



Citation: *ES v Minister of Employment and Social Development*, 2025 SST 639

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

**Appellant:** E. S.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Daniel Crolla

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**Decision under appeal:** General Division decision dated July 30, 2024  
(GP-23-768)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** In writing

**Decision date:** June 18, 2025

**File number:** AD-24-655

## Decision

[1] The appeal is allowed in accordance with an agreement reached between the parties.

## Overview

[2] The Appellant is a 52-year-old former interior decorator with a history of chronic pain and depression. She hasn't worked since 1998 and is the primary caregiver for her son, who has Duchenne muscular dystrophy.

[3] In November 2020, the Appellant applied for a Canada Pension Plan (CPP) disability pension.<sup>1</sup> She claimed that she was no longer able to work because of severe pain and anxiety.

[4] Service Canada refused the application after determining that the Appellant did not have a severe and prolonged disability during her coverage period, which ended on December 31, 2008.<sup>2</sup>

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal. The Tribunal's General Division held a hearing and dismissed the appeal. It acknowledged that the Appellant had significant medical problems, but it found insufficient evidence that they prevented her from working during her coverage period.

[6] The Appellant then asked the Appeal Division for permission to appeal. Last year, one of my colleagues allowed her appeal to proceed because she had produced additional evidence — an update from her current family doctor.

[7] Last month, I convened a hearing by teleconference to discuss the Appellant's disability claim in full. Partway through the hearing, it became apparent that the Appellant had in her possession clinical notes from her previous family doctor. The Appellant insisted that she had sent the notes to the Tribunal. However, they weren't on

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<sup>1</sup> See the Appellant's application for a CPP disability pension completed on November 20, 2020, GD2-25.

<sup>2</sup> Under section 44(2) of the *Canada Pension Plan*, a disability claimant must show that they have a severe and prolonged disability during their coverage period. A coverage period is established by working and contributing to the CPP. See the Appellant's record of earnings and contributions at GD2-55.

the record. I adjourned the hearing to give the Appellant another opportunity to submit the missing material.<sup>3</sup>

[8] On May 22, 2025, the Appellant submitted two document packages totalling 84 pages, including a medical file from Dr. Eva Eros, the Appellant's family doctor until 2011.<sup>4</sup> The Minister's representative then requested a settlement conference to discuss a potential resolution to this appeal. That did not succeed, but a second settlement conference did. The parties have asked me to prepare a decision that reflects their agreement.

## **Agreement**

[9] The Minister conceded that the Appellant had a severe and prolonged disability before December 31, 2008 and has had one ever since.<sup>5</sup> The Minister determined that the Appellant was entitled to be paid a CPP disability pension as of December 2019.

[10] The Appellant expressed her agreement with these statements.

[11] Having reviewed the record, I am endorsing the parties' agreement for the following reasons:

- The Appellant's husband was incarcerated in 2005, leaving her the sole provider and caregiver for three young children, including her severely disabled eldest son.<sup>6</sup>
- Dr. Eros's office notes from 2003 to 2008 document numerous ailments and complaints, including depression, anxiety, headaches, fatigue, sleeplessness, chronic back pain, and facial rashes.<sup>7</sup>

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<sup>3</sup> See Tribunal member's endorsement dated May 12, 2025, AD14.

<sup>4</sup> See document packages submitted on May 22, 2025, AD18 and AD19, accompanied by a letter dated April 7, 2025 by Dr. Heather Kelly, family physician.

<sup>5</sup> Refer to the recording of the final part of the settlement conference held on June 17, 2025.

<sup>6</sup> See the affidavit of M. W., the Appellant's daughter, sworn on April 9, 2025, AD18-5. See also Dr. Eros's office note dated August 5, 2005, AD18-16.

<sup>7</sup> See Dr. Eros's office notes dated June 2, 2002 to December 5, 2008, AD18-11 to AD18-21.

- Given her mental health condition and limited education, the Appellant was effectively unemployable at the end of her coverage period, even though she was only in her mid-30s at the time.
- The Appellant took reasonable steps to seek treatment, seeing various medical specialists and trying multiple psychotropic drugs, all to limited effect.

[12] Finally, I considered whether the Appellant was incapacitated from applying for disability benefits earlier than she actually did. But I saw no evidence that she was unable to form or express an intention to make an application earlier than November 2020.<sup>8</sup>

## Conclusion

[13] I hereby allow the appeal in accordance with the parties' agreement. Since the Minister received the Appellant's application for benefits in November 2020, the Appellant is deemed disabled as of August 2019.<sup>9</sup> That means the effective start date of the Appellant's CPP disability pension is December 2019.<sup>10</sup>



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Member, Appeal Division

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<sup>8</sup> The test for incapacity may be found at section 60(8) of the *Canada Pension Plan*.

<sup>9</sup> Under section 42(2)(b) of the *Canada Pension Plan*, a person cannot be deemed disabled more than 15 months before the Minister received the application for a disability pension.

<sup>10</sup> According to section 69 of the *Canada Pension Plan*, payments start four months after the deemed date of disability.