



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Tribunal File Number: GP-19-1571

BETWEEN:

**G.T.**

Appellant

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Antoinette Cardillo

Claimant represented by: Terio Francis

Teleconference hearing on: January 22, 2020

Date of decision: February 25, 2020

## **DECISION**

The Appellant is entitled to a Canada Pension Plan (CPP) disability pension to be paid as of December 2017.

## **OVERVIEW**

[1] The Minister received the Appellant's application for *CPP* disability benefits on November 19, 2018<sup>1</sup>. He is 28 years old with a high school education. He described his main disabling conditions as depression and anxiety, as well as sleep apnea. He indicated he was last employed as a machine operator/labourer from May 2016 to April 2017 when he stopped working due to his medical conditions. He felt he could no longer work as of February 2017. The Minister denied the application initially and on reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

[2] To qualify for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP). The calculation of the MQP is based on the Appellant's contributions to the CPP. I find the Appellant's MQP to be December 31, 2018.

## **ISSUES**

[3] Did the Appellant's conditions result in the Appellant having a severe disability, meaning incapable regularly of pursuing any substantially gainful occupation by December 31, 2018?

[4] If so, was the Appellant's disability also long continued and of indefinite duration by December 31, 2018?

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<sup>1</sup> GD2-29

## ANALYSIS

[5] Disability is defined as a physical or mental disability that is severe and prolonged<sup>2</sup>. A person is considered to have a severe disability if incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. A person must prove on a balance of probabilities their disability meets both parts of the test, which means if the Appellant meets only one part, the Appellant does not qualify for disability benefits.

### Severe disability

[6] I must assess the severe part of the test in a real world context<sup>3</sup>. This means that when deciding whether a person's disability is severe, I must keep in mind factors such as age, level of education, language proficiency, past work and life experience.

#### *i. Medical Reports*

[7] In a report dated May 2018, \_\_\_\_\_, family physician, indicated that the Appellant's prognosis was guarded. He indicated he was concerned with the Appellant's return to work due to safety issues and the risk of being injured while working with industrial machines.

[8] In a report dated June 17, 2018<sup>4</sup>, \_\_\_\_\_, Psychiatrist, indicated the Appellant's work was an issue. He was referred for anxiety, depression, stress and sleep problems. Dr. \_\_\_\_\_ noted the Appellant had problems with his mood and memory, and his focus and concentration were poor, but he had no abnormalities with his appearance, behaviour, cooperation, thought form/content and perception. He diagnosed the Appellant with partially treated major depressive disorder, sleep apnea, as well as family, legal and financial stress. He also indicated that the Appellant's legal issues were a dominant concern and opined that once they were resolved, his condition may improve.

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<sup>2</sup> Paragraph 42(2)(a) *Canada Pension Plan*

<sup>3</sup> *Villani v. Canada (A.G.)*, 2001 FCA 248

<sup>4</sup> GD2-108

[9] Based on the evidence on file, in August 2018, the Appellant was seen by Dr.

, neurologist, who indicated the Appellant had a sleep behaviour disorder since he was a teenager, as well sleep apnea. There were no significant abnormalities on the physical assessment. She concluded the Appellant did not have Parkinson's disease and noted no follow-up was required.

[10] Also on September 2, 2018<sup>5</sup>, the Appellant was seen by a respirologist, , who reported the Appellant was referred to the sleep clinic since he had complaints of being sleepy during the day since he was a teenager and described having sleep attacks at times. She noted the Appellant clearly described cataplexy which was resolved with the use of medication and stated he slept 8-10 hours per night. However, the sleep study showed moderate sleep disorder breathing and RBD (rapid eye movement sleep behaviour disorder: such as kicking and punching while asleep). noted the Appellant required treatment and recommended a CPAP machine as well as medication. The Appellant was advised about the risk of driving, swimming or doing any activities if he continued to have cataplexy or was sleepy.

[11] Later, in December 2018<sup>6</sup>, , provided that the Appellant still had episodes of kicking and punching during the night, however, the frequency and aggressiveness had decreased since starting medication. With regard to his history of excessive daytime sleepiness, falling asleep quickly and cataplexy, he continued to have these events; they actually seemed to be more frequent than he had initially let on at his last visits and still had excessive daytime tiredness, he had not responded to medication. In January 2019, . reported there were improvements in his conditions.<sup>7</sup>

[12] Another report from <sup>8</sup> dated January 14, 2019 indicated that the Appellant suffered from a major depressive disorder and narcolepsy. The Appellant's impairments included mood disturbance, labile emotions, psychomotor slowing, fatigue, memory issues, daytime

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<sup>5</sup> GD2-89

<sup>6</sup> GD2-93

<sup>7</sup> GD2-95

<sup>8</sup> GD2-107

sleepiness and he noted the Appellant had difficulty maintaining focus and concentration and had safety concerns around machinery, as well as decreased work productivity. His prognosis for depression was unknown because the symptoms were persisting and for narcolepsy, it was also unknown, although there was some improvement but still ongoing with treatment.

[13] In a letter dated March 19, 2019<sup>9</sup>, indicated that the Appellant was affected by his persisting low mood, fatigue, poor focus/concentration and short term memory loss. He was having difficulty sleeping which affected his ability to function. He recently completed testing with scores consistent with severe depression and severe anxiety affecting his ability to work. He was currently on treatment and medications. He was compliant with the treatments and medication and had regular counselling with a social worker and follow up visits with . He also had narcolepsy, obstructive sleep apnea and REM sleep behavioural disorder for which he was followed by a specialist. He continued to have difficulty staying awake during the day and had been started on medications, however, they had not been effective and new medications were being tried with little improvement. His prognosis was guarded. According to , the Appellant's persisting symptoms caused safety concerns and inability to perform any job duties properly.

[14] On September 6, 2019<sup>10</sup>, noted that the Appellant continued to have persisting low mood, fatigue, poor focus/concentration and short term memory issues despite treatment. He also had narcolepsy and continued to have excessive daytime sleepiness despite treatment. Due to these persisting symptoms affecting his ability to return back to work, the Appellant did suffer from a severe and prolonged mental disability.

## *ii. Testimony*

[15] The Appellant testified that he dropped out of high school at a young age but then returned to complete his degree two years ago, right after he stopped working or just before he

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<sup>9</sup> GD2-85

<sup>10</sup> GD1-91

stopped. He had difficulty therefore all the testing was done in a classroom, a couple of hours at a time, over a few days.

[16] He explained that when he left work, he was a moulder. He had previously done other types of such as a machine operator. He stated that he is computer literate but given his current state of mind and fatigue, he would not be able to do any type of sedentary work using a computer.

[17] He explained that he was able to work with his conditions because he could nap during his breaks.

[18] [redacted] has stated for the past three (3) years that he is unable to work based on narcolepsy, cataplepsy (although under control), and depression. Given these conditions, he is a danger to himself and others at work.

[19] He explained that he tried different medication but they had no effect. On a few occasions, some medication did improve his symptoms for a short period of time, but then the fatigue would set in.

[20] He is on medication for depression and he is seeing a social worker once per month. He said that the panic attacks have stopped.

[21] A normal day consists mainly of sleeping. He does not feel like doing anything. If he tries to read, his vision becomes blurred.

[22] He stated that he has about 20 days out of 30 where he cannot get out of bed.

[23] He also mentioned that he has a 20 minute drive restriction on his driver's license since about 12 months ago.

[24] He sleeps six (6) to eight (8) hours per night and also naps during the day for one (1) to three (3) hours.

*iii. Capacity to work*

[25] I find that the Appellant suffers from a severe disability since April 2017 when he stopped working.

[26] The Appellant was able to work until April 2017 because, as he explained during his testimony, he was able to take naps during his breaks.

[27] I recognize that the Appellant is only 28 years old but he is not well educated, he has not had a varied work history, and he has no transferable skills. The Appellant has a high school diploma that he completed two years ago with difficulty. He has only held manual jobs. He stated that he his computer literate but given his state of mind and fatigue, he would not be able to do any type of sedentary work using a computer. I am satisfied that as of April 2017, he lacked the capacity regularly to pursue any form of gainful employment.

[28] My finding is supported by \_\_\_\_\_ report dated Sept 2018 which provided that the Appellant required treatment and he was advised about the risk of driving, swimming or doing any activities if he continued to have cataplexy or was sleepy.

[29] Also, in December 2018<sup>11</sup>, \_\_\_\_\_, stated that the Appellant still had episodes of kicking and punching during the night, but the frequency and aggressiveness had decreased since starting medication. With regard to his history of excessive daytime sleepiness, falling asleep quickly and cataplexy, he continued to have these events; they actually seemed to be more frequent than he had initially let on at his last visits and still had excessive daytime tiredness, he had not responded to medication. Although in January 2019, \_\_\_\_\_ reported there were improvements in his conditions<sup>12</sup>, \_\_\_\_\_ report dated March 19, 2019<sup>13</sup>, clearly indicated

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<sup>11</sup> GD2-93

<sup>12</sup> GD2-95

<sup>13</sup> GD2-85

that the Appellant continued to have difficulty staying awake during the day. He had been started on medications, however, they had not been effective and new medications were being tried with little improvement. His prognosis was guarded. His persisting symptoms caused safety concerns and inability to perform any job duties properly.

[30] In addition, reported that the Appellant was affected by his persisting low mood, fatigue, poor focus/concentration and short term memory loss. He was having difficulty sleeping which affected his ability to function. Testing demonstrated scores consistent with severe depression and severe anxiety affecting his ability to work.

[31] I find that the Applicant's disability was severe by the MQP. I am also satisfied that his disability has been continuously severe since.

### **Prolonged Disability**

[32] The Applicant's conditions have been ongoing and he has not been responding to medication. As provided by report dated March 19, 2019<sup>14</sup>, the Appellant continued to have difficulty staying awake during the day. He had been started on medications, however, they had not been effective and new medications were being tried with little improvement. His persisting symptoms caused safety concerns and inability to perform any job duties properly. He was having difficulty sleeping which affected his ability to function. Recent testing demonstrated scores consistent with severe depression and severe anxiety affecting his ability to work.

[33] I find that the Applicant's disability is long continued.

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<sup>14</sup> GD2-85



## CONCLUSION

[34] The Appellant had a severe and prolonged disability in April 2017, when he stopped working. However, to calculate the date of payment of the pension, a person cannot be deemed disabled more than fifteen months before the Minister received the application for the pension<sup>15</sup>. The application was received in November 2018, so the deemed date of disability is August 2017. Payments start four months after the deemed date of disability, as of December 2017<sup>16</sup>.

[35] The appeal is allowed.

Antoinette Cardillo  
Member, General Division - Income Security

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<sup>15</sup> Paragraph 42(2)(b) *Canada Pension Plan*

<sup>16</sup> Section 69 *Canada Pension Plan*