



Citation: *OK v Minister of Employment and Social Development*, 2026 SST 161

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

Decision

Appellant: O. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 27, 2024 (issued
by Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: In Writing

Decision date: March 6, 2026

File number: GP-25-114

Decision

[1] The appeal is dismissed.

[2] The Appellant, O. K., isn't eligible to have her Canada Pension Plan disability payments begin before April 2022.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant is 32 years old. She has post-traumatic stress disorder and complex personality disorder. She also has features of other psychiatric conditions including a mood disorder, bipolar disorder, and an attention deficit disorder.

[5] The Appellant applied for a CPP disability pension in March 2023. The Minister of Employment and Social Development (Minister) initially approved her application with a date of onset of disability of January 2023.

[6] However, on reconsideration the Minister decided the Appellant's date of onset was December 2021. Payments of the pension began in April 2022.¹

[7] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division (Tribunal) because she wants her payments to begin earlier.

[8] The Minister says the law doesn't allow the Appellant's payments to start earlier than April 2022. There is an exception to this rule. It's called the incapacity rule. But the Minister says the Appellant doesn't meet the requirements for incapacity.

¹ See GD2-23.

[9] The Appellant says she does meet the requirements of the incapacity rule. She says she has been incapacitated since the year 2000,² because of her mental health conditions. She says she could not apply for a CPP disability pension at an earlier date.

What the Appellant must prove

[10] Disability payments can't start earlier than 11 months before a person applies for them.³

[11] If a person meets the requirements of the incapacity rule, their application will be treated as if it was made earlier than it was. In that case, the payments would start earlier.

[12] For the Appellant to succeed, she must prove that the incapacity rule applies to her. This means she must prove that she was incapable of forming or expressing an intention to apply for a disability pension before March 2023. She must also prove that her incapacity was continuous.⁴

[13] The Appellant must prove this on a balance of probabilities. This means she must show that it is more likely than not to be true.

Matters I have to consider first

I changed the filing deadlines

[14] The Appellant asked for an extension of time to file documents and submissions.⁵ She said her medical conditions were affecting her ability to meet the filing deadlines.

[15] I accommodated the Appellant's medical conditions and extended her filing deadline, so that she could participate fully in the appeal process.⁶

² The Appellant has also claimed incapacity from several different points in time including 2011, 2013, and 2018 in her various submissions.

³ See sections 42(2)(b) and 69 of the *Canada Pension Plan*.

⁴ See sections 60(8), (9), and (10) of the *Canada Pension Plan*.

⁵ See GD8.

⁶ Rule 10 of the *Social Security Tribunal Rules of Procedure* allows me to make decisions to accommodate a party.

I adjourned the hearing and changed the format

[16] The Appellant asked me to pause the appeal so she could pursue liability claims against “the Crown.” She also said she needed more time because of her medical conditions.⁷

[17] I refused to indefinitely pause the appeal. I gave my reasons in a letter dated September 11, 2025.⁸ However, I did adjourn the hearing to give the Appellant more time to prepare for the hearing and manage her conditions.⁹

[18] The Appellant originally asked for an in-person hearing. She changed her mind and asked that the format be changed to a written hearing because of her medical conditions. I granted the Appellant’s request for a written hearing.

[19] Although the Appellant requested a hearing in writing, she refused to answer the questions I sent her in writing for the hearing.¹⁰ Instead she said I had to answer her questions. However, it is not my role to answer questions of the parties in this appeal.

[20] Given the Appellant’s refusal to answer questions as part of the written hearing process, I am making my decision based on the evidence and submissions in the Tribunal’s record, which is well over 1,000 pages in length.

I refused the Appellant’s request for the Tribunal to appoint her a representative

[21] The Appellant asked the Tribunal’s registry staff to appoint a representative for her hearing, because she didn’t have one. She refused to send her requests for a representative in writing to the Tribunal.

[22] The Appellant also asked that a litigation guardian be appointed for her pursuant to Ontario’s *Rules of Civil Procedure*.¹¹

⁷ See GD12.

⁸ See GD13.

⁹ See GD14.

¹⁰ See GD15-1.

¹¹ See GD12.

[23] I refused the Appellant's requests. The Tribunal doesn't appoint or fund legal representatives for parties. If a party wants to have a representative at their hearing, they must retain and fund them on their own.

[24] This Tribunal has found in the past that it does not have a duty to provide appellants with a legal representative, and that there is no constitutional right to receive legal representation.¹²

[25] This is a federal Tribunal. Ontario's *Rules of Civil Procedure* apply to civil lawsuits in Ontario's Superior Court of Justice. They aren't applicable to this Tribunal, or any other tribunal.

Reasons for my decision

[26] I find that the incapacity rule doesn't apply to the Appellant. There is no evidence before me that supports that she was incapacitated at any point in time.

[27] I acknowledge that the Appellant has mental health conditions and a severe and prolonged disability that affects her ability to work. However, she has been able to form intentions and make decisions with those medical conditions.

The test for incapacity is strict

[28] It isn't easy to prove incapacity. It isn't the same thing as being disabled, or having mental health conditions. It isn't related to a person's inability to regularly work or hold a steady job. A person with a disability may still be able to form or express the intention to apply for a disability pension.

[29] Under the test for incapacity, it doesn't matter if the Appellant didn't think about applying for the pension, or could not make, prepare, process or complete the

¹² See *VT v Canada Employment Insurance Commission*, 2023 SST 491; and *B.C. v Christie*, 2007 SCC 21 (CanLII), [2007] 1 SCR 873.

application by herself. What matters is if she was able to form or express an intention to apply.¹³

[30] A person's capacity to form or express an intention to apply for a disability pension is generally the same as the capacity to form or express an intention to make other decisions in their daily life.¹⁴

[31] In deciding whether the Appellant met the test for incapacity, I had to consider:

- the Appellant's evidence about her limitations
- any medical, psychological, or other evidence in support of the Appellant's claim for incapacity
- evidence of the Appellant's activities during the period she says she was incapacitated
- what these activities show about the Appellant's capacity to form or express an intention to apply for a disability pension during that period.

[32] There is no medical evidence to support that the Appellant was incapable of forming or expressing an intention to apply for benefits at any point in time. The Appellant's activities also show that she didn't meet the strict test for incapacity.

The Appellant's evidence about incapacity

[33] The Appellant bases her claim for incapacity on her medical conditions. She points to her medical records to show that she has been experiencing her mental health conditions since she was a teenager.

[34] The Appellant says her unstable housing and inability to sustain steady work also show that she was incapacitated.

¹³ See *Canada (Attorney General) v Danielson*, 2008 FCA 78; *Canada (Attorney General) v Hines*, 2016 FC 112; and *Maloshicky v Canada (Attorney General)*, 2021 FCA 211.

¹⁴ See *Sedrak v Canada (Social Development)*, 2008 FCA 86; and *Canada (Attorney General) v Kirkland*, 2008 FCA 144.

[35] The Appellant also argues that she was unable to engage with “the system” because of a dependency on medication, lack of access to medication, and racial profiling.¹⁵

What the medical evidence says about incapacity

[36] There is no medical evidence that suggests or supports the Appellant was incapacitated at any point in time.

[37] The Appellant says that her failure to provide a Declaration of Incapacity form from a doctor should not prevent a finding of incapacity in this appeal.

[38] I reviewed the complete medical evidence available. The evidence shows that the Appellant was able to seek medical treatment, and make decisions about her medical care. While there is a period in 2023 when her sister attended some medical appointments with her, the Appellant continued to make decisions about her medical care at those appointments.¹⁶

[39] Having a support person attend some appointments and act as an advocate does not equate to incapacity. A person may need help navigating the health system and social assistance programs, while still being able to form and express intentions.

[40] There is no point in time where any doctor expressed a suggestion that the Appellant was incapable of making decisions about her medical treatment and care. The Appellant has never been admitted to a hospital involuntarily under a statutory order of a doctor or hospital. The Appellant has never had a power of attorney for her decision making.

[41] While the medical evidence confirms that the Appellant has a disability, it doesn't show that she was incapacitated and unable to form or express an intention at any time.

¹⁵ See GD15-2.

¹⁶ See GD2-185 to GD2-189.

The Appellant's activities don't show that she was incapacitated

[42] Evidence about the Appellant's activities show that she wasn't incapacitated at any time.

[43] The Appellant worked at a significant number of jobs between 2015 and 2023. The Minister identified at least 21 records of employment on file.¹⁷ The Appellant suggested she has had as many as 52 jobs.¹⁸

[44] The ability to form an intention to apply for a job or attend an interview for a job is no different than the ability to form an intention to apply for a CPP disability pension. The Appellant's work history shows that she held a consistent ongoing intention to try to work.

[45] While many of the Appellant's jobs were short-term, there were times when she maintained work for longer periods. For example, she worked at one job from January 2021 to June 2022.¹⁹ The Appellant earned a substantially gainful income from working in 2019 and 2020.²⁰ The ability to set the intention to do daily activities, like regularly attending work, is no different than being able to form an intention to apply for a disability pension.

[46] I find that the Appellant's inability to hold a steady job is evidence of her disability, but it's not evidence of incapacity. Her lengthy record of applying for and working at different workplaces shows she could form intentions and make decisions for herself.

[47] The Appellant has also moved numerous times. She suggests she moved up to 32 times and had several disputes with landlords throughout the period she says she was incapacitated.²¹ The ability to set an intention to find a place to live, and to sign

¹⁷ See GD6-5.

¹⁸ See GD15-2.

¹⁹ See GD6-6.

²⁰ See GD2-138. The Appellant's income was \$28,095 in 2019 and \$34,458 in 2020.

²¹ See GD2-535 and GD2-536.

rental agreements shows that the Appellant had capacity to set intentions and make decisions.

[48] The Appellant attended school full-time in 2018. She decided to change programs from culinary to arts that year. When she dropped out of school, she was able to apply for a special tuition refund exemption based on her medical condition.²² The Appellant's ability to apply for college and select her programs, apply for student loans, attend classes, and apply for a tuition refund show that she had capacity.

[49] The Appellant applied for disability benefits through the province of Ontario in 2018. The records show that she made a conscious decision to apply for the benefits.²³

[50] The Appellant was able to apply for a health card when she moved to Quebec by herself in 2021. She says she did this to get treatment for her medical conditions.²⁴ This shows her capacity to form and express an intention to get health coverage and treatment.

[51] The Appellant asked Dr. Koch, her psychiatrist, to help her get disability support benefits from the province of Quebec in November 2022.²⁵ She provided his office with proof of her Ontario benefits and the required forms.

[52] In January 2023, the Appellant asked Dr. Koch for help to get disability tax credits and provided him with a form to complete.²⁶ This evidence shows that she had the capacity to set an intention to apply for government benefits two months before she applied for her CPP disability pension. This evidence shows that the Appellant wasn't incapacitated.

[53] Dr. Koch's records suggest that the Appellant stopped working in January 2023, and went back to school.²⁷ This shows that she was also setting intentions and making

²² See GD2-397.

²³ See GD2-447.

²⁴ See GD2-536.

²⁵ See GD2-535.

²⁶ See GD2-185.

²⁷ See GD2-186.

life decisions two months before submitting her application for the CPP disability pension.

[54] I find that the Appellant hasn't proven, on a balance of probabilities, that she was incapacitated at any time. There is significant evidence to show that the Appellant was able to regularly and consistently find a place to live, and apply for and work at numerous jobs up to January 2023.

[55] The evidence shows that the Appellant was able to set intentions to apply for college, obtain funding, and apply for tuition relief. She was able to apply for health coverage and provincial disability benefits. She was able to ask her doctor for help to apply for further disability benefits and tax credits two months before her CPP disability application.

[56] The Appellant's medical evidence and the evidence of her activities all suggest that there was no point in time when she was incapable of forming or expressing an intention to apply for a CPP disability pension.

Conclusion

[57] I find that the Appellant isn't eligible to have her CPP disability pension payments begin before April 2022, because she wasn't incapacitated.

[58] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section