Citation: *MS v Minister of Employment and Social Development*, 2026 SST 202

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	M. S.
Respondent:	Minister of Employment and Social Development
Representatives:	Sandra Doucette, Michael Elliott, and Viola Herbert

Decision under appeal:	General Division decision dated July 14, 2023 (GP-22-584)

Tribunal member:	Jean Lazure
Type of hearing:	Videoconference
Hearing date:	October 1, 2025
Hearing participants:	Appellant Respondent's representatives
Decision date:	March 16, 2026
Corrigendum date:	March 24, 2026 (added Minister's representative's name)
File number:	AD-23-904

Decision

[1] The appeal is dismissed. The Appellant, M. S., is not entitled to a Canada Pension Plan (CPP) disability pension after May 2010.

Overview

[2] The Appellant applied for a CPP disability pension in October 2009.[1] The Minister approved her application and she began receiving benefits.[2] In November 2017, after learning the Appellant had had other earnings, the Minister reviewed her file and suspended payment of her disability pension as of December 31, 2017.[3]

[3] On August 6, 2021, the Minister decided that the Appellant wasn't entitled to a CPP disability pension after May 2010.[4] The Minister had learned that the Appellant returned to work in January 2010, and allowed a work trial period from February 1 to May 31, 2010. With the Appellant not eligible for a CPP disability pension from June 2010 to December 2017, this made for an overpayment, which the Minister claimed from the Appellant.[5]

[4] The Appellant requested a reconsideration of the Minister's decision.[6] The Minister upheld their decision upon reconsideration.[7]

[5] The Appellant appealed that decision to the General Division of the Social Security Tribunal (Tribunal).[8] The General Division held a hearing and dismissed her appeal.[9] The Appellant asked for permission to appeal that decision to the Tribunal's Appeal Division.[10] Permission to appeal was granted on October 4, 2023.

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[1] See GD2-41.
[2] Retroactively to June 2009. See GD2-31.
[3] See GD2-374.
[4] See GD2-26.
[5] See GD2-27.
[6] On October 24, 2021, see GD2-7.
[7] On January 7, 2022, see GD2-77.
[8] On March 18, 2022; see GD1-1.
[9] The hearing was held on June 27, 2023. See the General Division decision dated July 14, 2023, made by Member Michael Medeiros, at pages AD1A-1 and following.
[10] On October 3, 2023; see AD1-1.

Preliminary matters

[6] Prior to the hearing, I held a case conference in this matter, at which time the representative for the Minister raised the question of the need for an interpreter for the Appellant.[11] The Appellant agreed that an interpreter was not necessary. To be sure, I offered that an interpreter could be present at the hearing and be used only if and when needed. However, the Appellant declined this possibility as well.

[7] I reminded the parties of this at the outset of the hearing held in this matter. I had no difficulty understanding the Appellant during the hearing. I do not believe she had difficulty understanding others.

Issues

[8] What is particular about this case is that the Minister had initially granted the Appellant CPP disability benefits after her October 2009 application.[12]

[9] A person is disabled under the CPP when they have a severe and prolonged disability. A person is considered to have a **severe** disability if they are incapable regularly of pursuing any substantially gainful occupation.[13] A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.[14] The Minister had initially decided that the Appellant had a severe and prolonged disability. The Appellant received CPP disability benefits for a number of years.

[10] The Minister stopped her disability pension payments as of December 31, 2017, pending further inquiry. And then, in August 2021, the Minister decided that the Appellant had not been entitled to a CPP disability pension since June 1, 2010.

[11] When the Minister decides that a person receiving benefits is no longer eligible to receive them, or was no longer eligible to receive them, the Minister must prove that

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[11] On August 6, 2025
[12] See GD2-31 and GD2-125.
[13] See section 42(2)(a)(i) of the *Canada Pension Plan*, R.S.C., 1985, c. C-8.
[14] See section 42(2)(a)(ii) of the *Canada Pension Plan*.

that person's disability was no longer severe and prolonged.[15] In terms of severity, the Minister must prove that a person was not incapable regularly of pursuing any substantially gainful occupation. The Minister must prove this on a balance of probabilities.

[12] Therefore, the issues in this appeal are:

a) Did the Appellant's earnings after May 2010 exceed the threshold of a substantially gainful occupation?

b) If so, was the Appellant incapable regularly of pursuing a substantially gainful occupation?

Analysis

[13] I have considered the law and the evidence and concluded that the Minister has met their burden and has proven that the Appellant was no longer disabled under the CPP after May 2010. I find that the Appellant's earnings after May 2010 exceeded the threshold of a substantially gainful occupation. And I find that the Appellant was not incapable regularly of pursuing a substantially gainful occupation.

The Appellant's earnings after May 2010 exceeded the threshold of a substantially gainful occupation

[14] The *Canada Pension Plan Regulations* associate the notion of "substantially gainful" with a specific dollar value, which varies from year to year. Any earnings that exceed that threshold – which is the maximum yearly amount that a person can receive as a disability pension – are deemed to be substantially gainful.[16] Of note, part-time work can constitute a substantially gainful occupation (SGO).[17]

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[15] See *Atkinson v Canada (Attorney General),* 2014 FCA 187, and *Boudreau v Canada (Minister of Human Resources and Development* (July 26, 2000), CP 11626 (PAB).
[16] See Section 68.1 of the *Canada Pension Plan Regulations.* Specific substantially gainful amounts have been set by the *Regulations* since 2014.
[17] See *Landry v. MSD* (October 17, 2007), CP 24673 (PAB).

[15] The Appellant's earnings since 2010 have been the following:

Year	Appellant's earnings from work[18]	s. 68.1 substantially gainful amount	Meets s. 68.1 SGO threshold?
2010	$17,775	n/a	n/a
2011	$23,866	n/a	n/a
2012	$28,745	n/a	n/a
2013	$31,783	n/a	n/a
2014	$29,286	$14,846.20	Yes
2015	$14,094	$15,175.08	No
2016	$3,394	$15,489.72	No
2017	$35,718	$15,763.92	Yes
2018	$46,625	$16,029.96	Yes
2019	$47,637	$16,347.60	Yes
2020	$43,215	$16,651.92	Yes
2021	$61,600	$16,963.92	Yes
2022	$61,519	$17,577.96	Yes
2023	$66,600	$18,464.04	Yes

[16] From 2010 to 2013, there were no regulations in effect to prescribe a yearly SGO amount. Regarding the Appellant's earnings in 2010, $17,775, the lowest amount from those four years, there is case law from 2010 that deems a lower income as substantially gainful. Indeed, part-time earnings of $14,000 were enough for someone to be deemed not disabled in 2010.[19]

[18] See AD11-2 to AD11-6, and AD15-16 and AD15-16.
[19] See *L.B. v. MHRSD,* (January 9, 2012) CP 27616 (PAB).

[17] A criteria for a substantially gainful occupation before 2014 was that remuneration could not be a nominal, token or illusory compensation. I do not believe that $17,775 is any of those.[20]

[18] The Appellant's earnings only increased between 2011 and 2013, from $23,866 in 2011 to $28,745 in 2012 to $31,783 in 2013. If $17,775 in 2010 is substantially gainful, these greater amounts are as well.

[19] I understand that there were no regulatory SGO thresholds in effect before 2014. However, considering the Appellant's earnings only increased from $17,775 after 2010, her earnings from 2011 to 2013 are so not in the SGO ballpark that it is obvious they are those of a substantially gainful occupation.

[20] For most years between 2014 and 2023, the Appellant's yearly earnings largely exceeded the SGO threshold, often by a wide margin, doubling, even tripling the threshold.

[21] I said "most years" because there were two years, 2015 and 2016, where the Appellant's earnings did not meet the SGO threshold. The Appellant returned to school during those years to pursue her Bachelor's of Education degree.[21] There is no evidence that the Appellant left work to go back to school because of health-related issues. It is likely that the Appellant did so in order to increase her earning potential, as her ability to meet and exceed the SGO threshold increased significantly after having completed her degree and returned to work.

[22] I find that the Appellant's earnings from 2010 going forward met or exceeded those of a substantially gainful occupation. That is the first part of the test to determine whether the Appellant was no longer disabled.

[23] I will now turn to the second part of the test, whether the Appellant was incapable regularly of pursuing such substantially gainful occupations.

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[20] *G.T.* v. *Minister of Human Resources and Skills Development,* 2013 SSTAD 5.
[21] See GD2-354 and GD2-302.

The Appellant has not been incapable regularly of pursuing a substantially gainful occupation since June 2010

[24] A person simply having had earnings over the SGO threshold is not enough to say that they are no longer disabled.[22] The Minister therefore has to do more than just show the Appellant had substantially gainful earnings. The Minister also had to show that the Appellant was not incapable regularly of pursuing a substantially gainful occupation.

[25] What does "incapable regularly" mean, and what does it not mean?

[26] "Incapable" refers to an incapacity for employment, for work.[23] "Regularly" refers, of course, to this incapacity. It is the incapacity, not the employment, which must be "regular."[24]

[27] Also, predictability is the essence of regularity within the CPP definition of "disability".[25] "Regularly" means that a person must be capable of coming to work as often as is necessary.[26]

- **What to make of medical diagnoses and functional limitations**

[28] What being "incapable regularly" is not is having specific medical diagnoses. One is not incapable regularly with medical diagnosis A and incapable regularly with medical diagnosis B. Also, two people could have the same diagnoses, and one may be incapable regularly while the other may not.

[29] The Appellant had the following medical diagnoses: chronic hepatitis C and heart issues.[27] There have also been hernia, rheumatoid arthritis, diabetes, and thyroid

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[22] See *Canada (Attorney General) v Ibrahim,* 2023 FCA 204. See paragraph 14 for more on the threshold.
[23] See *MEI v Campoverde* (December 12, 1994), CP 3272 CEB & PG 8556, and *Laurin v. MEI August 11, 1994), CP 4368.*
[24] See *Miller v. MSD,* (October 7, 2005) CP 23304 (PAB), and *Canada (Minister of Human Resources Development) v. Scott,* 2003 FCA 34.
[25] See *Atkinson v. Canada (Attorney General),* 2014 FCA 187.
[26] See *Chandler v. MHRD* (November 25, 1996), CP 4040.
[27] See the Medical Report by Dr. Samia Makhlouf dated October 9, 2009, at GD2-384.

issues. The medical evidence on file is clear that these diagnoses have persisted in time.[28]

[30] Of course, a person has to be incapable regularly for medical reasons. But it is not the apparent severity of the medical diagnoses that is important - we don't focus on the diagnoses themselves.[29]. We focus instead on whether a claimant had functional limitations that got in the way of her earning a living.[30]

[31] The Appellant had functional limitations that led the Minister to initially grant her a CPP disability pension. The Appellant identified "tiredness, short breathing, weakness, and unconcentration (*sic*) in her Questionnaire for Disability Benefits from 2009.[31] In her Disability Reassessment Questionnaire dated December 5, 2017, she added not being able to carry heavy loads due to her hernia and having joint swelling and pain due to her arthritis.[32]

[32] Again, the medical evidence on file substantiates those functional limitations having persisted in time. Among other reports on these, the letter by Dr. Youssef from August 2021 reads as follows:[33]

> She suffers from multiple medical conditions affect her ability to work since 2010. She has aortic regurgitation lead to abnormal enlargement of the heart affect (*sic*) her ability to work due to shortness of breath with exertion. She also has severe hernia. She also has rheumatoid arthritis affecting her joints and affect her ability to work due to pain and discomfort in the joints and she had multiple cortisone injection with minimal relief. She also suffers from consequence of severe hepatitis C infection. Her hernia was related to her hysterectomy which was done in January 2010.

[33] However, I will state the obvious: in disability cases, functional limitations are only important if they truly limit one's ability to work, to earn a living.

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[28] See, among others, the reports by Dr. Youssef dated August 26, 2021, at GD2-21; by Dr. Lewtas dated February 6, 2023, at GD3-2; by Dr. Bishinsky dated April 20, 2021, at GD2-175.
[29] See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.
[30] See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.
[31] See GD2-404.
[32] See GD2-346.
[33] See GD2-21.

- **The Appellant's attendance and performance at work are not compatible with a finding of being incapable regularly of work**

[34] Again, it is the Appellant's inability to work that must be consistent for her to be found disabled.[34] So, from June 2010 onwards, did the Appellant's functional limitations limit her sufficiently so that her inability to work was consistent?

[35] In terms of attendance, the Appellant's position is somewhat inconsistent. On the one hand, she testified that she would mostly take all of the work she could, because she was concerned that if she didn't take enough work, her employers would remove her from the list of available educational assistants or teachers: "However, I can't decline a lot of calls. If I decline a lot of calls they will remove my name from the supply position."

[36] The Appellant also wrote, in a letter attached to her Return to Work Report dated December 5, 2017, that "the following family condition (*sic*) was pushing [her] to accept the supply work position": this included her husband's issues with his health and employment, as well as the costs of her children's education.[35]

[37] On the other hand, the Appellant wrote in that Return to Work Report, that "Some days I was not able to work due to my health condition."[36]

[38] There is some evidence on file of the Appellant's attendance at work. There are two employer reports on file, one from the Montessori Education Centre and another from the Toronto Catholic District School Board.[37]

[39] The Montessori Education Centre report concerns her employment there in 2009, when the Appellant initially returned to work following her disability. This report describes her attendance as "good" and that there were no absences for medical reasons, only to provide care for her daughter. The quality of her work is deemed

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[34] See *Maloshicky v. Canada (Attorney General),* 2018 FC 51.
[35] See GD2-372.
[36] See GD2-369.
[37] See GD2-161 for the Montessori report and GD2-166 for the TCDSB report.

satisfactory. The report does not mention any of the Appellant's health issues whatsoever.

[40] The Toronto Catholic District School Board report makes no mention of the Appellant's performance.[38] It says that the Appellant didn't require help from her co-workers, special equipment or special arrangements. The report also doesn't mention any of her health issues. It doesn't comment on her attendance but provides an attached document listing her attendance from February 2009 to November 2010:[39]

- From March to end of June 2009 (4 months): the Appellant worked 46.5 full-time days or about 11.6/month;
- From September to December 2009 (4 months): 42 full-time days or about 10.5/month;
- From January to June 2010 (6 months): 57 full-time days, or about 9.5/month;
- From September 20 to end of November 2010 (2 1/3 months): 19 full-time days or about 8.1/month.

[41] Over those 16+ months, it seems the Appellant averaged 10.1 days per month. Considering there are an average of 21.7 working days per month, and if I subtract 1.7 days per month for PD days or holidays, it seems the Appellant attended work about half of the school days.[40] It is not clear how many school days were actually offered to the Appellant, but she was there half the time. For a supply educational assistant, this already strikes me as regular attendance, which is incompatible with being incapable regularly of work.

[42] Also, this document refers to attendance in 2009 and 2010. 2010 is the year where the Appellant earned the least employment income (at $17,775) out of all of the

[38] See GD2-167.
[39] See GD2-169.
[40] 1.7 days is a somewhat arbitrary number here but I believe it is likely to be accurate.

years between 2010 and 2023, save for 2015 and 2016 when she went back to university.

[43] With the Appellant's income increasing significantly from year to year – even before 2015, and much more so since completing her bachelor's degree in education - it seems therefore likely that the Appellant's attendance only improved with time. This is further incompatible with the Appellant being incapable regularly of work.

[44] Also, in her testimony, the Appellant said that as a supply educational assistant, she "wasn't able to do the job perfectly", she "wasn't doing the full required job", most notably in terms of carrying things. She said her co-workers helped her when something heavy needed to be carried or pushed. However, both of the above reports didn't mention any of the Appellant's health issues, nor her needing to be helped in her job because of those health issues.

[45] I agree that the Appellant had functional limitations.[41] However, they did not truly limit her ability to work and earn a living. From the evidence, I simply cannot conclude that the Appellant was incapable regularly of work.

- **The Appellant was able to work in the real world as she did work**

[46] When I am deciding whether the Appellant 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.

[47] The Federal Court of Appeal has indicated that, in disability cases, I must analyze whether a person can work "in the real world."[42] I have to consider how their background and personal characteristics might affect their employability. These are known as the *Villani* factors.

[48] The Appellant has considerable work experience in the field of education, both as a supply educational assistant and then as a supply teacher. She is well educated,

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[41] See paragraphs 31 and 32 above.
[42] See *Villani v Canada (Attorney General)*, 2001 FCA 248.

having two university degrees. She speaks English, French, and Arabic. Today, as of this decision, she is 53 years old; in 2010, she was 37.

[49] I don't see any of these *Villani* factors as indicating the Appellant cannot work in the real world. It is rather apparent that the Appellant did work in the real world.[43]

[50] For all of these reasons, I believe the Minister has met their burden of proof and proven that the Appellant no longer had a severe and prolonged disability after May 2010. I believe that the Minister having allowed until the end of May 2010 as a work trial is reasonable. In closing, I will address a few of the Appellant's other arguments.

- **The Appellant's other arguments are not persuasive**

[51] In the letter attached to her Return to Work Report, the Appellant indicated that her medical conditions prevented her from accepting a full-time position. However, as I said above, a substantially gainful occupation can often include part-time employment.

[52] In that same letter, the Appellant said that she was pushed to take on work because of her husband's health and employment situations, as well as the cost of her children's education.[44] Unfortunately, these are not relevant arguments.

[53] For better or for worse, actually working can be problematic for claimants seeking a CPP disability pension. Indeed, the Federal Court of Appeal has stated that "the capacity of an applicant for a disability benefit to regularly engage in remunerative employment is the very antithesis of a severe and prolonged disability."[45]

[54] Also, though the Appellant didn't make this specific argument, I don't believe that the Appellant had benevolent employers. An employer that accommodates an employee, while modifying the expectations of this employee in keeping with their limitations, is known as a benevolent employer.[46] When a benevolent employer

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[43] See *Kiriakidis v Canada (Attorney General)*, 2011 FCA 316, where the Federal Court of Appeal substantiates this approach.
[44] See GD2-369.
[45] See *Miller v Canada (Attorney General)*, 2007 FCA 237.
[46] See *Atkinson v Canada (Attorney General),* 2014 FCA 187.

accommodates such an employee, the work product expected from that employee is considerably less than what is expected from other employees.

[55] There is no evidence that the work product put out by the Appellant was considerably less than what was expected from other employees. The Appellant testified to only slight accommodations, i.e. being helped pushing or lifting something heavy. And the employers' reports make no mention of any accommodations due to the Appellant's health issues.

[56] The Appellant argued that it took too long for the Minister to notify her that she was no longer eligible for a CPP disability pension, and that that was unfair to her. I agree with this and I very much sympathize with the Appellant. Unfortunately, I have no jurisdiction in equity. This means that I must stick to the law and cannot allow her appeal simply because of sympathy towards her or because of a belief that the law is unfair.

[57] Finally, as I said above, despite any sympathy I may have for the Appellant, I also have no jurisdiction over matters of overpayment and remission of same. This is an exclusive jurisdiction of the Minister.[47] I can only encourage the Appellant to reach out to the Minister.

Conclusion

[58] I find that the Appellant is not entitled to a CPP disability pension after May 2010.

[59] This means that the appeal is dismissed.

Jean Lazure
Member, Appeal Division

[47] Section 66(3) of the *Canada Pension Plan.*