



**Social Security Tribunal of Canada  
General Division – Income Security Section**

## **Decision**

**Appellant (Claimant):**  
**Representative:**

Sukhdeep Kaur Aulakh  
Roger Foisy

**Respondent:**

Minister of Employment and Social Development

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**Decision under appeal:**

Minister of Employment and Social Development  
reconsideration decision dated March 19, 2020 (issued by  
Service Canada)

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**Tribunal member:**

Virginia Saunders

**Type of hearing:**

Videoconference

**Hearing date:**

September 1, 2021

**Hearing participants:**

Claimant  
Claimant's representative  
Observer from the representative's law firm  
Interpreter

**Decision date:**

September 23, 2021

**File number:**

GP-20-953

## Decision

[1] The appeal is allowed.

[2] The Claimant, Sukhdeep Kaur Aulakh, is eligible for a Canada Pension Plan (CPP) disability pension. Payments start as of March 2018. This decision explains why I am allowing the appeal.

## Overview

[3] The Claimant was born and raised in India. She moved to Canada in 2001, when she was 23 years old. From 2001 to 2017, she did manual labour in warehouses and factories.

[4] The Claimant injured her neck and right shoulder in a workplace accident in 2008. She was off work for a short time. When she went back to work, she had a job that wasn't as physically demanding. Eventually, she returned to her usual duties.

[5] The Claimant's pain continued. She kept working because her family needed the money. She managed her pain with medication, physiotherapy, and chiropractic treatment. But by 2017, her pain was much worse. It was hard to do her job. Her employer didn't have light duties available, so the Claimant went on short-term disability.

[6] The Claimant had a discectomy in 2018. But her condition didn't improve much. She started to have pain on her left side. She was anxious and depressed. She didn't go back to work. She hasn't worked since June 2017.

[7] The Claimant applied for a CPP disability pension in February 2019. The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division.

[8] The Claimant says she can't work because of back, neck, shoulder, and arm pain.<sup>1</sup> She says her chronic pain causes depression, which also prevents her from working.<sup>2</sup>

[9] The Minister says there aren't significant medical findings to support a conclusion that the Claimant is disabled. The Minister says the Claimant's condition isn't bad enough to prevent her from doing lighter or modified work that is within her limitations.<sup>3</sup>

## What the Claimant must prove

[10] For the Claimant to succeed, she must prove she has a disability that was severe and prolonged by December 31, 2020. This date is based on her contributions to the CPP.<sup>4</sup>

[11] The Claimant has to prove this on a balance of probabilities. This means she has to show it is more likely than not that she is disabled.

[12] The *Canada Pension Plan* defines "severe" and "prolonged."

[13] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.<sup>5</sup> This means that if the Claimant is regularly able to do some kind of work that she could earn a living from, then she isn't entitled to a disability pension.

[14] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.<sup>6</sup> This means the Claimant's disability can't have an expected recovery date. The disability must be expected to keep the Claimant out of the workforce for a long time.

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<sup>1</sup> See GD1-31.

<sup>2</sup> See GD2-27.

<sup>3</sup> See GD3-2, GD6-4, GD8-3-4.

<sup>4</sup> Service Canada uses a claimant's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*. The Claimant's CPP contributions are on GD2-4.

<sup>5</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

<sup>6</sup> Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

## **Matters I have to consider first**

### **I accepted documents sent in after the hearing**

[15] At the hearing, the Claimant's representative asked to file new medical documents for 2020 and 2021. The documents were records from the Claimant's family doctor, Dr. Malik. The representative had just received them. I decided to accept the documents, because they were relevant to the issue in this appeal. I gave the Minister time to respond to the documents, which it did.<sup>7</sup>

### **Reasons for my decision**

[16] The Claimant has a disability that was severe and prolonged by December 31, 2020. I reached this decision by considering the following issues.

#### **Is the Claimant's disability severe?**

[17] The Claimant's disability is severe. She has functional limitations that affect her ability to do physical work. Because of her medical condition and her background, it isn't realistic to say she can earn a living doing lighter or part-time work.

#### **– The Claimant's functional limitations affect her ability to work**

[18] The Claimant has chronic pain syndrome. It causes functional limitations that affect her ability to work.

[19] I have to focus on whether the Claimant has functional limitations that get in the way of her earning a living.<sup>8</sup> When I do this, I have to look at **all** of the Claimant's medical conditions, not just the main one.<sup>9</sup>

[20] The Claimant says that, because of her pain, she can't do household chores, prepare meals, or do grocery shopping. She needs help in the shower and when dressing. She loses her balance when she is out walking.<sup>10</sup>

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<sup>7</sup> The new documents are at GD7. The Minister's response is at GD8.

<sup>8</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

<sup>9</sup> See *Bungay v Canada (Attorney General)*, 2011 FCA 47.

<sup>10</sup> See GD1-31, GD2-30-33.

[21] The Claimant says her medical conditions affect her ability to work in the following ways:

- she is limited in what she can do because of chronic neck, shoulder, back, and arm pain, and weak grip strength
- she can't look down or over her shoulder because of restricted movement of her cervical spine
- she doesn't sleep well, so she is tired all day
- she worries constantly
- she doesn't like working in groups or talking to people
- she doesn't like loud noises or crowded places
- she gets mad easily
- she forgets easily.<sup>11</sup>

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

[22] The medical evidence shows the Claimant had functional limitations by December 31, 2020.<sup>12</sup>

[23] In 2017 and early 2018, the Claimant consistently reported neck and right shoulder pain radiating into her right arm and causing numbness and tingling. Imaging showed mild to moderate degenerative disc disease of the cervical spine. Neurological examination and testing was normal.<sup>13</sup>

[24] Then the Claimant had an MRI. It showed a disc herniation in her cervical spine. She had disc surgery on December 13, 2018.<sup>14</sup>

[25] The surgery appeared to have completely relieved the Claimant's right-sided symptoms.<sup>15</sup> However, the uncontrolled pain had moved to the left side of her neck.<sup>16</sup>

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<sup>11</sup> The Claimant said this at the hearing. See also GD1-31, GD2-30-33.

<sup>12</sup> The Claimant must provide medical evidence that shows that her functional limitations affected her ability to work by December 31, 2020. See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Canada (Attorney General) v Dean*, 2020 FC 206.

<sup>13</sup> See GD1-40, GD1-117-118, GD1-159-161.

<sup>14</sup> See GD1-195-196.

<sup>15</sup> See GD1-198.

<sup>16</sup> See GD1-220.

When the Claimant saw her family doctor two weeks later, she was still in pain. She also had heaviness and weakness in her left arm and hand.<sup>17</sup>

[26] In the next five months, the surgeon, Dr. Jhas, and a physiatrist, Dr. Paleksic, wrote that the Claimant had improved significantly. Her only symptoms were “very mild” right-sided weakness that was normal after surgery, and residual neck pain that would get better with physiotherapy, daily stretching, and massage to break up the scar tissue.<sup>18</sup>

[27] Despite these positive outlooks, the Claimant continued to report neck pain and other symptoms to her family doctor and her physiotherapist.<sup>19</sup> In August 2019, she told an occupational therapist that her symptoms included headaches, daily swelling and soreness around the surgery scar, constant neck pain and tightness, intermittent pain in her right arm and shoulder that was triggered by any movement, intermittent pain in her lower back that limited her bending ability, and cervical pain with prolonged sitting. She also reported being forgetful, depressed, anxious and withdrawn.<sup>20</sup>

[28] I agree with the Minister that there is very little objectively wrong with the Claimant’s physical condition to explain why she is so limited. However, the Claimant has chronic pain syndrome. Chronic pain doesn’t always show up on tests and imaging. But it can still affect a person’s ability to work.<sup>21</sup>

[29] In August 2020, the Claimant saw Dr. Hanna for a chronic pain assessment. Dr. Hanna interviewed the Claimant and reviewed her medical records. He found her to be credible. He accepted what she told him about her symptoms and how she functioned. She told him she had constant, sharp upper back and neck pain. She had intermittent, sharp pain in her mid to low back, with pain referring down her right leg. She described mostly staying home during the day, napping in the afternoon, and doing

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<sup>17</sup> See GD2-76.

<sup>18</sup> See GD1-43, GD1-463-465.

<sup>19</sup> See GD1-112-114, GD1-419-438.

<sup>20</sup> See GD1-478-479.

<sup>21</sup> In *Nova Scotia (Worker’s Compensation Board) v Martin*, [2003] SCC 54, the Supreme Court of Canada said chronic pain is a potentially disabling condition, even if it isn’t supported by objective findings.

some household duties with her mother's help. She did everything slowly to avoid making her pain worse. She took only short walks because of her pain.<sup>22</sup>

[30] Dr. Hanna said the Claimant met the criteria for chronic pain syndrome because:

- she had secondary physical deconditioning due to disuse and/or fear avoidance of physical activity due to pain
- she had withdrawn from social settings, including work, recreation, or other social contacts
- her pre-injury function had not been restored, so that her physical capacity was insufficient to pursue work, family or recreational needs
- she had developed psychosocial effects, including anxiety, fear avoidance, depression, or nonorganic illness behaviour.<sup>23</sup>

[31] The medical evidence shows that the Claimant's chronic pain syndrome—specifically, physical deconditioning, fear of physical activity, and social withdrawal—prevented her from going back to her regular job.

[32] But to be severe, the Claimant's functional limitations must prevent her from earning a living at any type of work, not just her usual job.<sup>24</sup> So I now have to decide whether the Claimant can regularly do other types of work.

– **The Claimant can't work at any job**

[33] The Claimant can't regularly work at any job.

[34] I believe what the Claimant told me at the hearing. It was consistent with what she has been saying for the past four years. I accept her evidence about what she can and can't do.

[35] Although the Claimant can do some things, such as light housekeeping and taking her children to school and activities, she does everything slowly. She paces herself. She naps. She relies on her family members to help. They do most of the work.

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<sup>22</sup> See GD4-118-119. See GD4-132 for Dr. Hanna's comments on the Claimant's credibility.

<sup>23</sup> See GD4-132.

<sup>24</sup> See *Klabouch v Canada (Attorney General)*, 2008 FCA 33.

In addition, the Claimant is withdrawn and unmotivated. She has difficulty in social settings. These limitations make it unlikely the Claimant can regularly go to work and be productive at any job, even one that is sedentary or part time.

[36] In reaching this conclusion, I placed more weight on Dr. Hanna's opinion than I did on other medical reports. Those reports suggest the Claimant has no restrictions, or is only restricted from doing heavier work.<sup>25</sup> But the writers were focussed on the Claimant's physical condition. Dr. Hanna considered the combined effect of the Claimant's limitations. He is trained in chronic pain and pain management.<sup>26</sup> He based his opinion on a thorough review of the Claimant's medical records, an interview, and a physical examination.<sup>27</sup> So I think his opinion is a more reliable picture of the Claimant's medical condition and how it affects her ability to work in the real world.

[37] The Minister argued that Dr. Hanna contradicted himself, by saying the Claimant's test scores revealed clinical levels of depression and anxiety, while also saying she was orientated with good eye contact and normal affect.<sup>28</sup> These statements don't contradict each other. Dr. Hanna was talking about the Claimant's test scores, and then what he observed during the interview. They are two different things. The Minister offered no evidence to show why I should disregard Dr. Hanna's findings based on how the Claimant appeared during an interview.

[38] Dr. Hanna's opinion is that, because of her chronic pain and a corresponding decline in her psychological health, the Claimant hasn't been able to any job she is qualified for or might become qualified for since July 2017.<sup>29</sup>

[39] I agree with Dr. Hanna. When I am deciding if the Claimant can work, I must consider more than just her medical conditions and how they affect what she can do. I must also consider things like her age, level of education, language ability, and past

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<sup>25</sup> See GD1-465, GD2-79, GD7-31-32.

<sup>26</sup> See GD4-115.

<sup>27</sup> See GD4-115-129.

<sup>28</sup> See GD6-4.

<sup>29</sup> See GD4-133.



work and life experience. These factors help me decide whether it is realistic to say the Claimant can work.<sup>30</sup>

[40] The Claimant is young (she was 42 at December 31, 2020, and is now 43). She is educated, having completed high school and a year of university in India. But these positive characteristics are outweighed by the negative ones.

[41] First, the Claimant's education was in Punjabi. She doesn't speak, read, or understand English very well.

[42] Second, the Claimant has only done manual labour. Although she had some paperwork at one of her jobs, she was simply filling out quality control forms. The task didn't require much English or administrative skill. The Claimant doesn't have any other marketable skills.

[43] Third, the limitations that regularly prevent the Claimant from working also prevent her from training to improve her English or acquire new job skills.

[44] Finally, I considered the Claimant's life experience. She worked at physically demanding jobs from the time she first came to Canada as a young woman. She worked despite having young children, family obligations, and injuries. Her family needs her income. I believe that if there was anything the Claimant could do, she would be doing it.

[45] In the real world, the Claimant has no work capacity. Therefore, she doesn't have to show that she tried to work and failed because of her health conditions.<sup>31</sup>

**– The Claimant has followed medical advice**

[46] The Claimant has followed medical advice.<sup>32</sup> She has had surgery and physical therapy. She has tried different medications. She has been to specialists. If she didn't

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<sup>30</sup> See *Villani v Canada (Attorney General)*, 2001 FCA 248.

<sup>31</sup> The Federal Court of Appeal said this in *Inclima v. Canada (Attorney General)*, 2003 FCA 117.

<sup>32</sup> The Federal Court explained the requirement to follow medical advice in *Sharma v. Canada (Attorney General)*, 2018 FCA 48.

follow up with recommendations (such as seeing a psychologist), it was because she couldn't afford to.

[47] I find that the Claimant's disability was severe by December 31, 2020.

### **Is the Claimant's disability prolonged?**

[48] The Claimant's disability is prolonged.

[49] The Claimant's condition has prevented her from working since June 2017. Although Dr. Hanna said she hasn't been able to work since July 2017, he was answering a question about her condition on and since that time. Most of the evidence is that the Claimant stopped working in June 2017.<sup>33</sup> There is no evidence to suggest anything changed between June and July.

[50] Despite treatment, the Claimant hasn't improved. She is willing to see more doctors and try new therapies. But Dr. Hanna said she had many barriers to recovery, and her prognosis for returning to work was poor.<sup>34</sup> I find the Claimant's condition will more than likely continue indefinitely.<sup>35</sup>

[51] I find that the Claimant's disability was prolonged by December 31, 2020.

### **When payments start**

[52] The Claimant's disability became severe and prolonged in June 2017, when she had to stop working.

[53] However, the *Canada Pension Plan* says a claimant can't be considered disabled more than 15 months before the Minister receives their disability pension application. After that, there is a four-month waiting period before payments start.<sup>36</sup>

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<sup>33</sup> For example, see GD1-50, GD1-157, GD4-48.

<sup>34</sup> See GD4-133.

<sup>35</sup> In the decision *Canada (Attorney General) v Angell*, 2020 FC 1093, the Federal Court said that a claimant has to show a severe and prolonged disability by the end of their minimum qualifying period and continuously after that. See also *Brennan v Canada (Attorney General)*, 2011 FCA 318.

<sup>36</sup> Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can't start more than 11 months before the application date.

[54] The Minister received the Claimant's application in February 2019. This means she is considered to have become disabled in November 2017. Payment of her pension starts as of March 2018.

## **Conclusion**

[55] I find that the Claimant is eligible for a CPP disability pension because her disability is severe and prolonged.

[56] This means the appeal is allowed.

Virginia Saunders  
Member, General Division—Income Security Section