



Citation: *PH v Minister of Employment and Social Development*, 2024 SST 1494

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: P. H.

Respondent: Minister of Employment and Social Development
Representative: Andrew Kirk

Decision under appeal: General Division decision dated September 7, 2024
(GP-24-816)

Tribunal member: Pierre Vanderhout

Type of hearing: Teleconference

Hearing date: December 2, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: December 3, 2024

File number: AD-24-614

Decision

[1] The appeal is allowed. The Appellant is entitled to a Canada Pension Plan (CPP) disability pension. Payments start in February 2023. These are the reasons for my decision.

Background

[2] For clarity, I will refer to the Appellant, P. H., as the “Claimant.”

[3] The Claimant has stage 4 cancer (Chronic Lymphocytic Leukemia, or “CLL”). CLL is a terminal condition. Although the Claimant had symptoms related to CLL for many years, she did not receive the CLL diagnosis until 2023.¹ Before then, the primary diagnoses had been asthma and chronic pain in the neck and shoulders.²

[4] The Claimant applied for a CPP disability pension in January 2024.³ The Minister refused her application initially and on reconsideration. The Claimant appealed to the Social Security Tribunal (Tribunal).

[5] The Claimant had to show that her disability became severe and prolonged within the meaning of the Canada Pension Plan by December 31, 2020. That was the last day of her coverage period.⁴

[6] The Tribunal’s General Division dismissed the Claimant’s appeal, finding that she had some work capacity until at least May 2021.⁵ One of my colleagues in the Tribunal’s Appeal Division gave the Claimant permission to appeal the General Division decision.

¹ See, for example, GD2-109.

² See, for example, GD1A-25, GD1A-27, GD1A-28, GD1A-67, and GD2-87.

³ See GD2-29 and GD2-30.

⁴ This date is based on her CPP contributions. The Claimant’s CPP contributions are at GD2-44 and GD2-45. Service Canada uses a person’s years of CPP contributions to calculate their coverage period (MQP). See section 44(2) of the *Canada Pension Plan*. In this case, the CPP’s child-rearing provisions also affect the MQP. See GD7-2 and GD7-4.

⁵ See AD1A-1.

The parties agree on the outcome of the appeal

[7] The parties have asked for a decision, based on an agreement they reached during a settlement conference on December 2, 2024. The hearing scheduled for that date was converted to a settlement conference.⁶

[8] The parties agree on the following:⁷

- The Appeal Division should allow the Claimant's appeal. The parties do not want or need a full hearing at the Appeal Division.
- The Claimant is eligible for a CPP disability pension. She proved that her disability was severe and prolonged within the meaning of the *Canada Pension Plan*⁸ in December 2020. Based on her CPP contributions, the last day of her coverage period was December 31, 2020. This means that her disability became severe and prolonged within her coverage period.
- According to the Canada Pension Plan, the earliest a person can be deemed disabled for disability pension purposes is 15 months before she applied.⁹ The Claimant applied in January 2024, so the earliest she can be deemed disabled is October 2022.
- CPP pension payments start four months after the deemed date of disability.¹⁰ In this case, payments start in February 2023 because October 2022 is the deemed date of disability.

I accept the parties' agreement

[9] I accept the parties' agreement in full. I note that the Claimant filed new evidence at the Appeal Division that the General Division did not have.¹¹

⁶ See AD11-1. The Minister requested this conversion: see AD10-1.

⁷ See AD10-1 and the Appeal Division recording.

⁸ See section 42(2)(a) of the *Canada Pension Plan*.

⁹ See section 42(2)(b) of the *Canada Pension Plan*.

¹⁰ See section 69 of the *Canada Pension Plan*.

¹¹ See, for example, AD4.

[10] I am satisfied that the Claimant is eligible for the CPP disability pension. She proved that her disability became severe in December 2020. It is also prolonged.

[11] The Claimant's work capacity had been limited for many years. She last had qualifying CPP contributions in 2019. Those contributions arose from earnings of only \$6,335.00.¹² She lost a job in October 2019 because of pain and absenteeism, despite being a valued employee.¹³

[12] The Claimant continued trying to work until 2022. However, her annual earnings between 2020 and 2022 never exceeded \$2,352.00. These earnings were far below the substantially gainful level. Her final employer noted that her pain complaints went back many years and interfered with her ability to work.¹⁴

[13] The Claimant said her neck, back, and leg pain started after two car accidents in 2017. The pain had only worsened since then. The pain made sitting, standing, and walking uncomfortable. The pain often made her lay down or vomit. She tried to work but could not hold a job. The lumps in her neck grew. She also had serious breathing issues, nausea, and weakness.¹⁵ She had another car accident in January 2020.¹⁶

[14] The Claimant could no longer wash her hair or clean her house after the Covid pandemic started in early 2020. She had trouble using the stairs. She could not do any exercise. On some days, she could not drive. However, her limitations were still thought to be from asthma or chronic injuries. Her treatment was limited mainly to massage, asthma puffers, physiotherapy, over-the-counter pain medication, and an antidepressant.¹⁷

[15] The Claimant's condition continued to worsen by 2021. Around this time, she said she had 6-8 tumours in her neck. Each was about 5 cm to 6 cm long. She could hardly turn her neck or bend her head. However, she was told that the causes were

¹² See GD2-44, GD2-45, and AD8-3.

¹³ See AD1-19.

¹⁴ See GD2-30, GD2-41, and AD1-18. See also s. 68.1 of the *Canada Pension Plan Regulations*.

¹⁵ See GD1A-67, AD4-3, AD8-2, and AD8-3.

¹⁶ See GD1A-23.

¹⁷ See GD1A-23 to GD1A-25, AD4-3, AD8-3, and AD8-4.

swollen glands, swelling from the car accidents, or possibly “long Covid”. She was also told that asthma caused her breathing problems. She later learned that her bone marrow was 95% diseased by the time of her CLL diagnosis.¹⁸

[16] The evidence supports an onset date of December 2020 for the Claimant’s severe disability. By then, she could not hold a position for any length of time. She also had many other physical limitations. These restricted her mobility, breathing, and head and neck movement. I note that she had, at most, a high school education. That also limited her real-world work options.¹⁹

[17] I conclude that the Claimant has functional limitations that left her incapable regularly of pursuing any substantially gainful occupation by December 31, 2020. This means her disability was severe by then.

[18] The Claimant’s disability is long-continued and of indefinite duration. This means it is also prolonged. In January 2024, her family doctor confirmed that her Stage 4 CLL was a terminal condition. It could not be cured or adequately treated.²⁰

[19] The payment start date is February 2023. Based on the Claimant’s application date, payments cannot start earlier than that.

Conclusion

[20] I allow the appeal. The Claimant is eligible for a CPP disability pension. Payments start in February 2023.

Pierre Vanderhout
Member, Appeal Division

¹⁸ See AD4-3 to AD4-4, AD8-2, and AD8-4.

¹⁹ See GD2-31 and GD2-64. See also *Villani v Canada (Attorney General)*, 2001 FCA 248.

²⁰ See GD2-105.