Social Security Tribunal of Canada
Tribunal de la sécurité sociale du Canada

Tribunal File Number: GP-17-2599

BETWEEN:

Jason Neamtz

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: John Eberhard

HEARD ON: March 9, 2018

DATE OF DECISION: March 12, 2018

Canada

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on February 19, 2013. The Appellant claimed that he was disabled because chronic back pain which onset in 2011. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (SST or Tribunal). The Tribunal (General Division – GD) dismissed the appeal on December 10, 2015 finding that the Appellant did not have a severe and prolonged disability as of his Minimum Qualifying Period (MQP) of December 31, 2013 and continuously thereafter.

[2] The Appellant appealed the GD decision to the SST Appeal Division (AD). The appeal was allowed and the matter referred back with specific recommendation to this "Tribunal". The Tribunal communicated with the parties as follows:

> "The decision of the SST AD dated October 3, 2017 referred the matter back to the Tribunal General Division for the purpose of considering the application of the principles in *Lalonde* and *Inclima*. The Appeal Division contemplated an application of the law to the facts with an analysis that requires a reconsideration of the evidence. It remains open to the General Division to determine that the Appellant's disability was or was not severe (and was or was not prolonged) prior to December 31, 2013".

[3] I have received written submission from the parties. I have reviewed the historic medical briefs and submissions; and, the submissions of Counsel for the Appellant on the review. The position of the Respondent is that the evidence before the Tribunal does not support a determination that the Appellant is disabled within the meaning of the CPP on or prior to his MQP and continuously thereafter. The Appellant submits that his medical condition has progressively become worse since his last day of employment through to the MQP date and ongoing. The medical evidence provided shows that Mr. Neamtz continues to suffer from a chronic pain disability that prevents him from regularly pursuing any substantially gainful occupation.

OVERVIEW

[4] The Appellant made an earlier application for CPP disability benefits. That application was received February 2012 and is relevant to the extent that the information contained in the questionnaire (GD3-173) and available medical reports as of that time are before the Tribunal. Collectively, they contribute to the body of evidence available to me. The application was denied and there was no appeal by the Appellant at that time.

[5] To be eligible for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant must be found disabled as defined in the CPP on or before the end of the MQP. The calculation of the MQP is based on the Appellant's contributions to the CPP. The Tribunal finds the Appellant's MQP to be December 31, 2013.

[6] My redetermination resulted from a hearing by teleconference, held for the following reasons:

- More than one party will attend the hearing.
- The method of proceeding is most appropriate to allow for multiple participants.
- The method of proceeding provides for the accommodations required by the parties or participants.
- There are gaps in the information in the file and/or a need for clarification.
- This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[7] The following people attended the hearing:

Jason Neamtz, the Appellant

Nick de Koning, lawyer for the Appellant

[8] The Respondent did not appear. This is unfortunate because it did not have an opportunity to examine the Appellant, support its written submissions or respond to the arguments made at the hearing by the Appellant.

[9] The Tribunal has decided that the Appellant is eligible for a CPP disability pension for the reasons set out below.

EVIDENCE

[10] The Appellant was 35 years of age when he applied for CPP disability benefits on this application. He has a grade 12 education from a Welland High School where he specialized in the welding trade together with other "shop" programs. He holds a welding ticket and a certificate in overhead crane and rigging. He attended Mohawk College to get additional tickets such tig, flexcore and stick welding. He had a total of 13 welding tickets. He had a fork lift truck licence as well as a crane operator ticket. All have expired. Vocationally, he worked as a welder in Welland for John Deer. He has worked as a welder, crane operator and fork truck driver his entire career. He also worked as a cook and a security guard when at high school. He stated that he could not do his usual jobs because of walking and standing tolerances. The Appellant worked full time as a welder until a layoff allowed him to attend Niagara College to refresh his tickets. He returned to the job and last worked from October 14, 2010 until March 24, 2011 as a welder for Cambridge Pro Fab Inc. He was with the company for a total period of 4 years. The job was very physical. He stopped working due to strong back pain and leg numbness. His employer told him not to return to work until he could resume regular duties.

[11] Additional documentary evidence was tendered relating to EI benefits. He received 18 weeks of sick benefits and then, Regular EI benefits from August 2011 to January 2012 (GD IS10 – 2). The Appellant explained that when he received the Regular EI benefits, he was still technically employed by his company but was unable to go to work. His sick benefits were "transitioned to Regular benefits" through no application process in which he participated. He fully understood that the normal requirements were that he would be ready, willing and able to work but this was not the case nor did he ever suggest to anyone that that was possible.

[12] The Appellant submitted questionnaires dated January 30, 2011 and February 19, 2013 supporting his claim. In the questionnaires he states that the impairments which prevent him from working are right ankle and back pain and leg numbness (2011); and, severe back and leg pain (2013). He notes functional limitations to include:

a) cannot stand for more than 10 minutes (one hour in 2011)

b) cannot sit for more than 10 minutes (10 Minutes in 2011)

c) can walk about for 8 to 10 minutes (5 blocks or 10 minutes in 2011)

d) personal needs (eating, washing hair, dressing, etc.) – all "OK or good"

e) household maintenance (cooking is OK, cleaning, shopping and similar personal activities are tough and does very little)

f) sleeping is interrupted by pain or discomfort

g) does not drive a car any more

h) uses public transportation without much difficulty

[13] He wrote that he could no longer work because of his medical condition as of March 2011.

Testimony

[14] The Appellant testified to his work and educational background. His very early high school jobs of cooking and as a security guard could not be undertaken today because of his health problems. His back pain actually started in 2004. He was off work for a short period of time then and took physiotherapy which seemed to help. He went back to work until he was laid off for a period long enough for him to go back to College where he up-graded and renewed his work certificates (Welding and Fork Lift). When called back, his back pain eventually returned at a much more intense level and would not go away. He had been with this company in total for about 4 years.

[15] He attempted physiotherapy in 2011 with the help of his Blue Cross benefits insurer. He lasted about 5 weeks. The exercise intensified his pain. Each day after therapy he was in much greater pain. He could not lift any weight or participate on the treadmill. He did some isometrics but they did not help. He could not afford aqua therapy and no physician ever required him to do chiropractic, interventional injections, a home exercise program or acupuncture (so, "I never refused to try these interventions"). It was suggested that he get personalized orthotics but he could not afford them. He was fearful of someone "playing with his back" so did not do massage. He has in recent years started a KATA program which is a benign martial arts program calling for him to take repetitive stepping movements which he does every second day for about an hour. These exercises however do not reduce the levels of pain which he has constantly. He stated that Dr. Varey reported to his family Dr. Lee that a trial of epidural steroids "would be

worthwhile considering" (GD3-74) but in discussions with Dr. Lee they decided not to try them as "Dr. Lee did not think they would help".

[16] Between 2011 and 2013, he testified that there was no actual or specific recommended medical treatment that he refused to undertake. He did admit to not liking needles but no physician actually told him to do them. No medical person ever ordered more physiotherapy after his earlier attempts. He could not do that because of the exacerbated levels of pain that it produced. He could not afford orthotics and not sure how these would help his back pain and no one has ever explained that to him.

[17] He was asked about his activities of daily living (ADL). He has no car or social life. He has smoked for decades but has cut this back from a pack a day to ½ a pack. He has been caring for his young son for over 5 years. Initially, he had to move in with his parents because he could not endure the pain associated with dressing, changing diapers and looking after his home. He and his son have more recently moved to a one floor house that requires no stair climbing. He walks his son to school every day. When he returns (two blocks away) he is very sore and lies down by 11:00 AM to relieve the constant pain. He does vacuum up to 2 times a week. He does cooking and light housework. By 4 PM, he is in serious pain. He continues to take his prescribed strong pain medications faithfully 4 times a day. By 6:00 PM, he has taken his last pill and by 9:00 is ready to lie down again. Sleep is fitful because of the pain. These ADL have not changed much in 7 years.

[18] The Appellant was asked about his statements about deer hunting. As a young man he did this regularly but since he has developed the back pain, this has not been a regular activity. On a one-off adventure he was with a friend for 2-3 hours. They drove to and returned from a location on a farm not far from his home. He was standing or lying in the bush for about 2 ½ hours. This was hard on him and he has not done it again. He had not taken a narcotic that morning ("because that would not mix with hunting") but returned home to go back on his medications regime.

[19] He did acknowledge that when he was having a "custody battle" he was off of his Oxycocet but replaced them with Tylenol #3 and #4 because he though Children and Family Services would not approve a single parent on drugs. He thought that this short period of time

might have been when his urine testing revealed no narcotics in his system. He testified that there has been no time since he left work that he has not been on some pain medication. Mostly these have been codeine based analgesics including the regular Percocet along with a small quantity of prescribed marihuana at night, primarily for sleep.

[20] He described his current condition as one living with permanent daily pain and dysfunction. He noted he could not possibly be either a cook or a security guard now because of his severe pain in the lower back that radiates up to his neck, shoulder and neck. The standing and walking would not be possible. The pain runs into his leg and causes numbness and that prevents standing. The pain now goes to the neck and arms to the point where he cannot turn his neck. His one hand is now "stuck" (numb) and cannot move it in a functional manner.

Initial Medical Report

[21] The application for disability pension benefits was accompanied by an "initial medical report" dated September 4, 2013. Dr. William Lee (family physician) indicated that his patient of 2 years suffers from Degenerative Disc Disease (DDD) and his pain is chronic.

[22] He listed the medications of the Appellant as of the date of the report as: Lyrica, (weaned off of Percocet and Tylenol #4 (but "may have to go back on it") and Mobicox (GD3-71).

Additional Medical Reports Reviewed

[23] Some of the following information was obtained subsequent to the AD decision and has been analysed by the Tribunal:

- Health Status Report and Activities of Daily Living Index dated September 6, 2013 filed by Dr. Lee. The report concluded that he has chronic back pain getting no relief from stronger medications and that he is permanently unemployable.
- A Vocational Assessment Report dated July 15, 2013 (Mr. D. Bruin) referred to later in this decision.
- Previously submitted CPP Medical Report dated September 4, 2013 and a report of Dr. P. Varey (Neurologist), dated March 6, 2013.

- The Appellant underwent a Vocational Assessment (by Steve Van Eindhoven, CVP) on September 4, 2015 at the request of his legal representative. The Assessor concluded that the Appellant has experienced a significant loss of employment potential, and loss of competitive advantage, within the competitive workforce as a result of limitations evidenced/reported since the March 25, 2011 date of disability. The Appellant does not appear to be competitively employable to any extent at this time.

- On July 22, 2015 Deborah Kemp, Occupational Therapist, performed a Key Method Whole Body Functional Assessment. Ms. Kemp concluded that the Appellant is not capable of competing in regular/part-time employment. This is related to his very low tolerances and high pain perception.

- The Appellant was assessed on August 12, 2015 by Dr. Brett Dunlop, Orthopedic Surgeon. Dr. Dunlop stated that since the Appellant has undergone no particular physical rehabilitation, it is difficult to estimate what his abilities may be. Dr. Dunlop opined that the prognosis, both for pain improvement and return to any gainful employment would be guarded. Chronic pain behaviour over four years may be difficult to change. He did not recommend a surgical intervention.

SUBMISSIONS

[24] Counsel for the Appellant submitted that his client qualifies for a disability pension because:

a) The Appellant stopped work permanently on March 24, 2011 as a result of severe low back pain radiating into his right leg. He was being treated by physicians at Brantford Urgent Care, and continued to be treated with prescription medications with referrals for physiotherapy. On May 19, 2011 he had an MRI which showed disc bulging and early degenerative facet joint changes. He began receiving treatments at the Brantford Health Clinic/Ontario Health Clinic for Chronic Pain Management (Dr. Jaswinder Dhillon).

b) In an Attending Physician's Statement dated July 14, 2011 (GD3-105), Dr. Spaxman responds to the following questions:

    i. Has the patient previously had a similar condition? Answer: Patient has been dealing with this as a chronic condition for approximately 8 years.

ii. Surgery? Answer: Patient has been referred to orthopaedics – awaiting appointment.

iii. In your opinion, is patient a suitable candidate for a work re-entry program (i.e.: ease back, modified duties, gradual return to work, etc.)? Answer: Unsure, unlikely now. Would be wise to sort out issues with orthopaedic surgeon before trying new job or training.

c) Mr. Neamtz attended 7 appointments for pain management with Dr. Jas Dhillon in 2011 through June 26, 2012.

d) In an Attending Physician's Statement dated October 12, 2012 (GD3-87 to 88) Dr. Lee notes the following:

- Diagnoses of Sciatica and Prolapsed intervertebral Discs

Under Part V: Management Plan for the Current Condition, it is noted:

- Frequency of visits: 17 visits since July, 2011
- Future treatment plans: no change.

- Under Part VI: Estimated Time for Recovery: it is noted: Expected duration of recovery period: indefinite; permanently unemployable.

- In your opinion is patient a suitable candidate for medical or functional rehabilitation (i.e. conditioning program, counselling, etc.)? Answer: No - surgery not an option.

e) In a Patient Clinical Report on March 6, 2013 Mr. Neamtz attended with Dr. Peter Varey, (Physical Medicine and Rehabilitation Physician) (GD4-13 to 14). Mr. Neamtz indicated to Dr. Varey that anti-inflammatory medication did not help his pain. Dr. Varey wondered if a trial with epidural steroids would be worth considering and an interventional pain clinic and left it up to Dr. Lee's discretion. In the initial Medical Report dated September 4, 2013 Dr. Lee (GD3-152) noted in Part 11, "Pain is chronic and will gradually get worse. He is permanently unemployable."

f) In a Work Limitation Form completed by Dr. Langlois with Ontario Health Clinic for Cambridge Pro Fab Inc. dated November 6, 2013. In answer to the question - Will the employee be able to return to his/her job post injury/illness? The answer was No and Dr. Langlois wrote: "Chronic worsening of low back pain with spinal cord impingement and degenerative disc disease. MRI has shown progression of disease congruent with patient symptoms". The prescribed treatment was pain medication, further imaging of spine and probable neurosurgery/orthopaedic surgeon consultation.

g) On October 29, 2013 Mr. Neamtz attended at Grand River Community Health Centre and was seen by Dr. Kenny Scherber. Mr. Neamtz' chief complaint that day was his chronic pain. He requested Tylenol #4 for his pain since other medications used in the past do not work. He had not had any medication for approximately 2 months and since he had to wait 1 month to see his new family doctor he was seeking medical assistance in the interim. However, since he had never seen this doctor before a prescription for narcotics was not given but Mr. Neamtz did complete the referral package for the pain clinic.

h) Mr. Neamtz attended again at the Pain Management Clinic on November 7, 2013 with Dr. David Langlois noting his last visit at the pain clinic with Dr. Dhillon back in 2012 and his family doctor (Dr. Lee) is now retired. On re-evaluation Dr. Langlois prescribed Percocet at 4 tablets per day and follow-up in 3 weeks, which he did on November 28, 2013 at which time is prescription was renewed with an indication of no changes.

i) By letter dated November 25, 2013 Mr. Neamtz was terminated from his employment with Cambridge Pro Fab Inc. based on the limitations and restrictions noted by his health care provider and deemed him unable to perform the essential duties as a welder. Any collateral benefits he may have been entitled to were discontinued as at January 31, 2014.

j) A Vocational Report was prepared by Steve Van Eindhoven dated September 4, 2015. Mr. Van Eindhoven did not provide an optimistic prognosis for his ability to work in the future, and what work capacity there may be is subject to a number of caveats or conditions. Mr. Van Eindhoven's report supports the view that Mr. Neamtz has

significantly limited work capacity and that his disability, while severe, will be prolonged. As such, Mr. Neamtz has been unable to apply for any employment due to his sit/stand/walk tolerances and is not able to compete for any employment due to his restrictions. Mr. Van Eindhoven (at page 8) states he is competitively unemployable at this time.

k) Mr. Van Eindoven also disputed the findings from the July 15, 2013 assessment of Mr. Bruin stating that it is difficult for disabled individuals to search for work and promote their abilities, skills and potential while at the same time advising prospective employers that they have work restrictions and require accommodations.

l) Mr. Neamtz has been under the care of family doctors, a chronic pain specialist and managed pain with prescription medications, including a visit with an orthopaedic surgeon (post MQP). Due to financial limitations, he has not been able to access any treatments for which he would be required to pay a deductible or charges out of pocket.

m) Mr. Neamtz has suffered from chronic pain since 2004 trying to work despite the pain until it became unbearable and he had to stop working in 2011. His condition has not improved, and in fact has progressively gotten worse and is only now tolerable due to pain medication. Due to the length of time Mr. Neamtz' has suffered with pain behaviours and chronic pain he is no longer considered gainfully employable and he was not able to seek gainful employment at the time of the MQP date.

n) Based on Mr. Neamtz' education and work experience, he is not qualified for any sedentary position (such as the jobs suggested by D. Bruin). His back condition does not allow him sufficient tolerance to maintain any gainful employment in a sedentary position.

o) Mr. de Koning stressed in his closing submission that the report from Mr. D. Bruin (Certified Vocational Professional) does not base its conclusions on medical reports or physical testing of functionality. In fact, Bruin qualified his report (IS3-34). He wrote that no medical or non-medical documents were received to review in preparation for the

report. The conclusions reached was essentially boiler plate speculation based on the Appellant's interview on his work history and transferable skills with no basis upon which the skills were based other than his welding background. There was no vocational testing performed on the Appellant. He invites the Tribunal to disregard or reject this report.

p) The Appellant had never been offered any surgical solution to his problems so could not have rejected them. He disagreed with the submission that steroid injections were rejected out of hand. His client maintains that Dr. Lee convinced his client that they would not help.

[25] The Respondent submitted in writing that the Appellant does not qualify for a disability pension because:

a) In September 2011, Dr. Lee (Family Physician) noted a need for a referral to a back surgeon for an opinion and he also made a notation "wary of surgery". A Health Status Report completed by Dr. Spaxman in November 2011, as well as a clinical note in February 2012, indicated the Appellant was waiting for an appointment for a surgical consult. Dr. Manfredi, a new family doctor documented in January 2015 that he had shown the MRI report to Dr. Dhillon and his opinion was that no surgical intervention would be of help. Upon review of Dr. Dhillon's clinical notes, there was no documentation to suggest Mr. Neamtz had showed him the MRI scan report and no entries corroborating his opinion regarding surgical intervention (attending Physician's Statement dated July 14, 2011).

b) Dr. Dhillon wrote a note indicating that he had elected on his own to discontinue taking pain medication as well as Seroquel (an anti-psychotic medication which he was using to assist with sleep). Dr. Dhillon reported he seemed emotionally stable and there were no contraindications to him having custody of his child. Later, in November 2013, Mr. Neamtz returned to the pain clinic (last seen in 2012), as his family physician retired. His urine tested negative for all drugs and Dr. Langlois prescribed him Percocet (narcotic pain reliever) 4 tablets per day. Three weeks later, although Mr. Neamtz found his

prescribed dose of 4 a day to be adequate, he tested negative for all drugs. He explained he had been deer hunting and did not wish to take opioids while hunting deer. When next seen in January 2014 (after his MQP), Mr. Neamtz tested negative again for all drugs and explained he last took a pain pill 2 days before and that he takes them as he needs them. It is interesting to note that just prior to Mr. Neamtz going deer hunting, Dr. Lee documented limitations with standing for more than 20 minutes and walking for more than 10 minutes.

c) In June 2013, Mr. Neamtz underwent a vocational assessment by Mr. D. Bruin (Certified Vocational Professional) for the benefits insurance supplier. He relayed that treatment has been limited to pain medication. Mr. Bruin concluded Mr. Neamtz was qualified to seek potential employment as a sales representative, purchasing clerk, vehicle dispatcher or production clerk. The treatment generally recommended for mechanical back pain are strengthening exercises, stretching and to remain active. While Mr. Neamtz may have felt unable to return to his previous occupation as a welder, the vocational assessment supported his capacity for suitable work at his MQP. The severity of the disability is not based upon a claimant's inability to perform his regular job, but rather *any* substantially gainful occupation.

d) Mr. Neamtz was well-educated and just 35 years of age at his date of application possessing numerous transferable skills from his previous jobs. It is recognized he may not have been able to continue working as a welder due to his chronic back pain.

e) The MRI scan of his lumbar spine revealed two disc bulges with some abutment of the right nerve root; however there was no evidence of spinal canal stenosis. As well the electromyography was reported as no significant abnormalities identified. The Minister maintains Mr. Neamtz retained the capacity for suitable work at his MQP and continuously thereafter.

ISSUE

[26] The issue before the Tribunal in this appeal is whether the Appellant has established disability within the meaning of the CPP on or prior to his MQP and continuously thereafter.

ANALYSIS

Test for a Disability Pension

[27] The Appellant must prove on a balance of probabilities or that it is more likely than not, that he was disabled as defined in the CPP on or before the end of the MQP.

[28] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

a) be under 65 years of age;

b) not be in receipt of the CPP retirement pension;

c) be disabled; and

d) have made valid contributions to the CPP for not less than the MQP.

[29] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

Minimum Qualifying Period

[30] The Tribunal finds that the MQP is December 31, 2013.

Is the Medical Condition of the Appellant: Severe?

[31] There must be some medical evidence of disability (*Brent Warren v. Attorney General of Canada* (2008 FCA 377)). I am satisfied that this test has been met. The key question in these CPP cases is not the nature or name of the medical condition, but its functional effect on a claimant's ability to work. (*Ferreira v. Attorney General of Canada*, 2013 FCA 81). The Tribunal must regard personal factors such as age, education level, and a vocational course etc. and can draw any inferences from those facts and apply the law as set out in *Villani v. Canada* (A.G.), 2001 FCA 248).

[32] The Appellant has primarily been engaged in work which is physical in nature. Most recently he has worked as a welder. The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether his disability deprives him of work capacity and prevents him from earning a living. The determination of the severity of the disability is not premised upon a person's inability to perform his regular job, but rather on his inability to perform any work, i.e. any substantially gainful occupation. It is an applicant's capacity to work and not the diagnosis of the disease that determines whether the disability is "severe" under the CPP. (*Klabouch v. Canada (Social Development)*, 2008 FCA 33).

[33] The severe criterion must be assessed in a real world context as set out in *Villani*. This means that when deciding whether a person's disability is severe, the Tribunal must keep in mind factors such as age, level of education, language proficiency, and past work and life experience.

[34] The Appellant is relatively young and has a good command of English. He has a very narrow experiential and vocational background and work has been very physical in nature. His past work experience provides few transferable skills. I have focused on the medical issues and functionality related to his back and radiating pain to determine work capacity.

[35] The Tribunal must regard personal factors referred to in Villani. The Tribunal draws certain inferences from the testimony of the Appellant's testimony and documentation (*Lalonde v. Canada* (MHRD), 2002 FCA 211). Contrary to a Vocational Assessment by Mr. Bruin his post high school education consists of the relatively narrow work history in labour intensive jobs in a very physical vocational sector with no transferable skills that would take him to gainful employment into another sector. The Tribunal believes him when he says he would rather be working than suffering the constant pain he suffers. Accordingly, his prospects of finding work would be narrow notwithstanding his physical disabilities.

Objective and Subjective Evidence

[36] The Federal Court of Appeal in *Villani* has made it abundantly clear that the test must be applied with an air of reality. In other words, the test is not theoretical. The test is not whether the Applicant might, theoretically, be able to participate in some type of hypothetical employment scenario. The test is whether the Applicant is employable in today's labour market

by an actual employer having regard to the Applicant's disability and the economic realities that exist in the real world. The question is whether or not it is realistic to postulate that given all of the Applicant's well documented difficulties any employer would even remotely consider engaging him. I believe him when she states: "if I could work, I would work!"

[37] I disagree with the Respondent who maintains that clinically and radiologically, there is no evidence to support physical incapacity for all jobs. I find that the observations and conclusion reached by the insurance company-appointed Vocational Assessment Report dated July 15, 2013 are to be rejected as being without objectivity and inconsistent with medical reports. Where there is an inconsistency with the evidence of the Appellant, the Tribunal accepts his testimony on the evidence related to his functionality.

[38] Dr. P. Varey (Physical Medicine & Rehabilitation) evaluated Mr. Neamtz for longstanding intermittent leg pain. An assessment was undertaken on June 3, 2013. There was no evidence of focal entrapment neuropathy, lumbosacral radiculopathy, or peripheral polyneuropathy. The physician could not completely exclude a case of transient nerve irritation, the lack of active denervation or for that matter chronic remodeling is certainly encouraging. A lumbosacral MRI study supported some disc bulging and possible lateral recess fullness. He wondered if the pain is felt to be more discogenic in nature or possibly related to transient root irritation, if indeed "a trial with epidural steroids would be worth considering". An interventional pain clinic experience was thought to be worth considering. He left that decision to Dr. Lee's discretion. The Appellant did attend the clinic as recommended. While the evidence is not entirely clear, I am satisfied that after consideration by the family doctor, he was not prepared to recommend surgery to his patient.

[39] On May 19, 2011 an MRI showed disc bulging and early degenerative facet joint changes of his lower spine. The evidence, it is asserted, does not support severe pathology or impairment to preclude all types of suitable work. An MRI of the lumbar spine completed on August 26, 2012 continued to show the disc bulges at L4-5 and L5-S1, which were impinging upon the inferior recess of both neural foramina at these levels on the right with abutment of the exiting nerve roots. While there was no evidence of disease progression, the MRI results correlate with the ongoing back pain. On January 10, 2014, an MRI revealed similar results but adding an

"abutment of the existing nerve root at L4-L5 and L6-S1 and a progression of the annular tears at both levels". This progressively deteriorating objective evidence satisfies the Tribunal that a direct correlation can be made with the subjective evidence of the Appellant.

[40] The Respondent acknowledges the findings but asserts that the evidence reveals that his condition does not precludes all types of suitable modified part-time work as of his MQP.

[41] The Appellant testified in a way that gave the Tribunal confidence in his credibility. While in obvious discomfort, he responded to questions in a spontaneous and appropriate way. He did not attempt to embellish his physical limitations. His evidence was consistent with medical reports as well as his two application questionnaires. His supportive family doctor files were helpful in corroborating the testimony. The Tribunal found him to be a believable and credible witness.

[42] The Tribunal does conclude that the subjective evidence provided by the Appellant is compelling. He described, in detail, the nature of the constant pain, the impact on his ADL and the combined impact on his functionality and thus, his employability.

[43] The very nature and credibility of subjective evidence can outweigh the absence or uncertain objective clinical medical evidence (*Smallwood v. MHRD* (July 1999), CP 9274, PAB and *MHRD v. Chase* (November 1998), CP 6540, PAB). This is such a case. The conclusions reached by decisions of the Pension Review Board are persuasive. His daily pain, which is argued not to be explained by objective evidence, is real, pervasive and debilitating. It is hard to conceive that an employer would be able to accommodate any form of work for which the Appellant is qualified to suit his limitations and debilitating daily pain and needs to rest and lie down. A degree of predictable interruption to a work schedule may render an individual unemployable. Given the many interruptions to his day because of physical dysfunction, it would be difficult for him to be able to function in a competitive workplace.

[44] The phrase in the legislation "regularly pursuing any substantially gainful occupation," is predicated upon the individual's capability of being able to come to the place of employment whenever and as often as is necessary for him to be working. Predictability is the essence of regularity. Therefore, the requirement for a supportive employer with a flexible work schedule or

productivity requirement is a requirement not reasonably attainable within today's competitive workplace. (*Minister of Human Resources Development v. Bennett* (1997), Pension Appeals Board) Appeal File No. CP04757, 1997. In *Barlow v. Minister of Human Resources Development*, the Board applied the following test when determining the Appellant's entitlement to CPP disability benefits:

> "Is her disability sufficiently severe that it prevents her from regularly pursuing any substantially gainful occupation?
>
> Applying the test of Employability

[45] The answer for this Tribunal is that this Appellant is incapable of meeting that test. The reasons are found in his chronic pain condition. The conclusion arrived at in dealing with chronic pain is supported by the Supreme Court of Canada in the case of the *Nova Scotia (Workers Compensation Board) v. Martin*; The judgment was delivered by Gonthier J. who prefaced the decision by stating:

> "Chronic pain syndrome and related medical conditions have emerged in recent years as one of the most difficult problems facing workers' compensation schemes in Canada and around the world. There is no authoritative definition of chronic pain. It is, however, generally considered to be pain that persists beyond the normal healing time for the underlying injury or is disproportionate to such injury, and whose existence is not supported by objective findings at the site of the injury under current medical techniques. Despite this lack of objective findings, there is no doubt that chronic pain patients are suffering and in distress, and that the disability they experience is real. ---"

[46] "Chronic pain" has oft-times been defined as "pain"

> (a) continuing beyond the normal recovery time for the type of personal injury that precipitated, triggered or otherwise predated the pain; or
>
> (b) disproportionate to the type of personal injury that precipitated, triggered or otherwise predated the pain,

and includes chronic pain syndrome, fibromyalgia, myofascial pain syndrome, and all other like or related conditions, but does not include pain supported by significant, objective, organic, physical findings at the site of the injury which indicate that the injury has not healed. Arguably, there is no such evidence here.

[47] This jurisprudence reflects policies that call for an individualized assessment of impairment in chronic pain cases. This case clearly focuses on the chronic pain of the Appellant. The back and leg pain is ever present. The radiating pain up his back to the neck and down an arm to the hand is constant and exacerbated after only minimal exertion. He is mostly confined to his house with the need to regularly lie in an inclined position to provide any relief at all. The symptoms have been consistent since 2011 through the MQP and are extant as of the present time. It is an unfortunate reality that, despite the best available treatment, chronic pain in the Appellant has evolved into a permanent and debilitating condition. He has no hope or expectation that a future surgery will allow him to rehabilitate. The Tribunal accepts that the condition is debilitating and robs him of employment capacity.

[48] On August 12, 2015, after the MQP, Mr. Neamtz was seen by Dr. Dunlop, Orthopaedic Surgeon in Hamilton. The Tribunal is affirmed in its view of the condition of the Appellant. Dr. Dunlap's diagnosis is:

> "This man has mechanical back pain and likely foraminal impingement of the right S1 nerve root. He also appears to have developed a chronic pain condition with a flat affect."

[49] Dr. Dunlop goes on to say:

> "As this point I would say that Mr. Neamtz was unemployable. Part of this is from a psychological point of view in the form of chronic pain. Beyond this, he is four years off work and in the WSIB situation anyone off work longer than two years rarely gets back to any employment."
>
> "At this point, this man's impairment is two-fold. I believe that he has true physical findings, but beyond that, over the past four years he has developed pain behaviour and what would be considered a chronic pain situation. At this point, I do not believe that he would be employable or that he could compete for employment. As mentioned chronic pain behaviour over four years may be difficult to change ..."

[50] In summary Dr. Dunlop concludes:

> "At this point I would say that the prognosis, both for pain improvement and return to any gainful employment would be guarded."

Obligation to Mitigate

[51] In *Sharma v. Canada (Attorney General)*, 2018 FCA 48The FCA held that the analysis to establish a severe disability requires consideration of both the personal characteristics outlined in *Villani* and the duty to mitigate outlined in *Lalonde v. Canada (Minister of Human Resources Development)*, 2002 FCA 211. If either aspect fails the Applicant does not establish a severe disability. If an Applicant does not meet his duty to mitigate, it is reasonable for me to find that consideration of the personal characteristics outlined in Villani is moot.

[52] The Tribunal finds that the Appellant was without work capacity as of his MQP. The Federal Court of Appeal has confirmed that the reasonableness of a claimant's refusal to undergo recommended physiotherapy is a relevant factor (*Lalonde).* Similarly, the Federal Court of Appeal has upheld a Pension Appeals Board decision denying a disability pension to a claimant who had "unreasonably failed" to follow consistent medical advice to increase her activities (*Kambo v. Canada* (Human Resources Development), 2005 FCA 353 (also, *Cvetkovski v. Canada (Attorney General)*, 2017 FC 193). More generally, efforts to manage one's medical condition are required (*Klabouch v. Canada* (Social Development), 2008 FCA 33). As such, a claimant who does not seek medical care for his condition, or who unreasonably declines to pursue a recommended course of treatment, may not be found by the decision-maker to be incapable regularly of pursuing any substantially gainful occupation. Consequently, it is useful to undertake an analysis of whether the Appellant's actual course of treatment (investigations, pain medications, and regular visits to a pain clinic, but no surgery or physiotherapy) was reasonable at the time, and what impact this had on his capacity to work.

[53] It is accepted that physiotherapy did not work for the Appellant in 2011. Further recommendations were made well after the MQP. However, by then it was clear that any exertion exacerbated the pain and dysfunction of the Appellant. Physiotherapy did not assist the functionality of the Appellant. Any more, would not have made a difference. This finding is consistent with at least three treating caregivers and specialists who were not optimistic that a return to gainful employment would be likely. (Drs. Lee, Dunlop and Van Eindhoven).

[54] The Respondent has focused on the fact that there was no early referral to an orthopaedic specialist. This information is said to support the submission that at paragraph 17 of GD's decision where it was concluded that Mr. Neamtz did not want surgery. Again the GD Member's

paragraph suggested that Mr. Neamtz was presented with the option of surgery but refused. I am satisfied that there may not have been a referral (not the fault of the Appellant) before the MQP but there is no evidence to suggest the Appellant refused an option for surgery. On the whole of the evidence, there is no clear evidence that surgery was even contemplated by any health care provider.

[55] In *Lalonde*, the Federal Court of Appeal emphasized that while the disability test is "severe and prolonged: "this must be assessed in a "real world context" (page 9). Any hypothetical occupations (such as those suggested by Bruin) to be considered cannot be divorced from particular circumstances of the applicant such as age, education level, language proficiency and past life and work experience. An analysis of whether the Appellant's actual course of treatment (investigations, pain medications, and regular visits to a pain clinic, but no surgery or physiotherapy) was unreasonable at the time, and what impact this had on his capacity to work is warranted. To the extent that the Respondent has emphasized the lack of physiotherapy, specific recommendations were made well after the MQP and did not take into account his earlier experiences with this type of intervention. It is asserted that this does not assist the Appellant. But, if fact, I accept that he did Physiotherapy shortly after he had to stop work because of his back pain. It did not assist him. As for the other mitigating interventions referred to by the Respondent, there is no doctor who mandated them. There was no medical foundation for the argument that he failed to comply with hypothetical treatments such as acupuncture, home exercises or chiropractic, not that they would be beneficial to him. He was not required to participate (or was not offered the opportunity) therefore, he cannot be held to account for non-compliance.

[56] The Tribunal has considered the evidence of the Appellants obligation to mitigate his situation. In *Lombardo v. MHRD* (2001) CP 12731 the Pension Appeals Board concisely set out this principle as follows:

> "The Board has, over the years emphasized the need for Appellants for disability entitlement to demonstrate good faith preparedness to follow obviously appropriate medical advice and, as well, to take such retraining or educational programs as will enable one to find an alternative employment when it is obvious that one's prior employment is no longer appropriate".

[57] I agree that an Appellant must attempt mitigation of their health issues to be successful in an application for CPP disability benefits. An Appellant is obliged to make reasonable efforts to submit to programs and treatments recommended by treating and consulting physicians. If this is not done, an Appellant should be prepared to explain why it was not done. Mr. Neamtz was attending Dr. J. Dhillon (Family Medicine, of Brantford Medical Centre for pain management) and was "being referred to orthopedics". He eventually saw Dr. Dunlop (orthopaedic surgeon); Dr. Lee, Dr. Dhillon, Dr. Langlois and Dr. Manfredi all confirm the diagnosis of chronic pain, due to the bulging discs at L4-5 and LS-51. Dr. Dunlop noted there is likely foraminal impingement of the right S1 nerve root. Dr. Dhillon also indicated that surgery is not an option. I am satisfied that none of these physicians mandated anything in a treatment plan for which there was none-compliance. Even for the "needles" the Appellant testified that he would have reluctantly taken them if he was convinced by his family doctor that they would do him any good. There is no need to consider the issue of reasonableness of refusal in those circumstances.

[58] The Respondent argues that with multiple physicians suggesting an orthopedic consultation be completed, it is difficult to determine why it was not done over a period of four years. That is a good point for which the Appellant cannot be blamed. He did see such a surgeon after his MQP which persuades me that he would have seen one before his MQP had the opportunity been presented to him.

[59] The Respondent argues that the medical evidence revealed that not only did Mr. Neamtz decline recommended treatment, including physiotherapy, acupuncture, chiropractic treatment, massage therapy, orthotics, interventional injections and a home exercise program, but he would cease taking his pain medication without the advice of a physician. It is asserted that he first stopped taking his pain medication in June 2012. On the evidence I find that the times when he was not taking analgesic medications were very limited. Those events which were short lived were for reasons that are understandable. On one occasion because he did not want to mix drugs with a one-off hunting expedition and the other for a time when he was concerned about the perception of someone on strong narcotics when seeking custody of his child. But during this period he want on Tylenol #4 and he is believed when he testified that there has been no time since he stopped work has he ever been without some kind of daily pain medication.

[60] Even if I believed that his refusal for treatment was caught by the *Lalonde* requirement, I am guided by the persuasive decision of *Bulger v. MHRD,* March 2000 (CP 9164) in which the Pension Appeals Board carves out an exception for people who allegedly suffer from chronic pain and all its associated conditions including depression. However, that is not necessary as I find that he did not unreasonably refuse treatment options for his painful back.

[61] The Respondent asserted that Mr. Neamtz has not participated in any of the recommended treatment modalities due to his inability to pay for such services, not due to a lack of desire for treatment. The Respondent argued that he claimed he was unable to "pay the deductible" for chiropractic therapy and massage therapy, as well as orthotics. The Respondent points to evidence indicating Mr. Neamtz smoked a pack of cigarettes a day and drank 6 bottles of cola a day. It "conservatively estimates" $112/week or $448/month ($10 per pack of cigarettes and $1 per bottle of cola). It would be not be unreasonable to expect this 35 year old man to participate in treatment that would most likely benefit his medical condition, particularly when recommended by other health professionals. This is counter-indicated on the evidence. It is true that OHIP funded pain management programs and a regular, graduated home exercise program/stretching exercises cost nothing and arguably have improved Mr. Neamtz' back pain. I am satisfied that no home program was offered or suggested and he did make a large number of appointments at the pain management clinic. He has fulfilled his obligations in this regard.

[62] Counsel for the Appellant asserted that the Appellant may not have participated in recommended treatment modalities due to his inability to pay for such services, not due to a lack of desire for treatment. The Appellant has been under the care of treating doctors and his care has been managed through the public OHIP system. He has not worked since 2011. He has been single for many years and during the MQP up until the present, did not have the benefit of a spouse's income. He is not to be faulted for being impecunious and unable to access medical treatments that are not funded by OHIP. This is not a case where the Appellant simply refused or failed to seek any medical care whatsoever.

Medical Evidence, Employment Attempts and Work Capacity

[63] In assessing the reasonableness of the Appellant's treatment decisions during the MQP and the impact on his disability it is necessary to look at his work capacity. The principles in *Lalonde* and *Inclima v. Canada* (Attorney General) 2003 FCA 117 (*Inclima*)

[64] The Tribunal is mindful that Villani tells us:

> "--- the approach to the definition of disability does not mean that everyone with a health problem who has some difficulty finding and keeping a job is entitled to a disability pension. Claimants still must be able to demonstrate that they suffer from a "serious and prolonged disability" that renders them "incapable regularly of pursuing any substantially gainful occupation. ---The proper test for severity is the one that treats each word in the definition as contributing something to the statutory requirement. Those words, read together, suggest that the severity test involves an aspect of employability." (Para 50).

[65] It continues to indicate that medical evidence will be needed as will evidence of employment efforts and possibilities. Cross-examination tests the veracity and credibility of the evidence of claimants. The Appellant was not cross-examined by the Respondent.

[66] I am satisfied that by the MQP date (December 31, 2013) his physical symptoms had not improved at all and had worsened to become a chronic pain situation. His condition had become debilitating and worsened since its initial onset such that he has been unable to search for or be able to obtain any substantial gainful employment.

Work Capacity

[67] Where there is evidence of work capacity, a person must show that effort at obtaining and maintaining employment has been unsuccessful by reason of the person's health condition (*Inclima v. Canada* (A.G.), 2003 FCA 117). The Appellant has not sought alternative work. The determination of the severity of the Appellant's disability is not premised upon his inability to perform his regular job, but rather on his inability to perform any work, that is, "any substantially gainful occupation (*Minister of Human Resources Development v. Scott*, 2003 FCA 34). An essential element of qualifying for a disability pension is evidence of serious efforts by the Appellant to help himself, including aggressively seeking treatment and making reasonable and realistic efforts to find and maintain employment (*A.P. v MHRSD* (December 15, 2009) CP 26308 (PAB)).

[68] I am mindful of the Federal Court of Appeal's injunction in *Inclima* that the Tribunal must first make a finding of residual capacity before undertaking an investigation into whether a claimant made a sufficient effort to mitigate his impairments by seeking appropriate alternative work. Here, it is argued by the Appellant that there was no evidence of work capacity at the MQP and consequently no need to explore why the Appellant did not seek alternative work.

[69] The AD concurred with the findings on the various aspects of the test of severity:

> "I emphasize that there is no independent or explicit requirement under the CPP for an applicant to seek treatment, attempt lighter work or retrain. Rather, such efforts provide an evidentiary basis to support an inability to engage regularly in any substantially gainful occupation, which must be proven on a balance of probabilities. Correspondingly, a lack of effort or mitigation may suggest that irrelevant factors are at play, that an applicant could be employable with such efforts and/or that an applicant is not actually incapable regularly of pursuing any substantially gainful occupation".

[70] I find that the Appellant was without work capacity as of his MQP. In doing so, there are several relevant reports: the Vocational Assessments (IS3-33), along with any other reports addressing the worker's capabilities and limitations in 2013 such a Health Status Reports.

[71] Dr. Jas. Dhillon completed a Health Status Report and Activities of Daily Living Index for Ministry of Community and Social Services dated November 25, 2011 (GD3-121), commenting: "patient unlikely to find gainful employment due to medical condition". The report also indicates that he was prescribed Percocet, OxyContin, Seroquel and Lyrica at this time and a comment from the physician that he would require these medications on an ongoing basis (GD3-122).

[72] A Health Status Report and Activities of Daily Living Index dated September 6, 2013 was placed in evidence (IS3-10). The finding by Dr. Lee was: "Chronic Back Pain; no relief without stronger narcotics; permanently unemployable"

[73] Donald Bruin is a "Certified Vocational Professional". He was asked to opine on whether the Appellant is employable based on his presenting occupational profile, including functional abilities and limitations, pattern of aptitudes, education level, work experiences and transferable skills (IS3-33 to 61). At this time, the Appellant was reporting daily pain in his lower back and into his right leg. In the morning he is cramped and seized up and as the day goes on it gets

worse. He uses a cane when it is very bad. This is consistent with the testimony of the Appellant. "When he takes pain medication the pain decreases and he can function. He reported that he is use to his pain. He reported on his ADL which included taking the bus in the morning to get him to his mother's home. At night, he sleeps for about two hours and then he gets up for a while because of pain". (IS3-38). In forming an opinion on whether Mr. Neamtz is employable, and regarding suitable vocational options the assessor reviewed his future vocational and return-to-work goal planning. It was a lengthy and academic report. Mr. Neamtz was judged at a "significant skill level in dealing with Data/Information, People, and Things, as per his demonstrated work history". There is no indication as to how these conclusions were reached. He "has the demonstrated ability to work with data/information at the intermediate level", but there is no indication of what background would lead to this conclusion. He was assessed to have a lengthy "number of transferable skills" (IS3-44) but no explanation was offered for this conclusion. The author indicated that the "opinions and recommendations were formulated based upon the medical and non-medical information available at the time of writing this report", with no references as to which medical and other reports. This is not helpful.

[74] Counsel for the Appellant submits that on July 15, 2013 the Long Term Disability Carrier (Medavie Blue Cross) arranged for the Vocational Assessment. Mr. Bruin interviewed the Appellant. On page 2 of the report indicates "no documents were received to review in preparation for this report" [i.e. from Blue Cross]. Also, at no time during this assessment was there any actual physical or functional testing. Mr. Bruin's report is very generic and does not reflect occupations that Mr. Neamtz could genuinely perform. The Appellant's ability to work was not evaluated by Mr. Bruin, who was not afforded an opportunity to review medical records that outlined Mr. Neamtz' functional limitations from a doctor's perspective. The Appellant submits that he does not possess the education, training or experience to pursue the occupations suggested by Mr. Bruin. I agree. Furthermore, the jobs suggested by Mr. Bruin all require prolonged sitting which is contraindicated by the Appellant's treating doctors. His report (at page 5) confirms that the Appellant was experiencing significant financial difficulty, especially in regards to paying a family law lawyer in an ongoing custody dispute regarding the Appellant's son. This dire financial difficulty resulted in the Appellant being unable to pay for non-OHIP funded treatment such as chiropractic or massage, which the Appellant did not believe would be effective in any case. I agree with this general assessment and place little weight on the report.

[75] Mr. Van Eindoven also disputed the findings from the July 15, 2013 Vocational Assessment that was completed by Mr. Donald Bruin. Mr. Bruin indicated that the jobs that Mr. Neamtz would be suited for were as follows: Production Clerk/Purchasing Clerk/Dispatcher/Wholesale Trade (non-technical). In summary Mr. Van Eindoven concluded:

> "In sum, Mr. Neamtz does not possess the education, training or experience to pursue these occupations. Further, at the time he may be competing against prospective job seekers who are graduates of programs such as the Supply Chain and Logistics Management diploma program to Trios College; a 10-week internship program that specifically trains and targets students towards occupations such as Production Clerk and Inventory Clerk."

[76] He noted that it is his experience, that it is difficult for disabled individuals to search for work and promote their abilities, skills and potential while at the same time advising prospective employers that they may require duty, scheduling or ergonomic accommodations ..... Mr. Neamtz appears to have been rendered less capable of earning an income, regardless of the occupation(s) pursued. He also has reduced ability to take advantage of opportunities which might otherwise have been available to him; had the disability and subsequent limitations not occurred. Mr. Neamtz has been unable to apply for any employment due to his sit/stand/walk tolerances. As set out above he is not able to compete for any employment due to his restrictions.

[77] The discussion of the type of work he might hypothetically do is moot. Pursuant to the guidelines found in *Inclima*, I find that the Appellant had no meaningful work capacity as of his MQP or since that time. Consequently, there is no need to explore why the Appellant did not seek alternative work. He had no capacity for the work he was doing in 2011 and was thereafter incapable regularly of seeking any other kind of gainful employment.

[78] On September 6, 2013 Dr. Lee completed a Health Status Report (IS3-5). On page 5, part 4 Dr. Lee indicates: "chronic back pain, no relief without stronger narcotics, permanently unemployable". I accept this conclusion from the treating physician and am satisfied that the chronic pain suffered by the Appellant is a sever disability. His medical condition has progressively gotten worse since his last day of employment through to the MQP date and ongoing. The medical evidence provided shows that Mr. Neamtz continues to suffer from a chronic pain disability that prevents him from regularly pursuing any substantially gainful occupation be it full time or even part time.

Is the Medical Condition of the Appellant: Prolonged?

[79] In order for a disability to meet the above definition of "prolonged", it is not necessary for the disability to be permanent: *Litke v Canada (Human Resources and Social Development)*, 2008 FCA 366. While the Plan is not intended to provide support for disabilities that are temporary in nature, in order to meet the test for prolonged, an Appellant need only show that the disability is long continued and of indefinite duration.

[80] Accordingly, even where there is some possibility that a disability could improve based on treatment or other factors, if the evidence supports a finding on a balance of probabilities, of indefinite and long duration at the time of application or adjudication by the Tribunal that is sufficient to meet the "prolonged" test. There is no evidence before the Tribunal to suggest that the Appellant's disability is likely to improve in the near future. In fact, quite the opposite is true. The evidence suggests that his chronic disability is long continued and of indefinite duration. The Tribunal finds that the severe disability of the Appellant is, by definition, prolonged.

CONCLUSION

[81] The Tribunal finds that the Appellant had a severe and prolonged disability in March 2011, when he could no longer work because of his disability. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) of the CPP). The application was received in February, 2013; therefore the Appellant is deemed disabled in November 2011. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of March 2012.

[82] The appeal is allowed.

John Eberhard
Member, General Division - Income Security