¹¹ See *Klabouch v Canada (Social Development)*, 2008 FCA 33.

¹² See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

- She has difficulty sleeping because of pain, and this results in fatigue.
- She has difficulty using stairs at times.
- Her hand, wrist, and shoulder joints can become inflamed and affect her ability to work.

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

[35] The Appellant must provide some medical evidence to support that her functional limitations affected her ability to work no later than December 31, 2017.¹³

[36] The medical evidence confirms the Appellant had fibromyalgia before her MQP.

[37] Dr. Gunn, the family doctor, completed several reports. He says the Appellant has had fibromyalgia since 2008.¹⁴ He says he recommended the Appellant stop working in **December 2018** because of her medical conditions.¹⁵

[38] Dr. Gunn says the Appellant had to stop working at a retail store in 2015 due to flare ups of pain resulting from her fibromyalgia.¹⁶ He said that there was severe muscle pain, migraine, bouts of pneumonia, and depression at that time.

[39] Dr. Gunn’s records from the relevant period of 2017 and 2018 don’t show that the Appellant was reporting severe functional limitations or that there were any ongoing visits or treatment for depression, migraine, or pneumonia. There is no mention in the Appellant’s medical records of depression or pneumonia, and no treatment for them from 2017 to 2025.

[40] The Appellant saw Dr. Gunn three times in 2017 before her MQP.¹⁷ A visit in May 2017 was for left occipital neuralgia (pain on the back of the head and neck on the left side). He recommended she ice the area for 10 days and that he would provide an

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

¹⁴ See GD2-55.

¹⁵ See GD2-187.

¹⁶ See GD5-7.

¹⁷ See GD2-169.

injection for pain if the issue continued. The next visit for similar complaints or fibromyalgia was 22 months later in March 2019.¹⁸

[41] The Appellant says she had Lyme disease in 2017. I do see that she was bitten by a tick in July 2017 and had a viral illness in August 2017.¹⁹ However, Dr. Gunn specifically said he didn't think it was Lyme disease. Also, there was no ongoing treatment for this condition after August 2017 in the medical records.

[42] I don't find that this short illness related to a tick bite resulted in a prolonged medical condition that is relevant for this appeal. A condition must be continuous and prolonged for me to consider it when making a decision.

[43] These three visits to Dr. Gunn in May, July, and August 2017 reflect the only record of medical visits the Appellant had for her conditions in 2017 before her MQP. There is no evidence her neck pain didn't resolve at that time, or that she required an injection for pain.

[44] In 2018, the year after the MQP, the Appellant had one visit to Dr. Gunn. It was for a dental abscess that started in May 2018. Her next medical visit was in March 2019, for fibromyalgia muscle pain. After this visit in 2019, the Appellant began to see Dr. Gunn much more frequently for her medical condition, and began reporting additional symptoms.

[45] The Appellant made submissions that she wasn't able to attend the doctor regularly from November 2017 until April 2019, because she was in a legal dispute with her landlord.²⁰

[46] After reading the submissions related to her legal dispute, I don't find that the Appellant's legal dispute would have made her incapable of seeking regular medical attention for her medical conditions and limitations, if they were severely affecting her

¹⁸ See GD2-168.

¹⁹ See GD2-169.

²⁰ See GD7-10.

ability to work and perform daily activities. Her further submissions suggest that the dispute began in the summer of 2018, after the MQP.²¹

[47] The medical evidence shows the Appellant had fibromyalgia before December 31, 2017. It could cause flare ups of muscle pain and this likely impacted the Appellant's ability to work at times over the years. While this condition appears to have worsened after 2019, particularly with the onset of additional medical conditions, that isn't a factor I can consider for this decision.

– **The Appellant could work in the real world on December 31, 2017**

[48] When I am deciding whether the Appellant could work, I can't just look at her medical condition and how it affects what she can do. I must also consider factors such as her:

- age
- level of education
- language abilities
- past work and life experience

[49] These factors help me decide whether the Appellant could work in the real world—in other words, whether it is realistic to say that she could work.²²

[50] I find that the Appellant could work in the real world. She was still able to work as of December 31, 2017.

[51] The Appellant was 50 years old at her MQP. She speaks English. Her age and communication skills would not have been a barrier for her being able to work in the real world.

[52] The Appellant has a college diploma in graphic design. She has certification as a portrait photographer and as a custom photo/art framer. She is also certified to teach

²¹ See GD12-7.

²² See *Villani v Canada (Attorney General)*, 2001 FCA 248.

jewelry making. She took a government re-training course in 2016 prior to opening her store, to train her to be able to operate her own business.

[53] The Appellant has worked as a portrait photographer and as a dark room developer. She has also worked as a waitress, and in many retail stores. She instructed jewelry making classes in the past, and made and sold her own jewelry. She also reads tarot cards. Her last job was operating her own retail store for about two years.

[54] The Appellant's education and work experience would not have been barriers for her to find work or to qualify to retrain for a sedentary job in the real world. She has numerous transferrable skills from her background.

[55] At several points in the application and appeal process, the Appellant has submitted lengthy written submissions to the Minister and to the Tribunal. Her written submissions show that she is intelligent, articulate, detailed, and has excellent communication skills. She has also demonstrated basic computer skills. She was able to perform the necessary accounting and paperwork to run a business.

[56] I find that the Appellant's personal characteristics weren't barriers for her to be able to work, or qualify to retrain for sedentary work in the real world in December 2017.

– **The Appellant had work capacity after her MQP**

[57] The Appellant had capacity for work after her MQP. She was working in her retail store until about October 2018. Her store closed at that time because she was evicted by her landlord. She said her medical conditions were also affecting her ability to work.

[58] The Appellant completed an employment questionnaire.²³ She says that in December 2017 at the end of her MQP she was working about 10 hours per day, or about 230 hours per month.²⁴

²³ See GD2-15.

²⁴ See GD2-17.

[59] The Appellant says that in 2018 her work hours reduced because sales slowed down, and her functional limitations began to affect her more.²⁵ I asked her to provide an estimate of the average hours she worked at her store after her MQP, and she says she can't give an average because she was managing her medical conditions at that time.²⁶

[60] I am contrasting the Appellant's failure to provide the requested information about her average hours of work in 2018, with her ability to repeatedly provide lengthy and detailed written submissions throughout her application and appeal process, including an average of her working hours right up until her MQP in December 2017.²⁷

[61] The Appellant was the sole worker for her store. She did the inventory, sales, merchandising, accounting, advertising/social media, stocking, and cleaning.²⁸

[62] This evidence shows that the Appellant clearly had work capacity in December 2017, and continued to work after that time.

[63] The Appellant didn't earn a substantially gainful income from her store. She says she invested all the stores earnings back into the business and didn't pay herself.²⁹ However, her low income during this period isn't reliable evidence about her earning capacity.

[64] If the Appellant had put the same hours into working at another job as she had put into working for her business, she would have earned a substantially gainful income in 2017, and possibly in 2018.

[65] The evidence shows that the Appellant had work capacity after December 31, 2017.

²⁵ See GD2-20.

²⁶ See GD12-2.

²⁷ See GD2-17.

²⁸ See GD2-15 to GD2-22.

²⁹ See GD2-18.

– **The Appellant didn't try to find and keep a suitable job**

[66] If the Appellant could work in the real world at her MQP, she must show that she tried to find and keep a **suitable** job. She must also show her efforts weren't successful because of her medical conditions.³⁰ Finding and keeping a suitable job includes retraining or looking for a job she can do with her functional limitations.³¹

[67] The Appellant did try to work. But she didn't try to work or re-train for work at a suitable job.

[68] The Appellant says she stopped working at a large retail craft store because of her medical conditions in 2015. She says she wasn't able to continue working part-time at a retail store because her body could not keep up with the physical requirements of the work.³² However, after that she opened her own retail store, selling art and spiritual items.

[69] The Appellant's work in her own store was like her work at the craft store, except when she was running her own store, she had to take on significant extra work duties and hours. The work she did with her store was the same type of work, with even more demands.

[70] I understand that when a person is self-employed, they are better able to set their hours and take breaks to accommodate their needs. The Appellant says she wanted to hire someone to help her in the store to be able to manage her conditions.

[71] However, the Appellant also says she was told she would need to devote 36-60 hours per week to run her own business, when she was in a government sponsored business training in 2016.³³ She was aware that she would be working full-time hours in a retail environment, before she opened the store.

³⁰ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

³¹ See *Janzen v Canada (Attorney General)*, 2008 FCA 150.

³² See GD2-88.

³³ See GD2-17.

[72] I don't find that the Appellant's attempt at running her own shop shows that she attempted to find suitable work that would accommodate her medical conditions. It was the same type of job she had already determined was inappropriate for her, with additional hours and duties.

[73] Even if the Appellant had been able to hire extra help and reduce her full-time hours, she would still have been working part-time at a retail store. A job that she says she was incapable of doing with her medical conditions since 2015.

[74] Based on the evidence before me, I find that the Appellant had work capacity as of December 31, 2017. The Appellant hasn't shown that she made efforts to work at or retrain for a job that was suitable for her, based on her functional limitations. She stopped working in October 2018 when her store closed, which was in part due to being evicted from the premises. She hasn't tried to work or re-train for suitable work since that time.

[75] Based on the Appellant's work capacity and activity after her MQP, I can't find that she had a disability that was severe and prolonged by December 31, 2017. She hasn't proven, on a balance of probabilities, that she was unable to regularly work at a suitable job because of her medical conditions on that date.

Conclusion

[76] I find that the Appellant isn't eligible for a CPP disability pension because her disability wasn't severe by December 31, 2017. Because I have found that her disability wasn't severe, I didn't have to consider whether it was prolonged.

[77] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section