



Citation: *JB v Minister of Employment and Social Development*, 2022 SST 1086

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: J. B.
Representative: E. N.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 1, 2021 (issued
by Service Canada)

Tribunal member: Anne S. Clark
Type of hearing: Teleconference
Hearing date: April 25, 2022
Hearing participants: Appellant
Appellant's representative
Appellant's friend/Witness
Decision date: June 16, 2022
File number: GP-21-2333

Decision

[1] The appeal is dismissed.

[2] The Appellant, J. B., 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 50 years old. She was 35 when she was last eligible for a CPP disability benefit. She is a yoga instructor and studied Human Relations Psychology in college. She worked as an exotic dancer for 14 years. She has one son who was born in February 2007. The Appellant has epilepsy and has had seizures since 1982 or earlier. She said the effects of the seizures make her unable to work.

[4] The Appellant applied for a CPP disability pension on June 22, 2020. 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 she had epilepsy for many years and is affected by seizures that also injure her head and body. When she was first diagnosed she took prescribed medication and it helped some of her symptoms. She stopped taking medicine in 2006 when she became pregnant. Since then she has managed her condition with "plant medicine", cannabis, and diet. She said there is very little medical evidence before 2008 because the medical community failed her and she has had to manage her condition on her own. She also told me her contributions to the CPP are low because she was mostly self employed and she only contributes to the CPP during her "peak" years. She said she needs a disability pension to pay for her diet to help control the seizures.

[6] The Minister says there is no evidence to show the Appellant had functional limitations from her health conditions by the end of December 2006. The Minister noted there is treatment the Appellant could try to control her symptoms and she should be able to pursue employment and work within her functional limitations.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she had a disability that was severe and prolonged by December 31, 2006. This date is based on her contributions to the CPP.¹

[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.²

[10] This means I have to look at all of 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. If the Appellant is able to regularly do some kind of work to earn a living, then she isn’t entitled to a disability pension.

[11] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.³

[12] 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.

[13] The Appellant has to prove she has a severe and prolonged disability. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she is disabled and was by December 31, 2006.

¹ A person’s years of contributions to the CPP are used to calculate the “minimum qualifying period”. It is usually called the MQP and is often described using the date the period ended. In this case it is December 31, 2006. See subsection 44(2) of the *Canada Pension Plan*. The Appellant’s contributions are on pages GD2-62 and 63.

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

³ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

Matters I have to consider first

I accepted the documents the Appellant sent in after the hearing

[14] The Appellant acknowledged that she did not submit medical evidence about her health conditions on or before December 31, 2006. She said she thought she only had to prove she **had** a condition by December 31, 2006 and she **became** disabled by that condition. She did not appreciate that she had to show she had the condition **and** was disabled by December 31, 2006. Therefore, she only submitted evidence and provided witnesses about her current symptoms and limitations.

[15] The Appellant said she could get evidence about her health conditions by December 31, 2006. She asked for two weeks to do that.

[16] The Appellant's request was reasonable. It was very important for her to submit medical information to support her position that she was disabled by December 31, 2006. I agreed to allow her time to file evidence. I set deadlines according to her request and allowed time for the Minister to reply. The Appellant filed additional information and made submissions.⁴ The Minister did not file a reply and relied on previous submissions.

Reasons for my decision

[17] I find that the Appellant hasn't proven she had a severe and prolonged disability by December 31, 2006.

Was the Appellant's disability severe?

[18] The Appellant's did not prove her disability was severe by December 31, 2006. I reached this finding by considering several factors. I explain these factors below.

⁴ The Appellant's post-hearing submissions and evidence are at GD11

– **The evidence doesn't show the Appellant's functional limitations affected her ability to work**

[19] The Appellant says she had epilepsy, depression, anxiety and symptoms from trauma to her body and head. However, I can't focus on the Appellant's diagnoses.⁵ Instead, I must focus on whether she had functional limitations that got in the way of her earning a living.⁶ 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 affect her ability to work.⁷

[20] I find that the evidence doesn't show the Appellant had functional limitations by December 31, 2006.

– **What the Appellant says about her functional limitations**

[21] The Appellant says that her medical conditions have resulted in functional limitations that affect her ability to work. She says she has frequent seizures that limit her functional ability. They also cause injuries to her head and body. The seizures are unpredictable. They are also affected by things outside of her control. She believes the seizures are, at least, partly caused by her menstrual cycle, lightning storms, tidal currents and 5G towers.

[22] The Appellant said she had a significant period of depression in 2005 and attempted suicide. She saw a psychologist in 2006 and tried Neurofeedback sessions he recommended. She did not say if her condition improved with the sessions but she stopped attending them in May 2006. She also stopped taking medication in 2006 when she became pregnant. It appears she has not tried any other prescribed medication since.

[23] The Appellant said seizures cause head injuries that affect her memory. She suggested the Neurofeedback sessions were intended to address those symptoms as well. She did not say if they helped her memory.

⁵ See *Ferreira v Canada (Attorney General)*, 2013 FCA 81.

⁶ See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

⁷ See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

[24] The Appellant said she proved to herself that medication cannot help her condition. She lost her driver's licence in 2005. She cannot renew it because she cannot get insurance unless she takes medication and is seizure free for one year. She also said she "turned a corner in 2014".

[25] The Appellant follows a ketogenic diet and feels this is a recognized treatment for epilepsy. She said she had a full year without a seizure using only cannabis and her diet. She also said the seizures are worse now than they have ever been. She said she had one to six seizures a year from 2006 to 2010 and she had two from 2011 to 2013.⁸

– **What the witnesses say about the Appellant's functional limitations**

[26] The Representative also gave oral testimony.⁹ She said she has known the Appellant since 2009. She first saw the Appellant have a seizure in January 2014. Since then she was present when the Appellant had six different seizures. They seem to be getting more and more difficult. The last was in November 2021 and it took a very long time for the Appellant to recover from it.

[27] The Representative's evidence is not helpful to determine whether the Appellant had a severe disability by December 31, 2006. This is because she did not know the Appellant or observe symptoms until 2009 and later - years after the MQP ended.

[28] The Appellant's friend J. M. (Witness) testified. He said he has known the Appellant since 2014. He witnessed at least three seizures and he assisted the Appellant as she recovered from them. The Witness said he is an ambulance driver and feels these seizures are very serious. He said he had to talk to the Appellant's son about the seizures to help him understand what was happening.

[29] The Witness' evidence is not helpful to determine whether the Appellant had a severe disability by December 31, 2006. This is because he did not know the Appellant or observe symptoms until 2014 - years after the MQP ended.

⁸ The Appellant said this in a document beginning at GD2-38.

⁹ The Representative also wrote a letter in support of the appeal. It begins at GD3-1.

[30] The Appellant's friend, C. J. wrote in support of the appeal. She said she has known the Appellant since 1977 and first witnessed a seizure in 1982. She spent a lot of time with the Appellant in 2005/2006 when the Appellant was pregnant. She witnessed five different seizure during that time. She confirms the Appellant was living with epilepsy in 2006.¹⁰

[31] Evidence from the Appellant's friend confirms the Appellant had a condition in 2006. It cannot be considered medical evidence that confirms the Appellant had functional limitations that got in the way of her earning a living by December 31, 2006. The letter confirms the Appellant did not drive and had seizures but does not address the Appellant's ability to work.

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

[32] The Appellant must provide medical evidence that shows that her functional limitations affected her ability to work by December 31, 2006.¹¹

[33] The medical evidence doesn't support what the Appellant says. There is evidence on file to show the Appellant has a serious health condition and needs treatment. The evidence on file shows the Appellant had treated for epilepsy and required hospitalization. She does not take recommended medication and does take remedies like cannabis that are not prescribed.¹²

[34] Information the Appellant filed after the hearing shows she consulted specialists in 1997 and 2004.¹³ There is a statistical report and analysis from 2006.¹⁴ There is a statement of account showing the Appellant paid a psychologist for services from January 10 to May 2, 2006.¹⁵

¹⁰ Ms. Julien's letter is at GD6

¹¹ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

¹² Dr. Stolz, Neurologist said this in GD2-96, 97, 98, and 104.

¹³ See GD11-3 to 8.

¹⁴ This report begins at page GD11-13.

¹⁵ See page GD11-26

[35] The medical evidence doesn't show that the Appellant had functional limitations that affected her ability to work by December 31, 2006. As a result, she hasn't proven she had a severe disability.

[36] When I am deciding whether a disability is severe, I usually have to consider an appellant's personal characteristics.

[37] This allows me to realistically assess an appellant's ability to work.¹⁶

[38] I don't have to do that here because the Appellant's functional limitations didn't affect her ability to work by December 31, 2006. This means she didn't prove her disability was severe by then.¹⁷

Conclusion

[39] I find that the Appellant isn't eligible for a CPP disability pension because her disability isn't severe. Because I have found that her disability isn't severe, I didn't have to consider whether it is prolonged.

[40] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section

¹⁶ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁷ See *Giannaros v Minister of Social Development*, 2005 FCA 187.