



Citation: *AK v Minister of Employment and Social Development*, 2023 SST 864

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

**Appellant:** A. K.  
**Representative:** H. S.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Ian McRobbie

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**Decision under appeal:** General Division decision dated March 10, 2023  
(GP-22-1401)

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**Tribunal member:** Kate Sellar

**Type of hearing:** In Writing  
**Decision date:** **June 27, 2023**  
**File number:** AD-23-568

## Decision

[1] I'm allowing the appeal. The Claimant is entitled to a *Canada Pension Plan* (CPP) disability pension. Payments start May 2021. These are the reasons for my decision.

## Background

[2] A. K. (Claimant) applied for a CPP disability pension in September 2015. The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed the Minister's decision to this Tribunal. The General Division dismissed her appeal on November 28, 2016.

[3] The Claimant applied for a CPP disability pension again on April 8, 2022. The Minister refused her application. The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal. The General Division decided that the Claimant didn't prove that her disability became severe between October 27, 2016 and December 31, 2017.

## The parties agree on the outcome of the appeal

[4] The parties have asked for a decision based on an agreement they reached during a settlement conference on June 27, 2023.<sup>1</sup>

[5] The parties agree on the following:

- The Appeal Division should allow the appeal.
- The Claimant proved that she had a severe and prolonged disability within the meaning of section 42(2)(a) of the CPP starting in November 2017 based on the medical reports.<sup>2</sup> This means the date of onset was between October 27, 2016 and December 31, 2017.

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<sup>1</sup> See section 39(2) of the *Social Security Tribunal Rules of Procedure*.

<sup>2</sup> Including the consultation note from the pain care clinic at GD2-343 to 345.

- The Claimant applied for the disability pension in April, 2022. According to section 42(2)(b) of the CPP, the earliest a claimant can be considered disabled is 15 months before they applied. For the Claimant, that date is January 2021. In accordance with section 69 of the CPP, payments start four months later in May 2021.

## **I accept the parties' agreement**

[6] I accept the parties' agreement.

[7] The Claimant's disability is severe and prolonged within the meaning of the CPP. I'm satisfied that the Claimant's functional limitations became severe in November 2017 based on the medical evidence. At that point she had functional limitations associated with possible degenerative disc disease of the lumbar spine, mechanical lower back pain and fibromyalgia.<sup>3</sup> She was also at the heart function clinic for heart failure which was resulting in shortness of breath even after walking less than a block.<sup>4</sup> The Claimant took steps to manage her conditions, as difficult as that has been. She didn't refuse treatment unreasonably. Her functional limitations along with some of her personal circumstances meant that she was incapable regularly of pursuing any substantially gainful work.

[8] The Claimant's disability is long-continued and of indefinite duration, so it is prolonged within the meaning of the CPP.

## **Conclusion**

[9] I allow the appeal. The Claimant is entitled to a *Canada Pension Plan* disability pension. Payments start May 2021.

Kate Sellar  
Member, Appeal Division

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<sup>3</sup> See GD2-343 to 345.

<sup>4</sup> See GD2-347.