



# CANADA PENSION PLAN DISABILITY APPLICATION & APPEALS GUIDE

For Canadians with  
Myalgic Encephalomyelitis (Chronic Fatigue Syndrome)  
and/or  
Fibromyalgia

2020 Edition

BY: NATIONAL ME/FM ACTION NETWORK  
Lydia E. Neilson, MSM, CEO  
Margaret Parlor, President  
John Wodak, Pension Advisor





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**Disclaimer:** This guide was compiled by the National ME/FM Action Network. We have done our best to give you accurate and useful information. However, this document is for guidance only and we do not take responsibility for your application. We advise you to check out important points with Canada Pension Plan staff or with a legal professional.



## Foreword to 2020 Edition

In one way, CPP-D has not changed since we last updated this Guide in 2016. CPP-D is still a workplace insurance program for Canadians outside of Quebec who are between the ages of 18 and 64 and who become disabled. As an applicant, you still must convince a decision-maker that you meet the eligibility criteria:

- ◆ that you have a disability that is severe and prolonged and
- ◆ that you were covered by the Canada Pension Plan at the date of the onset of your disability.

In other ways, there have been important changes. The application form was completely revised. This has required changes in Chapters 4 and 5 and Appendix A. There is also a new post-retirement disability benefit which is discussed at the end of Chapter 3. The Social Security Tribunal is more established so Chapter 6 has been modified.

Since we were rewriting parts of the Guide, we have taken the opportunity to review and update information throughout. In particular, we now use the terminology ME (rather than ME/CFS), FM (rather than FMS), coverage period (rather than MQP) and disability payments or supports (rather than disability benefits).

Service Canada, which administers the Canada Pension Plan, has introduced a “toolkit” to help applicants and health professionals through the application and reconsideration process. The Social Security has introduced very good information material. So why do we still need this Guide? We still need this Guide because ME and FM provide special challenges when applying. In particular, it can be challenging for people with ME and/or FM

- ◆ to determine the date of onset of their disability,
- ◆ to express how their medical issues affect their ability to participate in the workforce, and
- ◆ to obtain evidence to support their claim.

We hope that, by explaining how the CPP-D system works, we will make your application process much easier.

This Guide is based on legislation and documents in place in January 2020 including

- Application for a Canada Pension Plan Disability Benefit ISP-1151 (2019-12-19)
- Medical Report for a Canada Pension Plan Disability Benefit ISP-2519 (2018-10-03)
- Request for Reconsideration of a Canada Pension Plan Disability Decision SC ISP-1145 (2018-10-09)
- Notice of Appeal – Income Security – General Division SST\_NOA\_GD\_IS (2019-02)
- Application to the Appeal Division – Income Security SST-LTA-AD-IS (2019-02)



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## Messages from the Authors – Lydia Neilson

KEY MESSAGE 1: Applying for CPP-D is an emotional experience.

KEY MESSAGE 2: Documentation is extremely important

Dear Reader:

You may have noticed that anytime you have to complete a form, do a questionnaire or apply for disability supports of any kind, you are overwhelmed by feelings of sadness and turmoil. This is a stress that only those who are going through a prolonged illness can understand. It brings to mind the losses you have experienced as a result of your illness.

As stressful as it is to continue dealing with your illness, a whole new feeling of panic comes over you as you relive the experiences of your illness and consider why you cannot work and the drastic changes to your life.

It is not a door you want to open. It is difficult to sit down and wrestle with the paper work that makes you have to face your illness and its consequences head-on.

Reliving how you fell ill, the tests and diagnosis and the bewilderment that comes with it are all part of this process. In a way you feel you are grieving for a loved one you have lost and you find yourself struggling again with the anger, denial and isolation you originally felt when becoming ill.

These are normal feelings and know that others also have to face this reality. It is, in the end, part of healing. Once you have managed to go through this process of putting down on paper the impact of your illness on your life and on those of your loved ones, it will also bring you relief, satisfaction and the knowledge that you can do it.

My second message is about documentation. Having good documentation can make the difference between qualifying and not qualifying. As soon as you can, set up a binder or a file and keep all your records. Keep all your documents and keep a list of all your correspondence, phone calls and appointments.

Sincerely,

NATIONAL ME/FM ACTION NETWORK

Lydia E. Neilson, M.S.M.

Founder and Chief Executive Officer



## Messages from the Authors – John Wodak

KEY MESSAGE 3: You are dealing with a bureaucracy.

KEY MESSAGE 4: The onus is on you to convince the decision-makers that you qualify for CPP-D.

Dear Reader:

We know when we are ill because we have symptoms – the subjective sensation that things are “not normal”. Pain, fever, nausea, and unexplained fatigue are all symptoms. If our symptoms are severe or persist for a long time, we visit a doctor who will examine us, order tests and possibly refer us to a specialist. These investigations may reveal signs (also known as “objective medical evidence”) - facts about our condition which can be measured and/or observed by a third party. A consistent combination of signs and symptoms will lead to a diagnosis, and the diagnosis guides treatment and support. This is the main purpose of the health care system.

Ideally, the process of finding out “what ails you” is cooperative. You (the patient) are an integral member of the health care team, meeting face-to-face with the professionals and providing them with information about your symptoms which is accepted at face value and used to reach a conclusion.

In contrast, the process of finding out whether or not you meet a specific definition of disability is adversarial. The initial decision(s) will be taken by someone you may never meet, who reviews your application package to determine the answers to several key questions: “How severe are the symptoms, how do they limit your abilities [to work], and do you meet our definition of disability?” The onus is on you to show that you qualify. Sadly, your own personal testimony will be treated with scepticism. If the initial application is denied, there will be an appeal process, ending with a legal or quasi-legal hearing in which one side “wins” and the other side “loses”. The last thing a seriously ill person wants is another battle, especially one in which their personal credibility is questioned.

Applying for CPP-D is particularly challenging for people with ME or FM. These illnesses vary in severity from person to person so the diagnosis by itself is not proof that you qualify. There are no magic tests to measure your level of disability. For this reason, it is hard to show on paper that you are disabled. Many applications are turned down at the initial and reconsideration stages but are successful at the later stages when the patients and decision-makers meet face-to-face. Have faith in yourself and keep trying.

Sincerely,

NATIONAL ME/FM ACTION NETWORK

John Wodak

Pension Advisor

## Messages from the Authors – Margaret Parlor

KEY MESSAGE 5: Don't hesitate to ask for help.

KEY MESSAGE 6: How do the symptoms of your illness interfere with your ability to function?

Dear Reader:

The first time I completed a disability application form, it was for a friend whose daughter was autistic. The role of a mother is to support and encourage her child, so she could not bring herself to face the bureaucracy and write down her daughter's shortcomings. Applying for disability is an emotional experience. I did not have the same emotional hurdle as she did. It was much easier for me than it would have been for her.

For me, the hurdle was to explain why Anne should qualify as disabled. The breakthrough for me was understanding the concept of how Anne's autism affected her ability to function. As part of that, I had to think about what functioning really means.

One question was whether Anne could feed herself. There was no question that if you put a plate of food in front of Anne she could get the food from her plate to her mouth. That is, however, a very narrow view of feeding yourself. For a person living alone, feeding yourself means shopping for food, storing food safely, cooking meals and making good nutritional choices. As part of her autism, Anne did not have the decision-making skills necessary to do these things. Thus, Anne was impaired in her ability to feed herself. Anne qualified for provincial disability payments because her impaired decision-making, which was a symptom of her autism, affected her ability to carry out the activities she needed to function. I then applied for CPP-D for Anne (she had made sufficient contributions) and convinced the decision-maker that Anne's impaired decision-making skills prevented her from engaging in substantial gainful employment.

Your completed application form will tell the story of how your symptoms affect your ability to carry on activities and, in particular, your ability to be in the workforce. To help you, we have put together a list of common symptoms of ME and FM, symptoms like pain and mental fatigue. We have also put together a list of activities that are common at home and work. It is your job to make the linkages between your symptoms and the difficulties you experience when trying to participate in the workforce. It won't be easy, but the people judging your file are looking for this information.

Sincerely,

NATIONAL ME/FM ACTION NETWORK

Margaret Parlor

President

# 1 The Basics of CPP-D



You are probably reading this because you are unable to work due to the debilitating effects of ME (Myalgic Encephalomyelitis, formerly referred to as Chronic Fatigue Syndrome or ME/CFS) or FM (Fibromyalgia) or because someone close to you is in this situation. You may have postponed applying because you or your doctor hoped you would recover quickly, but now you are having to admit that your illness may last longer than was first expected.

There are two main reasons to apply for CPP-D – finances and validation.

In some cases, CPP-D will be your only workplace insurance when your Employment Insurance runs out. If you are receiving payments under a workplace disability plan, applying for CPP-D may be a requirement under that plan. CPP-D is an insurer of first instance. That usually means that if you get a monthly amount from CPP-D, that is an amount that your workplace insurance plan won't have to pay you.

Qualifying for CPP-D validates your disability. It means that a government agency has confirmed that you are dealing with health issues that are serious and that have an impact on your ability to work.

Qualifying for CPP-D can increase the amount of your CPP retirement pension when you turn 65. During your disability years, you are likely earning much less than normal and perhaps you aren't earning any money at all. Ordinarily, these low-income years would be considered in determining an average income. If you are approved for CPP-D, these years are ignored in the calculations, resulting in a higher average income and therefore a higher retirement pension.

Here are some key points about CPP-D:

- ◆ CPP-D is an insurance program that provides income support for Canadians of working age (18-64) who have contributed to the Plan and who become unable to work because of disability while they are covered by the plan.
- ◆ CPP-D is operated by the federal government and applies to all Canadians except residents of Quebec who are covered by the Quebec Pension Plan.
- ◆ The CPP disability program is administered by Service Canada on behalf of Employment and Social Development Canada (ESDC).
- ◆ Throughout the entire application and appeal process, the onus is on you (the applicant) to show, to the reasonable satisfaction of the adjudicator, that you are disabled and eligible for CPP-D payments.
- ◆ If you are approved, the amount you receive is based on your contributions to the Plan. It is not based on the severity of your disability. It is not based on your income or assets.
- ◆ If you qualify for CPP-D, your children may be eligible for additional payments.
- ◆ CPP-D is an all-or-nothing program. If you are found to qualify, you will receive the amount you are entitled to. If you are found not to qualify, you will receive no payments. There are no partial payments for being partially disabled.

- ◆ The minimum monthly payment in 2019 was \$496.36, while the maximum monthly payment was \$1,362.30.
- ◆ The CPP-D provides monthly payments. It does not include benefits such as dental coverage or prescription drug costs.

Here are some key points about CPP-D applications:

- ◆ You must apply for CPP-D in writing. The forms and questionnaires which make up the application package are available from Service Canada. You are free to add supporting material.
- ◆ You must convince the decision-maker on two points:
  - ◆ that you have a disability that is both severe (to the point that you cannot engage in substantially gainful employment) and prolonged
  - ◆ that the date of onset of your disability was while you had CPP coverage
- ◆ If your application for CPP-D is not granted at the initial phase, there are opportunities for you to have your application reviewed or reconsidered.

Once you qualify for and begin receiving CPP disability payments, you must contact Service Canada to keep them informed of certain specific events in your life such as if you change your name or your address or if you earn over a certain amount. (The amount for 2019 was \$5,700).

Service Canada will occasionally review the health and work status of people receiving CPP disability payments, to ensure that they continue to be eligible. Eligibility will end automatically when you turn 65.

CPP-D is just one program for Canadians with disabilities. There are a number of other programs available through the federal government, provinces and territories, municipalities, etc. For a listing of federal government programs, see <http://Canadabenefits.gc.ca>. Other federal programs include the Disability Tax Credit and medical expense deductions from income tax. The application processes for these are separate. Do not assume that, if you qualify for CPP-D, these other programs will flow automatically. Do not assume that, if you are turned down for CPP-D, you won't qualify for these other programs.



## 2 Getting Help

### *People who can be of assistance*

Is it hard to apply for CPP-D? On the plus side, there is a lot of good information and the process is generally user-friendly. (It should be – about 60,000 applications are submitted every year). On the minus side, you are not feeling well and this may be the first time you have applied for disability support.

If someone has legal authority to represent you (e.g. Power of Attorney), they can apply on your behalf. If you want someone to discuss issues with Service Canada on your behalf, you can send Service Canada a form authorizing them to speak with Service Canada for you, but they will not be allowed to make key decisions on your behalf.

Here are some places where you can look for assistance:

**Your Health Care Provider:** You will need to involve your health care provider when completing the application package. Some health care providers have considerable experience with such applications and may be able to help you.

**Service Canada:** Staff are ready to answer questions and help you in many ways. Staff have even helped people complete their forms. Remember, however, that the primary role of the organization is to judge your claim, not to help you qualify. Be careful how you talk to staff. You wouldn't, for instance, want to suggest that your claim is doubtful. If someone gives you advice on the phone which supports your case, you would want to get it in writing. (You can ask for it in writing, or you can write a letter or an email describing your understanding of what was said.)

**Family, Friends and Colleagues:** They have the great advantage that they know you and can testify to the way your condition has changed your ability to function, i.e. what you were doing before and what you are doing now.

**Unions & Professional Associations:** Their membership services sometimes include free support, up to and including representation at appeal hearings (usually by a union/association representative, but possibly by a lawyer). If you are receiving disability payments from an employment-related source which has been negotiated through a

collective agreement, the union or association will have a vested interest in making sure that the conditions of the agreement are met.

**ME and FM Support Groups:** These groups will be familiar with your condition and should be able to advise you on the best way to express yourself in an application. They may also be able to provide an advocate or refer you to a lawyer or paralegal with experience on this kind of case.

**Other Disability Organizations:** Some disability organizations will help you complete an application and help with appeals for free or for a nominal cost.

**Lawyer or Paralegal:** Many lawyers and paralegals help with CPP-D for a fee (though the first half-hour consultation may be free.) Because of the costs, lawyers and paralegals are usually not brought into the case until an appeal stage.

**Legal Aid:** In some provinces, CPP-D appellants can qualify for Legal Aid, especially at the appeal stage. Contact the Legal Aid authority in your province/territory to see if you are eligible

**Member of Parliament:** Your local member of parliament can sometimes be helpful in resolving particular issues.

#### **Questions To Ask When Hiring a Professional:**

What should you discuss when considering whether to hire a professional?

- ◆ The challenges in your case and how the professional could be of help.
- ◆ Their experience and track record with CPP-D cases and, if possible, references from previous clients.
- ◆ Discuss fees before making any firm commitment.

**Note:** Section 65(1) of the Act prohibits the assignment, attachment or anticipation of a CPP-D payout and therefore a standard contingency agreement may not be enforceable. The professional will likely raise this point when a fee and payment schedule are being discussed.



### 3 Are You Covered by CPP-D?

*Did you have coverage at the date of onset of your disability?*

#### A. How Contributions Are Collected

The Canada Pension Plan collects mandatory contributions from employed individuals and their employers.

- ◆ As a pension plan, it provides retirement payments to applicants who have reached retirement age; and
- ◆ As an insurance plan it provides disability payments to those who are compelled to leave the workforce for medical reasons.

CPP contributions are collected by the Canada Revenue Agency. There is a reconciliation when you complete your tax return each year, and any over- or under-payment is refunded or added to your tax payable. Contributions are forwarded to the CPP by the Canada Revenue Agency and are used solely for the purposes of the Plan. CPP maintains a record of contributions for each and every contributor.

**Hint:** Contact Service Canada to obtain a printout of your record of contributions. It will show your earnings and your contributions for every year that you have been contributing to the plan. The most recent year or two may not be included.

#### B. When Are You Covered for CPP-D?

CPP-D covers the period when you are between the ages of 18 and 64. There will be no pay-outs covering any period after you turn 65. (You can still apply for CPP-D after you turn 65 if you are looking for payments covering a period before you turned 65.)

A typical insurance policy (think of a home or fire insurance policy) will cover you for a specified period on payment of a premium. The coverage ceases instantly at the end of that period unless you make another payment. CPP-D is a bit different. You must



have made contributions for some time before you have coverage, and the coverage continues for some time after you stop making contributions.

Under CPP-D, you are generally not “insured” unless you have made contributions in four of the last six calendar years. Thus for example, if you haven’t made any contributions whatsoever, then make contributions in four consecutive years, and then stop making contributions, you will start coverage when you have four years of contributions and continue to be covered for two more years. Your

eligibility will usually end on a December 31st because of the linkage with the tax-collection system. The period when you are covered is sometimes called the “minimum qualifying period” but we will call it your coverage period throughout this Guide.

If you do not meet the four-of-the-last-six-year requirement, there are some special rules around contributions and coverage that may help you.

- ◆ Individuals with 25 or more years of contributions need to have made contributions in three of the previous six years to get coverage.
- ◆ Child Rearing provision: If you left work to care for children under the age of 7, that period of time may be excluded from the calculations.
- ◆ Credit Splitting: If you are divorced or separated, you may be able to claim a portion of your former partner's credits. These will be added to your contribution record.
- ◆ Work Outside Canada: If you worked and contributed in both Canada and another country with which Canada has a reciprocity treaty, you may be able to have the international contributions added to your contribution record.
- ◆ If you worked a few months into a new year and then had those months refunded and you need to extend your coverage period by a few months, you may be able to buy back those few months.

### C. Date of Onset

The Date of Onset is the month that your disability reached the point that it could be considered severe and prolonged. The concepts of severe and prolonged are discussed in Chapter 4. The Date of Onset is important for two reasons:

- 1) You must show that the Date of Onset of your disability occurred while you were covered by the CPP-D plan and that you have been disabled continuously since. If you cannot show this, you will not qualify.
- 2) The Date of Onset is used to determine when your payments start. (A “deemed date of onset” is used when the application is delayed.)

Determining the Date of Onset of disability can be difficult in some ME and FM cases. The Date of Onset may not be obvious when it occurs, and it may not even be easy to

identify when you look back in time. Pick a date that you think best reflects the situation and that you can defend with evidence. Here are some hypothetical examples.

**Mary** had a full time job. She also had a diagnosis of FM and was missing quite a few days of work (paid sick leave). She and her doctor eventually agreed that her FM symptoms were making it too difficult for her to work and that she needed to focus on her health. She went on disability leave. Her last day of work was March 15. Mary would argue that March was the date of onset of her disability. Even though she was struggling and missing work before she left, she was in the workforce and receiving a full salary, so she couldn't really argue that she was too disabled to work before March.

**Jack and Jill** worked for a retail store and were paid only when they worked. They were consistently working 30 to 40 hours per week. On December 1, 2018, they were in a relatively minor car accident, but they developed FM as a result of it. They worked a bit the next March, April and May, but by June they realized that they couldn't continue. Jack had made 10 straight years of contributions to CPP when the car accident happened. Jill had made only 3 years of contributions.

- ◆ Jack would want to argue that his Date of Onset was December 2018 to maximize his income, while the CPP-D staff might take the position that the Date of Onset was June when he finally stopped working for good. If CPP-D accepted his application with a Date of Onset of June, Jack could accept this or he could choose to go through the reconsideration/appeal process asking for an earlier Date of Onset. He would run the risk that the appeal would find he was not disabled at all.
- ◆ Meanwhile, Jill would want to argue that her date of onset was after she had made enough contributions for 2019 to meet the qualification criteria

*This illustrates a challenge for CPP-D staff. Is it fair to assign Jack a December 2018 date of onset and to assign Jill, under the same circumstances, a June 2019 date of onset?*

**Pauline** was laid off from her job in June 2015. She wasn't feeling well and did not have the energy to look for another job. A year later (June 2016) she received a diagnosis of ME. Looking back, she realized that it was ME symptoms that prevented her from looking for work. She could apply for CPP-D using June 2016 as the date of onset since the diagnosis was still during her coverage period which would run out in December 2017.

*Alternatively, she could try to argue that the Date of Onset was in June 2015 when she left work. To make that argument, Pauline could ask for statements from family, friends, former co-workers and health care providers that described her health at the time she left work showing that it was consistent with her diagnosis of ME.*

**Paul** was in the same situation as Pauline, but did not apply for CPP-D payments until Nov 2019. He would have to provide evidence that his disability started sometime before December 2017 (the end of his coverage period) and had been continuous since. If he is successful, he will likely not receive full retroactive payments (see Deemed Date of Onset).

**Hint:** There is a question about date of onset on the application form you fill out and on the application form your health provider fills out. It is a good idea to talk to your health provider to ensure that the two forms use the same date of onset.

### D. Deemed Date of Onset (when application is delayed)

If you can show that your Date of Onset occurred while you still had coverage, you may apply for CPP-D any time, even years later, but your payments may not be fully retroactive. Payments are limited to 11 months before the Date of Application (discussed in chapter 5). If you delay in applying for CPP-D, you still have to show that you became disabled during your coverage period. CPP-D will assign a “deemed date of onset” 15 months before the Date of Application and payments will start in the fifth month after that (technically, “the fourth month following the month in which the applicant became disabled”)

**Cathy** left work in December 2014 because of her FM. If she had applied for CPP-D before March 2016, she would have received payments starting in April 2015. However, she did not apply for CPP-D until December 2018. CPP-D agreed that she became disabled while she was covered for CPP-D. They then assigned a Deemed Date of Onset for September 2017 (15 months prior to the date of application). As a result, her payments started in January 2018, the fifth month after the deemed date of onset. Because of her delay, she missed out on payments for the period between April 2015 and December 2017.

**Hint:** If your application was delayed because you were seriously incapacitated, you can submit a form asking for full back payments. Don't delay. Contact Service Canada for further information.

### E. Post Retirement Benefit

Two different people called us about the same issue. Each had found, when they were around 60 years old, that they were struggling at work. Each chose to retire early and signed up for CPP early retirement monthly payments. Each later received a diagnosis of ME/FM and realized that they could have applied CPP-D monthly payments (which are higher than CPP early retirement monthly payments) from the time they left work until they turned 65. And each found out that they could not go back and apply for CPP-D payments because the rule said that if you are on CPP retirement payments for more than 15 months, you can't switch to CPP-D payments. Both thought it was extremely unfair not to be able to switch.

The rule changed somewhat in January 2019. You still can't switch to regular CPP-D payments, but you can apply for the “post-retirement disability benefit” which gives you extra income every month (\$496.36 in 2019). People who think they could have qualified for CPP-D when they started their early retirement payments can apply. So can people who became disabled after receiving their first retirement payment but while they were still within their coverage period.

### The Bottom Line

***If you have a basis for arguing that the onset of your disability occurred when you had CPP coverage, keep going. If there is no way to make such an argument, you won't qualify.***



## 4 Do You Qualify as Disabled?

*Do you meet the criteria in the legislation?*

### A. The Criteria in the Legislation

CPP-D is governed by the Canada Pension Plan Act. Section 44(1)(b) provides supports for CPP contributors who become “disabled”. Section 42 of that Act provides the criteria for determining disability.

42(2) For the purposes of this Act,

- ◆ a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,
- ◆ a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and
- ◆ a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death;

The onus of proof is on the applicants. In other words, it is up to applicants to put forward the evidence to demonstrate that they have a disability that is severe and prolonged.

The standard of proof is “reasonably satisfied” or “more likely than not”. The adjudicator reviewing the evidence has to decide whether it is more likely than not that the applicant has a disability and that the applicant meets the severe and prolonged criteria. If so, the applicant will be deemed eligible. If the adjudicator is not reasonably satisfied, s/he will deny eligibility and the applicant can then appeal the decision.

There are three main questions addressed in this chapter:

1. What is your disability (Section B)
2. Is your disability severe (Section C)
3. Is your disability prolonged (Section D)

Then we point to some factors that are not considered (Section E)

### B. What is Your Disability?

Disability and illness are not the same thing. Disability is about having impairments (symptoms) that hinder participation in society or, in this case, participation in the workforce. To participate in the workforce, one is expected to do things like get to work, interact with others and be reliable, safe and productive. These expectations can become barriers to people dealing with health issues.

Here is the chain:

**ILLNESS(ES)** (Medical conditions) ⇒ result in **SYMPTOMS** (Impairments) ⇒ which affect your ability to do **ACTIVITIES** ⇒ which affect your **EMPLOYMENT**

Let's say that you have FM and your symptoms include pain and fibrofog. These would affect your ability to do activities like taking a bus and carrying on conversations. If the symptoms are mild, you would likely still be able to participate in the workforce. If the symptoms are severe, you would not be able to.

The application forms seek information about your diagnoses, your impairments, and your activity limitations for the purpose of determining whether you are sufficiently able to work. To help you put together

your story, we have included four worksheets in Appendix A. The first is to identify your medical conditions, the second is to identify your key symptoms, the third is to identify your activity limitations and the fourth is to identify the workplace expectations that are difficult for you.

Start filling in all of the worksheets one at a time. Use pencil because you want to be free to modify your answers later.

Once you have filled each worksheet in, try linking the worksheets together. Work back from Worksheet 4 to Worksheet 3 to see what activities limit your participation in the workforce. You might find you have to make changes to one or both worksheets. Then work back to Worksheet 2 to see what symptoms are at play. Then work back to Worksheet 1 and see if all your symptoms are accounted for under your various diagnoses.

***Marc** tried filling in these worksheets. One reason he had difficulty attending work was because he found it difficult to get going in the morning because he wakes up chilled. He added “getting going in the morning” to Worksheet 3 and made a note in the body temperature box on Worksheet 2. That symptom ties in with ME on Worksheet 1. Another activity that caused him considerable difficulty was holding a pencil. He added that to Worksheet 3, then wrote a special note about finger strength in the muscle strength box on Worksheet 2. That ties in with FM on Worksheet 1.*

**Hint:** Take some time to complete these worksheets. They need to be thought through. It would be very helpful to have input from family or friends. It is quite possible you have compensated for some of your symptoms without realizing that you have done so.

Remember throughout that the purpose of the worksheets is to draw out your story. You are identifying what medical



diagnoses you have, what symptoms are having a big effect, what activities are causing you difficulty, and how all this affects your ability to work.

### C. Is Your Disability Severe?

The question is whether you are capable of pursuing any substantially gainful occupation. The test for “substantially gainful” is not clear-cut but here is a quote from CPP-D’s “adjudication framework” that provides some guidance:

“An individual who is working to the maximum capacity that his or her disability permits, and whose earnings are less than the maximum annual or monthly CPP disability pension amount [ie less than \$1,362 monthly / \$16,350 annually in 2019], is not productive and is not performing. This individual can be determined incapable of working at a substantially gainful level.”

Persons earning a bit more than that might also be found to be incapable, but someone earning double that amount is unlikely to be found to be incapable. Having said that, if you earn around \$10,000 or more in a year, your application will be reviewed very carefully.

There are various ways that you can show evidence that your disability is severe. These are rarely used alone but rather in combination:

Your medical situation: The adjudicator is interested in your diagnoses, their symptoms, your medical history, the treatments you have tried, and the results of those treatments.

One problem you may encounter is the issue of treatments that were suggested but which you have not followed (either did not start or discontinued). These may come back to haunt you. You will need to explain why you did not follow them. Hopefully you discussed these situations with your health professional and s/he agreed with your reasons.

Another problem is that adjudicators may come up with “what if” scenarios.

- ◆ What if it isn’t really ME and instead it is lack of motivation? A quick visit to a psychotherapist could get the patient back in action.
- ◆ What if she had tried a different pain medication? It might do wonders for her pain and have her out dancing again.
- ◆ What if the patient had tried massage therapy as the doctor suggested? Perhaps that would have made a big difference.

You cannot anticipate all the “what if” scenarios, but you can try to assure the adjudicator that you are motivated to get better and that you are working with the health profession to the best of your ability to explore possible treatments.

**Serious activity limitations:** The adjudicator is interested in work-related limitations, like those on Worksheet 3.

**Disrupted work history:** The adjudicator is interested in your work history. Consider the accommodations you made while working (or are making if you are still working). For example, did you start using notes as reminders or did you need to call on colleagues to cover for you? Also discuss attempts to work that were not successful.

**Disrupted overall life:** ME and FM are associated with reduced activity levels which can be disruptive to overall life. The Functional Capacity Scale in Appendix B is a measure of this disruption. This scale was developed by Dr. Bested and Dr. Marshall of the Environmental Health Clinic of Ontario. If you score 6 or lower most days, it is very unlikely that you would be able to work. If you score levels 8 and above most days, you are generally able to work unless there are other factors at play. If your scores are generally around 7, your situation is borderline.

### Severity is a very important issue.

**If, on one hand, you have low scores of functional capacity, major work disruption and significant activity limitation, this indicates that your disability is severe. Move forward with the confidence that your application is deserving on this point.**

**If, on the other hand, you have functional capacity score is 8 or higher, if you are showing little work disruption, or if you aren't experiencing a significant degree of activity limitation, you are unlikely to be found to have a severe disability.**

**If your functional capacity scores are borderline, if you can still do a bit of work and if your activity limitations are moderate, you need to consider carefully whether or not to proceed with your application for CPP-D. There could be a rationale for going forward with a CPP-D application but it might be better to focus on developing a viable work/health balance.**

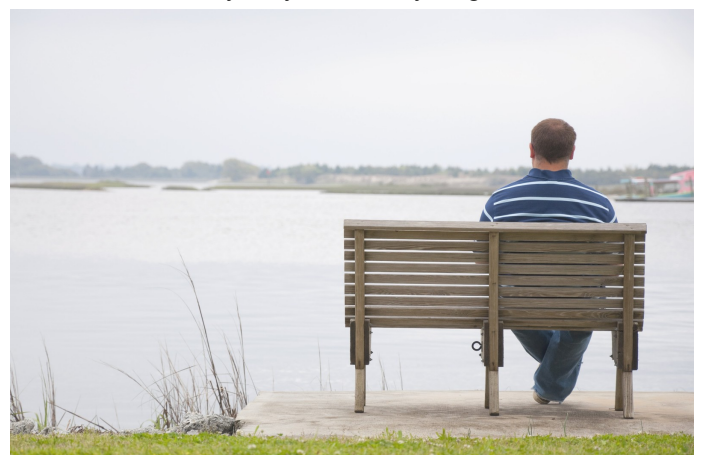
While it is relatively easy for you to determine whether your disability is severe, it can be much more difficult to demonstrate to the adjudicator that your disability is severe. The adjudicator needs to be convinced that your

story is real. Perhaps you weren't working to your “maximum capacity” when your earnings fell below the threshold. Perhaps you were exaggerating your symptoms and activity limitations when describing your symptoms.

How can you demonstrate the real severity of your situation? One thing we know is that people with ME and FM can become “invisible”. Because of their activity limitations, they do not get out much and people may not come to them. People can feel as if they have disappeared from the face of the earth. How do people know your how disabled you are when they don't see you?

Have confidence that you are deserving, do what you reasonably can to demonstrate the severity of your disability and hope for the best. You may be turned down at adjudication and reconsideration but you could be successful at the hearing stage, especially if you get to meet the decision makers face to face. To maximize the chances of getting your application accepted, here are some possible strategies.

- ◆ Keep a diary and include it in your submission.
- ◆ Try to get evidence of severity on your medical record. Give a copy of your diary or worksheets to your primary health care provider so that these are on your file and the record shows that you have discussed this with him/her.
- ◆ Get letters attesting to your situation from family, friends, neighbours, former work colleagues, religious adviser and other people who are aware of your situation (home care provider, massage therapist, etc)
- ◆ In your submission, go into detail about the impact your illness has had on your life. Talk about the adjustments you have had to make. Try to document those adjustments. For example, if you had to drop your favourite activity, say so and try to get a note from the



activity leader. “Cathy belonged to our book club for 10 years and was very active. She dropped out because of her health. We were sorry to lose her.”

- ◆ Talk to your health care provider about any tests or referrals that can be done safely. Have the health care provider make a note even when a referral was not made. Example: “I thought about sending Max for a functional evaluation but I can see myself that he has very limited functioning and I believe it could be detrimental to his health.”

### D. Is Your Disability Prolonged?

According to the adjudication framework, once the adjudicator determines that your disability is severe, the adjudicator is supposed to ask two more questions:

- ◆ whether you will no longer qualify as severely disabled within a year of your date of application and
- ◆ whether there is a definite return to work date.

If your disability is expected to last less than a year past the date of application or if there is an established return-to-work date, you will be turned down. It can be very discouraging to face the possibility that you may not be back at work soon, but that is a requirement of the application.

### E. Statements That are Not Relevant or Helpful

Be careful of statements like the following:

- ◆ I live in a town where the mill shut down and there are no jobs available. (Are you not working because of where you live or because you are disabled?)
- ◆ I am having trouble finding a job I can do because the economy is bad right now. (Are you not working because of economic conditions or because you are disabled?)
- ◆ I find it especially difficult to look for work right now because I am looking after my ailing parents. (Are you not working because of your family situation or because you are disabled?)

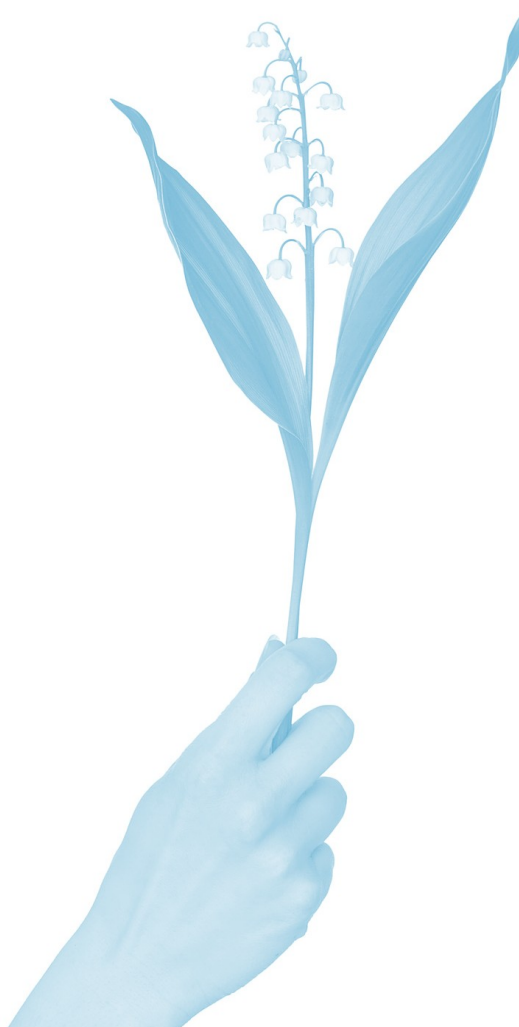
When determining whether or not you qualify, decision-makers do not consider your assets and other income, including disability payments from another source. You don't have a better chance of being approved because you are short of funds. You don't get a lesser chance because you have assets or support.

You are not disqualified from receiving payments if you live outside Canada. However, where you live may be relevant to your application. Examples: I moved in with my sister in Minnesota who takes care of me. I moved to Arizona because the Manitoba winters made my symptoms much worse

### The Bottom Line

**If you have a basis for arguing that you have a disability that is severe and prolonged, keep going. If you can't make such an argument, you won't qualify.**

**Putting together evidence to support your argument that your disability is severe and prolonged may be difficult. Do what you reasonably can.**





# 5 Putting Together Your Application

## *Filling in the forms*

### A. Completing Application

In the past, you had to submit your application (Form ISP-1151) on paper. Starting in 2020, you can submit on-line or on paper

**Hint:** We recommend submitting on paper because it provides more flexibility in answering questions – for instance, you can write notes in the margins. You can of course fill out some of the information on-line before printing off the document and adding the hand-written notes.

**Hint:** When you submit your application, it is date-stamped on receipt by Service Canada. That date becomes the date of application. Recall that CPP-D generally pays only 11 month before the date of application. There is also a 4 month wait period (see page 6). If it has been 15 months or more since you stopped work, send in your application as soon as possible. You can submit your medical information and supplementary information later.

Some people who are applying for CPP-D have already applied for other disability coverage. For instance they may have applied for workplace Long Term Disability or they may have applied for provincial disability coverage. Service Canada asks if you want to rely on the medical records that you used in those applications. If you choose this option, then there is no need to file a medical report (Form ISP-2519).

If you have applied for different disability coverage, consider this option carefully. On one hand, it may be cheaper or easier to allow CPP-D to use the medical reports already submitted elsewhere. On the other hand, that file might not be up-to-date. Further, you may want your primary health provider to be actively involved in you CPP-D application (eg to answer questions that Service Canada might have).S/he might not be consulted if you choose to rely on your previous application.

You may want to look at a middle ground. You can

give Service Canada permission to accesses your old records, ask your primary health provider for supplementary information, and ask Service Canada to contact your primary health provider if there are questions.

**Hint:** The application forms ask if you are unable “to work regularly at any job.” Recall from Chapter 4 that the rule-of-thumb is that you have to be able to earn at least \$16,350 per year. So, for instance, a job at \$100/week would not count as “any job”.

### B. Disability Questionnaire

There are four pages at the front and three pages at the back of the questionnaire with information and instructions for you. (Service Canada asks you to remove these pages before sending in your package).

The questionnaire itself asks for

- ◆ Section A – Information about you
- ◆ Section B – Information to determine your coverage period and how much would be owed to you upon qualifying
- ◆ Section C – Information about your medical condition(s) and your activity limitations
- ◆ Section D – Information about your doctor or nurse practitioner
- ◆ Section E – Information about your work history
- ◆ Section F – Information to determine if your children are eligible for payments
- ◆ Section G – Information on how you want payments to be made
- ◆ Section H – Your consent for Service Canada to obtain personal information
- ◆ Section I – Your declaration and signature (or the declaration and signature of someone representing you).

For Section B, you will remember from Chapter 2 that Service Canada keeps a record of your contributions to CPP each year. You will also remember that the general rule is that you must have worked in four of the last 6 years but that there are some special circumstances that affect eligibility or how much you are paid. Section B is collecting information to see if there are any special circumstances in your case.

Question C1, the date you feel you could no longer work, is an extremely important question. Review the Date of Onset discussion in Chapter 3.

Questions C2 to C6 ask other questions about your medical situation. The adjudicators will consider this information on the medical report when deciding whether your disability is severe. They are looking for instance, how long you have been ill, what tests have been undertaken, and whether you are trying appropriate therapies.

Question C7 is where you tell Service Canada if you want to use your medical records from a previous disability application.

When you look at Question C8 (functional assessment – assessing your abilities), remember that, on worksheet 3 of Appendix A, you identified which activities cause you problems. These activities should be reflected in Question C8. We expect that you will be showing problems in some of the activities under part A (physical abilities) and under part C (communication and thinking abilities). You could be showing problems under part B (behavioural and emotional abilities) because of your lack of energy to tackle these activities. Some people will show problems in part D (other daily abilities).

You have the opportunity to provide comments on the bottom of the four pages. We encourage you to do so. Try to relate them to the workplace. Do not hesitate to add additional pages. Remember to point the adjudicator to those pages and include your name, social insurance number, etc.

Section E asks about your work history. Your work history can tell a very important story about how your disability evolved, so do not hesitate to describe your work history in detail. If you tried unsuccessfully to work, explain what happened.

Other sections of the application form are straight-forward.

If, on completing the form, you feel that it has not fully captured your situation, do not hesitate to include additional material to fill the gaps. There are three areas we suggest are underrepresented on the forms.



Firstly, the form does not key in on the impact of your medical conditions on you overall life. It may be useful to discuss the impact on your family, social, community and recreational/leisure activities.

Secondly, the form does not ask if your condition is “prolonged”. While it can be discouraging to think about being out of the work-force for at least one more year, it may be useful to raise this in your material.

Thirdly, the form does not ask for supplementary material like supportive letters from family members, friends, your former employer and former work colleagues. This “third party testimony” can be particularly helpful if the writers have known you a long time and can testify to the changes in your abilities before and after you became ill.

### C. Medical Report

**Note:** this section does not apply if you are relying completely on medical records provided to a different disability support provider.

Select the health provider who knows your disabilities the best. Discuss with him/her your intention to apply for CPP-D supports.

Give your health provider the medical report (Form ISP-2519) with the first sections filled in.

Show the health provider your completed application form. Show him/her your worksheets. Talk to him/her about the diagnoses, symptoms and functional limitations you identified. Discuss how s/he is going to fill out the prognosis, expected duration and frequency sections, pointing out that if s/he ticks duration less than 1 year your application will be rejected, and if s/he says that the prognosis is improvement, that might be interpreted as able to return to work. Show your health providers your diary or functional capacity scores.

Ask your health provider to attach a copy of your entire chart to the report. Hopefully, the chart will have a complete record of all investigations and treatments. You may be charged for this work.

**Hint:** The fee paid to your doctor by CPP for completion of this report is up to \$85, about equivalent to 30 minutes of your doctor's time. This is very little time to complete the work. Some doctors charge extra for supplementing the medical report. Try to simplify the task as much as you can by ensuring everything that you give the doctor is organized.

**Hint:** Penny had a good relationship with her doctor. She felt comfortable giving him a spare copy of the Medical report form with suggested answers pencilled in. She told him that she hoped it would save him some time and perhaps prevent some points from being overlooked. She readily acknowledged that this is the doctor's form and it is his credibility on the line so he was free to rewrite or change anything she had suggested.

- ◆ If you have changed doctors during the period you want to cover, you can authorize your doctor's office to request copies of your old records.
- ◆ Ensure that there is a completed checklist supporting your diagnosis of ME or FM.
- ◆ Review with your doctor's office that reports for all your specialist visits, emergency room visits and hospitalizations are included in the file.
- ◆ If you have been receiving treatments from other health care professionals, either on referral from your doctor or on your own initiative (physiotherapy, massage, acupuncture, chiropractic, counselling, community care etc.), ask them to send a short written report to your doctor confirming the treatments, the period over which they were provided, and any additional comments they may care to make.
- ◆ If you have been taking prescription medications, request copies of your medication records from all the pharmacies you use.

Your health care provider will probably forward the completed form directly to CPP, keeping a copy for your chart. You may ask for an additional copy for your own records.

## D. Submitting the Disability Questionnaire

Go through the checklist on the back page of the form.

If you live close to a Service Canada office, the safest way to submit your application is in person (or a friend can do it for you). This is particularly convenient if there are documents (e.g., birth certificates) which need to be certified. Make an appointment, and the Service Canada agent can make and certify photocopies of the documents at the same time. If this is not convenient, arrange to have the photocopies made and certified separately (see the second to last page of the application package) and mail the completed application to Service Canada; registered mail is recommended.

**Hint:** We recommend strongly that you keep a copy of your application for your own reference. However, you are entitled to ask CPP for a copy of your file at no charge, should the need arise.

## E. What Happens Next

**Hint:** You will almost certainly get a telephone call from Service Canada as they review your file. This is an opportunity to talk to the adjudicator. Answer their questions truthfully without forgetting your core message – that you would like to be able to participate in the workforce, that you have a disability that is severe and prolonged which prevents you from doing so, and that you contributed to CPP which covers you in situations like this. It is okay to talk to an adjudicator to clarify details about the application, but if the discussion turns into an interview about eligibility, be careful. At a minimum, document the conversation. You might also want a witness to be present.

If there is any information missing, an agent may contact you or your doctor and ask for it.

The assessment of your application will take approximately three to six months.

If your application is approved, you will receive a letter headed "Notice of Entitlement"; this will be discussed in Chapter 7 of this Guide. If your application is denied, you will receive a letter explaining the reasons for denial and advising you of your right to appeal. If your application is approved but the Date of Onset is later than you wanted, you can decide to accept it or you can appeal it. Remember that if you appeal the Date of Onset, the decision finding you eligible could be overturned.

## 6 If You Are Turned Down

*Here is how you keep going*

### APPEALS

You may feel hurt, rejected, tired and frustrated to have your initial application turned down. You may not want to have anything else to do with the system. We understand that. But we would nevertheless advise you not to take the denial of your application personally. Historically, just less than half the applications are accepted at the initial application stage.

If you still believe that you have a valid application, then you should appeal. Historically, more than half of the people who go through the appeal process are successful. Many people drop out at this stage. The available evidence suggests that many of them are in fact disabled and could have been approved if they had appealed.

The CPP Act defines a sequence of three appeals.

- ◆ The first appeal ("Reconsideration") is an internal review by CPP adjudication staff.
- ◆ The second appeal is to the Social Security Tribunal – General Division – Income Security Section.
- ◆ The third appeal is to the Social Security Tribunal – Appeals Division.

#### **A. Reconsideration**

If your original application is denied, you will receive a letter stating the reasons for the denial. The denial letter will include a summary of the evidence used by the adjudicator to reach his/her conclusion. The letter then advises you of your right to challenge the decision and tells you where to send your request for reconsideration.

If you still believe you should be considered for CPP-D, all you have to do is send a written request for reconsideration within 90 days of your receipt of the letter of denial. You can use the Request for Reconsideration form provided by CPP-D.

Try to give explicit and detailed reasons for your appeal. The steps that follow are to help you through the application process.

**STEP 1: Set yourself a deadline date** for submitting your request for reconsideration and stick to it. The rule is that you must make your request for reconsideration in writing within 90 days after you receive the written decision. This can be interpreted several ways – when the denial letter was sent, when the denial letter should have arrived, when it actually arrived, or when you actually opened it (if for example you were away from home when it arrived). Write the date you first saw the denial letter on the letter so you have a record of that date. However, to be safe, calculate the deadline from the date on the letter. Ninety days is one day less than 13 weeks. It could take a few days for the appeal letter to get to the CPP office. So set your deadline for sending the request for reconsideration 11 weeks from the date on the denial letter.

If the denial letter is dated March 1, set yourself a deadline of May 17 (11 weeks away) to put your request for reconsideration in the mail. You can, of course, send your letter before then. There is a little flexibility built in so you can send your request a few days after the deadline you set and still meet the technical deadline. If it goes in much later, you will have to try arguing that your disability made it impossible for you to meet the deadline - you are really complicating your life. It is better to be safe and stick to your deadline.

**STEP 2: Read the reasons for denial very carefully.**

- ◆ The most common reason is, "we have concluded that you should still be able to do some type of work." (It would be more precise to say that you have not made your case; remember that the onus is on you to prove that you are disabled.) If this is the reason, you have to put emphasis on your disability being severe and prolonged. (Reread chapter 4)



- ◆ Another possibility is that the adjudicator has concluded that the date of onset of your disability was outside your coverage period. If this is the reason, you have to focus on when your disability started. (Reread chapter 3)

### STEP 3: Review the evidence CPP used to arrive at the decision.

- ◆ Double-check any references to medical reports in the denial letter, to make sure nothing has been omitted, misquoted or taken out of context. If something has, then point this out in your letter applying for reconsideration.
- ◆ If you have multiple diagnoses, has the adjudicator over or under-emphasized one of your conditions, particularly as it relates to impairments? If so, discuss this in your letter.
- ◆ Has the adjudicator suggested or implied that ME or FM is a curable condition? Remind the adjudicator in your letter that available treatments are focused on management rather than cure.
- ◆ If the denial letter states you are ineligible for payments because there are therapies you have not yet tried, consult with your doctor who is in fact the only person who should be deciding what your treatment ought to be.
- ◆ Is there relevant medical evidence which has not yet been submitted to CPP? If there is an issue around your coverage period, perhaps there are older reports that you had not thought to submit in your original application. You can compile this evidence and include it with your letter.
- ◆ Is there new medical evidence that would support your application? Your doctor may be able to comment on treatments that have been explored since your original application. Perhaps there are assessments that could be scheduled which would support your application. Discuss these with your doctor.
- ◆ Is there non-medical evidence, such as an unsuccessful attempt to return to work, which should be brought to the adjudicator's attention? Describe this in your letter, and perhaps attach documentation like a letter from the employer.
- ◆ If the denial letter does indeed suggest "you should still be able to do some type of work", is there any reference to the hypothetical work being "substantially gainful"?



If you are not sure what information CPP has, you have the right to request a copy of your file. The request can be included in your appeal letter or in a separate letter sent at any time. Do not miss your deadline while waiting for CPP to respond.

**STEP 4: Talk to other people.** Give a copy of the denial letter to your doctor, to your family, to your friends and to your legal adviser if you have one. See if they have suggestions on what can be done to support your appeal. Your doctor especially may suggest going for other assessments. Your doctor or a friend may be prepared to write supplementary material for your appeal.

**STEP 5: Prepare and mail your letter on or before your deadline.** Don't forget to include the date you received the denial, together with your name, address, phone number, SIN, and signature. If you don't have all your material ready, send the letter anyway and say that you are still preparing material which you will submit as soon as you can. It is far better to submit an incomplete appeal than to miss the 90-day deadline. There will usually be a couple of months to add information after the appeal letter is sent and before any decision is made.

We suggest that you send your material by registered mail or courier service so you can track the package and confirm its arrival.

**What's Next?** The reconsideration is carried out by the regional office of CPP. The staff reviewing this appeal will not have been involved in adjudicating your original application. A fresh set of eyes will be looking at your application. This gives you another chance.

CPP may request that you attend an "independent medical examination", but rarely does so at this stage (see Appendix "C" for tips on IMEs). Generally you will hear nothing until the decision arrives in the mail.

The time for reconsideration appeals to be processed varies. A typical duration is about six months.

If the reconsideration results in an approval, you will receive a Notice of Entitlement. This is discussed in chapter 7.

If the reconsideration results in a denial, you will receive a letter of explanation which will explain the decision and notify you of your right to appeal, this time to the Social Security Tribunal.

### B. Social Security Tribunal - General Division – Income Security Section

You have just found out that you have been turned down at the reconsideration stage. Once again, you feel hurt, rejected, tired and frustrated. If the answer is yes, go to the next stage of appeal, the Income Security section of the General Division of the SST.

The Social Security Tribunal is an independent body, created by statute to administer the second and third levels of appeals under the CPP, OAS (Old Age Security) and Employment Insurance (EI) legislation. The Chairperson of the SST reports to Parliament through the minister responsible for CPP (currently the Minister of Employment and Social Development), but you and CPP (technically, the Minister) have equal standing at an appeal hearing. You are called the “appellant” and the Minister is the “respondent”. The person deciding the case is called the “Member” (as in Member of the SST).

It is important to note that, while the process is still adversarial (you against CPP), the SST itself is impartial. Its job is:

- ◆ to identify people who truly qualify for CPP-D (true positives)



- ◆ to reject people who don't qualify for CPP-D (true negatives)

Think of the SST as having the job of balancing the public's wish to support Canadians who need disability supports with the public's wish not to spend money on people who do not meet the criteria for CPP-Disability. The SST doesn't want to turn down someone who should qualify.

The SST has a General Division and an Appeals Division. The General Division has two sections, the Income Security Section (for CPP and OAS cases) and an Employment Insurance Section for EI cases. The Appeals Division hears appeals of General Division decisions. There is a "Hearing Information" page on the SST's website which you should study carefully when the time comes

#### Contact information:

**Phone:** 1-877-227-8577 (toll-free)  
**Fax:** 1-855-814-4117 (toll-free)  
**Mail:** PO Box 9812, Station T  
Ottawa, ON K1G 6S3  
**Email:** [info.sst-tss@canada.gc.ca](mailto:info.sst-tss@canada.gc.ca)  
**Website:** [www1.canada.ca/en/sst/](http://www1.canada.ca/en/sst/)

For this appeal, you will go through the same five steps that you went through applying for reconsideration:

- ◆ setting a deadline for yourself eleven weeks ahead (the rule for this appeal is 90 days from the date you received the decision)
- ◆ reviewing the decision
- ◆ reviewing the evidence used to arrive at the decision
- ◆ consulting with your doctor, family, friends and legal adviser (we recommend to getting professional help at this stage)
- ◆ compiling and sending the notice of appeal on or before the deadline you set.

You might also want to look at cases which have been decided by the SST. Their website has a searchable database of decisions.

The SST has a standard Notice of Appeal form available on-line or by contacting the SST toll-free line. The form is straight-forward. The SST also has a very good guide on the logistics of filing an appeal <https://www1.canada.ca/en/sst/cpp/gd-cpp-appeal.pdf>.

In section 2, you are asked what kind of appeal you would like: There are five choices: by teleconference, by videoconference, in-person, by written questions and answers or by looking at the written record. Recall that paper documentation has not convinced the original adjudicator or the reconsideration adjudicator, so we would suggest staying away from the last two options and teleconference as well.

[A] retired doctor who heard appeals under the previous system says he could not have made fair decisions without meeting claimants face to face. "I can tell you there were a couple of times when you would say to yourself, 'This is a slam dunk for denial,' until the human walked in," said George Sapp, who lives near Halifax. "Then you would see the person that's attached to the file. And sometimes it took you back. And you listened."

The Globe and Mail, *"Tribunal can deny in-person appeals in disability benefits cases"*, July 6, 2014.

### Next steps:

- ◆ The SST will acknowledge receipt of your appeal (or notify you if it is considered to be incomplete)
- ◆ You may be assigned a "navigator" to help you through the process. This is a new position. Always remember that the navigator's job is to help you understand the process. It is NOT to help you win your case.
- ◆ The SST will send a copy of the appeal to CPP (the respondent Minister) "without delay".
- ◆ The Minister is required to provide a copy of your application and appeal file to the SST "within 20 days", and
- ◆ The SST should then forward a copy to your representative or you "without delay". This may be the first time you have seen your complete file, and it is most important that you and your representative review it carefully to make sure that nothing is missing and that there is nothing that doesn't belong there.

Any supplementary material and/or corrections must be

sent to the Tribunal (**not CPP**), which will forward a copy to the respondent.

If you have questions during this period, call the SST toll-free number for assistance. The call centre will either answer your question or refer it to a staff member, who is supposed to return your call within three business days.

At this stage, some cases are settled through agreement with CPP.

If all your material is filed, you can notify the SST that you are ready to proceed. In all likelihood, the Member will arrange the hearing of your choice (in person or teleconference).

**Preparing for a hearing:** Assuming that you were turned down because CPP-D found that you were capable of working your presentation to the tribunal should include the four issues discussed in Chapter 5 section C.

- ◆ your medical situation
- ◆ serious activity limitations,
- ◆ your work history
- ◆ your disrupted overall life.

You should also mention how long this situation has gone on despite your desire to get back to work.

If you were turned down because your date of onset was outside your coverage period, you will focus on time lines.

You will have raised these issues in your documentation. There is not harm in repeating yourself.





Accept that the Tribunal Member will have read your Hearing File carefully and will be familiar with its contents. Unless you can prove otherwise, assume that CPP has accurately summarized your medical evidence in its "Explanation of the Decision". What has been missing to this point is the "personal touch". This will be the first time in the process that you meet the decision-maker face-to-face. Try to explain to the Tribunal Member exactly how your illness affects your daily life and ability to function. Friends and family members who know you well can be called as witnesses to your limitations.

- ♦ **Appearance at the Hearing:** Your best strategy at an appeal hearing is to be honest. This applies not only to what you say, but to what you wear (suggestion: what you would normally wear for a doctor's appointment) and how you behave (suggestion: if you need to stand up and move around to relax your muscles, just do it). You should not exaggerate your case, nor should you understate it.
- ♦ **What to Expect:** If the hearing is your first ever experience of a judicial-type process, it can be very intimidating. Some people who hear appeals are polite and supportive while others take a more aggressive (or seemingly unfriendly) approach. Do not be put off by the second approach. Keep your cool, stand your ground, and be respectful. If you need more time to answer a question, say so. If you do not understand a question, ask that it be repeated or clarified. The Tribunal Member is there to give you a fair hearing and decide on the merits of your case. Even if s/he is unfriendly and aggressive, the decision could still be in your favour. The Tribunal Member will question you and consider all the evidence, including verbal testimony provided by you and any other witnesses. CPP's earlier decisions will not influence the Tribunal. (This is a so-called "hearing *de novo*".)
- ♦ **The role of your Representative:** Your representative should guide you through your presentation (this will have been thoroughly discussed and rehearsed beforehand); prompt you if you appear to be losing the thread of your testimony; protect you if things start to go "off track"; and deliver the closing summary at the end of the hearing. Remember, though, that one of the main purposes of a face-to-face hearing is to get the decision-maker to walk a mile in your shoes; the more of the presentation you do personally, the better the chance of a successful result.

**Videoconference Hearings:** If you are not familiar with videoconferencing (which is probable), do a little research of your own. In the United States, the Social Security Administration has been conducting disability appeals via videoconferencing for a number of years. The use of the technology for employment interviews is increasing rapidly. There are numerous sites on the internet with tips

for a successful interview, and many of these can be applied to an appeal hearing.

- ♦ **What to expect at the Hearing:** In theory, the technology will be "transparent" and the hearing will be identical to a face-to-face hearing. In practice, there will be differences. Body language may be more difficult to read, and the camera and microphone may not distinguish between significant and trivial actions or sounds. Try to maintain eye contact, apparently this is important. Obviously, these comments also apply to your representative and any witnesses.

**Teleconference Hearings:** In our opinion, it is unlikely that a person with ME or FM can have a fair hearing by teleconference, but we need to be prepared for the possibility. As well (see the "Hearing Information" page on the SST website), it appears that you will be responsible for providing a telephone - unlike videoconferencing, where Service Canada's facilities are used.

Review of the teleconference advice on the internet suggests the following:

- ♦ Use a landline, not a cellphone;
- ♦ If you have a representative and/or witnesses, use a single location with a speakerphone;
- ♦ Make sure there are no (actual or potential) distractions: children, pets, call waiting signals;
- ♦ Be comfortable, but sit at a desk or hard surface in case you need to make notes.

### At the Hearing:

- ♦ Don't smoke, eat or drink, but have glasses of water handy for everyone;
- ♦ Make sure all the participants are identified, at all locations;
- ♦ Wait for the questioner to finish speaking before answering;
- ♦ If you are not sure you understood the question, ask for it to be repeated;
- ♦ Speak slowly and clearly;

**After the Hearing:** Regardless of the form of hearing used, discuss the experience with everyone who was present and make notes of the significant points. This is important because the grounds for an appeal (should one be necessary) will be limited to errors of fact or law in the hearing and decision; new evidence will not be permitted.

**Tribunal Decision:** The Tribunal decision will be sent to your representative by regular mail.

If the decision is in your favour it will specify a date of onset for your disability in addition to declaring that you are in fact disabled. The Minister has the right to appeal, so your payments will not start before the appeal period has run out. If the decision is not in your favour, you can apply for permission to appeal to the Appeal Division of the SST.

### C. Social Security Tribunal - Appeals Division

**The contact information for the SST's Appeal Division is the same as for the General Division.**

Either party can appeal a General Division decision, but it is not an automatic right. An **Application for Leave To Appeal** must be received by the Appeal Division within 90 days of your receipt of the General Division's decision. (Note that the time limit includes mail time.) Information on how to do this and a Notice of Appeal form are available on the SST's website.

The legislation allows for only a few specified grounds for an appeal. Essentially, the question is whether there is a major problem with the General Division's decision.

If leave to appeal is granted, there will be a hearing. The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

### D. Judicial Review

A request for Judicial Review of an Appeal Division decision is not to be undertaken lightly. To be successful, you must satisfy the Court that there has been a serious error of fact or interpretation of the law in the SST's decision.



The rules of procedure are strict and very formal. You are allowed to represent yourself, but if you are not self-represented, the rules state you must be represented by a lawyer.

If you wish to explore this option, consult a lawyer and/or the Federal Court Office in your province. Unless the Court rules otherwise, you are responsible for all your costs and fees related to the action. CPP is entitled to ask that you pay their costs as well.

A denial of an Application for Leave to Appeal is also subject to Judicial Review by the Federal Court.

### E. Appeals—Frequently Asked Questions

**Q: I applied for CPP-D and was turned down. I didn't appeal. Can I apply again?**

**A:** Yes, you are allowed to submit multiple applications, but only one will be considered at a time. If nothing has changed, your new application will be reviewed using the same evidence and coverage period as the first application. However, if the second application is successful, any retroactive payout will be based on the second date of application. If you didn't appeal a Reconsideration decision, the same applies.

But a Social Security Tribunal decision is final unless it is appealed (the legal principle of *res judicata* - Latin for "the matter has been settled" - applies). All the evidence considered by the Tribunal is off the table, and you will need new evidence and/or a change in coverage period to have a chance of success.

**Q: I missed the appeal deadline; what are my options?**

**A:** At each level of the appeal process, the "Minister" (i.e., CPP), the General Division of the SST, or the Appeal Division of the SST, as the case may be, has the discretion to accept a late appeal. The SST has a time limit of one year from the date the decision was communicated. The decision to accept a late appeal is subject to Judicial Review and must be defended in court if it is challenged. The factors to be considered include:

- ◆ Is there evidence of a continuing intention to pursue the appeal?
- ◆ Is there a reasonable explanation for the delay?
- ◆ Is there an arguable case?
- ◆ Is it 'without prejudice' to the Minister?

Simply stating “I forgot” is not an acceptable explanation. If one of your treating physicians is willing to sign a “**Declaration of Incapacity**” form (obtainable from Service Canada) or to write an equivalent letter to the effect that you were unable medically to appeal within the deadline, a late appeal could be accepted. Otherwise, your only option is to re-apply.

**Q: Can I request a time extension?**

**A:** Requests for an extension of time are a commonly-used tactic in legal processes, and are usually granted when the request is made **within the specified time frame**. However, at the Reconsideration and SST (General Division) stages of the CPP process - where the right of appeal is automatic - any statement of intent to appeal is accepted as an appeal. There is therefore no need to request an extension. A request would be appropriate if you need more time to prepare an Application for Leave to Appeal to the SST (Appeal Division).

**Q: Am I allowed to submit new evidence after I received the decision?**

**A:** The SST Regulations allow for the re-examination (“rescission or amendment”) of a decision on the submission of “new facts”. There is a one-year time limit.

The legal test for what might constitute “new facts” is:

- ◆ The evidence must be genuinely “new”, not a repetition of evidence already considered;
- ◆ It must not have been discoverable earlier by the exercise of reasonable diligence; and
- ◆ It must have the potential to change the previous decision.

**Example:** If an appeal based on a diagnosis of FM had been denied and the applicant was subsequently given an additional diagnosis of long-standing depression, the depression would be a “new fact” and the decision could be re-opened. However, confirmation of the original FM diagnosis by a different specialist would not be a “new fact”.

**Q: My application/appeal has been allowed but the Date of Onset that they picked is later than I think it should be. Can I appeal it?**

**A:** Yes, but there is a possibility that the appeal decision-maker might decide you are not disabled at all as everything will be back on the table. Each level of the process involves a completely fresh examination of all

the evidence. You will have to decide whether or not to take the risk.

**Q: I’ve been granted Leave to Appeal and CPP proposes an Award without a hearing?**

**A:** CPP may send you a “Without Prejudice” letter offering to allow your appeal without a hearing. The proposed Date of Onset may be later than you claimed in your application. You need to make a decision whether or not to accept their offer.

**Q: I asked CPP for advice when I was completing my application and I either misunderstood or the advice was incorrect. What should I do?**

**A:** Section 66(4) of the Act gives the Minister the authority to correct “erroneous advice or administrative error”. If the agent who discussed your concern with you followed correct procedure, s/he will have included a record of your discussion in your file, and you are entitled to a copy of the file. If your file does not have a brief, accurate record of the discussion, it will be a question of your word and memory against the agent’s. If you are convinced you are in the right, your MP is probably the best person to help.

**Q: My application was denied, and I applied for CPP early retirement benefits, Can I still appeal for CPP-D?**

**A:** If the 90-day time limit for an appeal has not expired, you can continue your appeal and receive your CPP retirement pension at the same time. If your appeal(s) are successful, the amount of retirement payments you have received will be deducted from your CPP-D retroactive payment

**HINT:** CPP-D payments are always greater than retirement benefits because of the way they are calculated. The application form for retirement benefits specifically asks applicants if they have stopped work because of a disability.

**Q: My SST experience was terrible. The Tribunal Member bullied me and was most unfriendly. Is there anything I can do?**

**A:** Yes, there are two possibilities. If the Tribunal turned down your appeal and “crossed the line” which defines “due process and fair play”, you have grounds for an appeal to the Appeal Division. And even if the Tribunal allowed your appeal, you can still file a formal complaint with the Chairperson.

# 7 If You Are Approved

## *Points to keep in mind*

### A. Immediate Action

#### Notice of Entitlement

A Notice of Entitlement is sent to you when your application has been approved or when your appeal has been allowed and not challenged by CPP. It will advise you of:

- ◆ The amount of your monthly payment, (This is adjusted every January to include a cost-of-living increase);
- ◆ The effective date (month and year) on which payments begin; and
- ◆ The amount of the first payment, which will include any retroactive payment.

Included with the Notice of Entitlement will be two copies of a breakdown of the amounts, by year, of any retroactive payments. One copy of this breakdown must be attached to your next tax return, accompanied by the T4 slip issued by CPP for the taxation year when you receive the first payment. The Canada Revenue Agency will automatically reassess your tax returns for the affected years. If they fail to do so, you can submit a completed T1-ADJ T1 Adjustment Request form.

#### Private Insurance Policies & Retroactive Payments:

If you are receiving long-term disability (LTD) payments under a private insurance policy, either from your former employment or under a policy you purchased yourself, it is quite likely one of the policy's conditions stipulates that you were required to apply for CPP-D. The payments you receive from CPP-D will be offset (deducted) from your LTD payments. If this is the case, your retroactive payments must be paid to the insurance company. You may have been required to sign a form to this effect (one of the rare exceptions to Section 65(1) of the Act), in which case your retroactive CPP-D payments will have been paid directly to the insurance company.

**Hint:** Do not spend the retroactive payment until you are sure it is yours!

#### CPP-D and Taxes:

Be aware of the tax implications. **CPP payments are taxable.** Even if you never see the retroactive payment, you will still receive a T4 slip and have to report it on your income tax return. If your LTD payments are taxable, you should receive a letter from the insurance company to confirm the repayment of retroactive payments. Attach this to your tax return. If you fail to do so, you will find yourself paying tax twice on the same income. If your LTD payments are not taxable, you are responsible for all the tax on past and future CPP-D payments.

#### Apply for Other Benefits

##### 1. Disabled Contributor's Child Benefit (DCCB)

- ◆ If you have children under the age of 18, you (or the custodial parent) will be entitled to the DCCB. This should be included in your Notice of Entitlement. If it is not, contact Service Canada immediately;
- ◆ Children between the ages of 18 and 25 in full-time education are also eligible. The DCCB will be paid directly to them, but they have to apply. The Service Canada website advises that application(s) should be submitted as soon as possible, because **retroactivity is limited to 11 months**;
- ◆ If your children are no longer eligible for the DCCB but were eligible on the date your CPP-D began, they are entitled to retroactive payments.

If you were already receiving CPP survivor's benefits (because of the death of a spouse or partner), the combined (disability plus survivor's) benefit will be less than the sum of the two separate benefits. Insurance companies may or may not offset the DCCB or the survivor's portion of the combined benefit, depending on the precise wording of the policy.



## 2. Disability Tax Credit (DTC)

If you have not already done so, obtain Form T2201 from the Canada Revenue Agency and discuss with your doctor whether you are eligible for the Disability Tax Credit (DTC). This is not automatic, because the eligibility criteria are different from CPP-D. If your doctor agrees that you qualify, ask him/her to complete the application and send it immediately to the Revenue Agency (you do not need to wait until you complete your tax return). If the application states that you qualified for the DTC in past years as well as the current year, the Revenue Agency should reassess your returns for the affected years and refund any overpayment.

## 3. Other Benefits

The federal, provincial and territorial governments all have support programs and services designed to assist disabled individuals in a number of ways, and there are frequent changes. The best way to find out if there are any for which you might be eligible is to contact your Member of Parliament or provincial legislature member or go to <http://Canadabenefits.gc.ca>.

## B. Long-Term

If nothing changes at all after the approval formalities have been completed, you will continue to receive CPP-D payments until you reach the age of 65. You will receive a T4 slip once a year from CPP. When you turn 65, you will be automatically shifted a CPP retirement pension. You will still have to apply for Old Age Security and, if applicable, Guaranteed Income Supplement.

## When to Contact CPP-D

When you signed your application, you undertook to notify the Canada Pension Plan of any changes that may affect [your] eligibility. If you recover and return to the workforce, you have an obligation to advise CPP of this. You will also want to advise CPP if you change your name or address.

## Reassessment

CPP has the right to reassess your condition at any time. You will receive a questionnaire to be completed by you and your doctor. The covering letter will advise you that a) Your file is under review and b) You may be sent for an independent medical examination, depending on your answers.

If CPP decides that you have regained the ability to return to work, they will terminate your payments. The decision

can be appealed in the same way as for applications (Reconsideration, SST General Division, and the SST Appeal Division), but with one major difference: when you applied, the onus was on you to prove that you were disabled. This time, the onus is on CPP to prove that you have recovered. In the absence of direct evidence to this effect, e.g., earnings reported on a tax return, this is no easier than proving that someone is disabled.

## CPP Incentives:

CPP provides incentives and assistance which are as follows:

- ◆ You are encouraged to try volunteer work suitable to your condition;
- ◆ You are allowed to earn modest amounts (up to \$5,700 in 2019) without reporting to CPP or jeopardizing your eligibility;
- ◆ You are allowed to return to school without affecting your eligibility;
- ◆ If you believe your condition has stabilized at a level which allows you to go back to work (and your doctor agrees), CPP will continue to support you while you complete a Vocational Rehabilitation program and/or a three-month trial of work. If at the end of this period you are unable to continue working, your payments will continue; they will only cease if you continue to work.

## Planning to return to work

If your symptoms have subsided to such an extent that you think you may be ready to attempt to go back to work, take the precaution of determining what you are able to do:

- ◆ Can you go half a day without resting or getting exhausted?
- ◆ Can you go a whole day without resting or getting exhausted?
- ◆ Can you do that every day?

If you think that you are able to do that, test yourself. Go through the routine you would have to follow for going to work. You will have to consider:

- ◆ Will you be driving? If so, can you deal with the traffic and still be fresh when you get to work?
- ◆ Will you be taking the bus and can you stand in the bus or in line?



- ◆ How long can you stay at work?
- ◆ What is your condition at the end of the day?
- ◆ Can you do that every day and for how long?

Taking these precautions and following the schedule you would have if you were working i.e. getting up at the time you would go to work, drive or ride the bus the length of time it would take you to get there and all things you need to take into consideration. Plan your day without resting and then do the things at night you would do normally.

If you are unable to do this for a period of time, it means you are not ready to return to work and it is not to your advantage to attempt at this time.

**HINT:** While following this attempt to return to work exercise, be sure to take copious notes which will help you to assess your condition. It will also be of assistance to you if your disability insurer is requesting you return to work.

Once you are able to do the above, it is time to speak to your doctor and discuss returning to work. The notes you took while practising for your return to work will be of help to your doctor also. If the doctor agrees with your self-assessment to be ready, you can take advantage of the assistance that is available to you.

There are safeguards built into the process if your return to work turns out to have been overly optimistic.

**Automatic Reinstatement:** If you have worked for **less than two years** and are unable to continue because of the same condition for which you were originally approved for CPP-D, your payments will be reinstated on completion of two simple forms - one by you and the other by your doctor. **You must apply within a year of stopping work.** You may do this as often as necessary. If you had to stop work because of a different condition, you will need to re-apply with a new application. (This amendment to the Act became effective in 2005.)

**Fast-track Re-Application:** If you have worked for **more than two years but less than five years** and are unable to continue, again because of the same condition, your application for CPP-D will be fast-tracked and should be approved with little difficulty.



## APPENDIX A

# Worksheets for Preparing Your Application

### #1: MEDICAL CONDITIONS WORKSHEET

The purpose of this worksheet is to identify the medical conditions that interfere with your ability to work..

Include all medical conditions that affect your ability to participate in the workforce. You may have multiple diagnoses. Here is a quote from one appeal case: "The Appellant suffers from fibromyalgia, chronic fatigue, thoracic outlet syndrome, irritable bowel syndrome, panic disorder with agoraphobia, major depression and hypertension."

Rank	Medical Condition	Symptoms affecting ability to work

The Medical Report form (filled out by your health professional) asks for the ICD code for each of your diagnoses.

The ICD-9-CM code for Myalgic Encephalomyelitis is 323.9. The code for Fibromyalgia is 729.1.

If the form is updated to ask for the ICD-10 code, the code for Myalgic Encephalomyelitis is G93.3 and the code for Fibromyalgia is M79.7.

## APPENDIX A

### #2: SYMPTOM WORKSHEET

The purpose of this worksheet is to identify symptoms that interfere with your ability to work.

This table shows the symptoms of ME and FM which are most likely to interfere with work. Space is provided for additional symptoms you may experience (e.g., hearing loss, hip soreness, depression.)

In the appropriate right-hand columns, put check-marks to rate the severity of each symptom.

Then, in the left-hand column, rank your symptoms in order of severity, with 1 being the most severe.

RANK	SYMPTOM	ABSENT	MILD	MODERATE	SEVERE
	<b>Post-exertional malaise:</b> worsening of symptoms after physical, cognitive or emotional effort				
	<b>Fatigue:</b> persistent or relapsing fatigue that substantially reduces activity level				
	<b>Sleep disturbance:</b> non-restorative sleep, insomnia, hypersomnia				
	<b>Pain:</b> in muscles and joints, headaches				
	<b>Stiffness:</b> that limits movement				
	<b>Physical dysfunction:</b> involving muscles, ligaments and joints				
	<b>Headaches/migraines:</b> of new type, pattern or severity				
	<b>Memory disturbance:</b> poor short-term memory				
	<b>Confusion and difficulty concentrating:</b> "brain fog"				
	<b>Dysphasia:</b> difficulty retrieving words, or saying the wrong word				

## APPENDIX A

RANK	SYMPTOM	ABSENT	MILD	MODERATE	SEVERE
	<b>Gastrointestinal disturbance:</b> diarrhea, irritable bowel syndrome				
	<b>Recurrent sore throat, recurrent flu-like symptoms</b>				
	<b>Dizziness or weakness upon standing, or light-headedness</b>				
	<b>Changes in body temperature, erratic body temperature, cold hands and feet</b>				
	<b>Heat/cold intolerance</b>				
	<b>Hot flushes, sweating episodes</b>				
	<b>Marked weight change</b>				
	<b>Breathlessness with exertion</b>				
	<b>Hypersensitivity to stimuli:</b> lights, noise, emotional or mental stress				
	<b>Muscle weakness</b>				
	<b>New sensitivities to food/medications/chemicals</b>				
	Add other symptoms here:				

## APPENDIX A

### #3: ACTIVITY LIMITATION WORKSHEET

The purpose of this worksheet is to identify particular activities that are difficult for you. We have included a section for overall capacity which ties in with the Functional Capacity Scale in Appendix B.

When you are looking at each activity, ask yourself if

- if you can do it safely
- if you can do it as fast, as frequently and as well as would be expected of someone your age
- if you pay a price for doing it or you simplify or avoid doing it

You may add other activities that cause you difficulty (eg getting going in the mornings). Think for instance of difficulties that caused you to leave your previous job.

Are you limited in:	Describe the problems you encounter
<b>PHYSICAL ACTIVITY:</b>	
sitting/standing	
walking	
lifting/carrying	
bending/stretching	
physical stamina	
<b>MENTAL ACTIVITY:</b>	
concentration	
memory	
seeing/hearing	
speaking/communicating	
mental stamina	
organizing, decision-making, multi-tasking	

Are you limited in:	Describe the problems you encounter
<b>PERSONAL NEEDS:</b>	
washing	
dressing	
bowel/bladder function	
sleeping	
eating	
breathing	
<b>HOUSEKEEPING:</b>	
shopping	
cooking	
cleaning/laundry	
administration – banking, bills, mail	
<b>OTHER ACTIVITY:</b>	
using a telephone	
using a computer	
driving a car	
passenger in car	
using public transport	
coping with bright lights	
coping with noise	
<b>OVERALL CAPACITY:</b>	
Participating in	
Family activities	
Social activities	
Community activities	
Sports and leisure activities	

## APPENDIX A

### #4: BASIC WORKPLACE REQUIREMENTS WORKSHEET

The purpose of this worksheet is to identify job requirements that you have difficulty meeting.

Note: We have included two lists, one from the previous version of this Guide and the other from the newer CPP-D application form.

Look at which of the expectations on Worksheet 4 are difficult for you to fulfill. Think about your old job and try to state why you had to leave. Also, think of a less demanding job you might do (perhaps part-time or flex-time, perhaps with fewer responsibilities). Why would you have difficulty with it? Are there other workplace requirements that should be added to Worksheet 4?

REQUIREMENT	Describe why meeting the requirement is difficult.
<b>Attendance (full-time, 35 - 40 hr/week):</b> Your ability to turn up for work on time every working day, with no unusual lateness or absence for medical reasons.	
<b>Attendance (part-time, 5 - 20 hr/week):</b> Your ability to turn up for work on time every working day, with no unusual lateness or absence for medical reasons.	
<b>Physical productivity:</b> Your ability to remain “on duty and alert” for the working day, with only normal rest and meal breaks.	
<b>Reliability:</b> Your ability to complete assigned tasks accurately, safely and on time.	
<b>Cooperation:</b> Your ability to contribute consistently to the work of a team.	
<b>Interpersonal skills:</b> Your ability to interact with your supervisor, colleagues and clients, as required for the job.	

**BASIC WORKPLACE REQUIREMENTS WORKSHEET** *continued*

Job requirements from the CPP-D application form

REQUIREMENT	Describe why meeting the requirement is difficult.
getting hired or create your own job	
get ready for work	
travel to and from work	
deal with co-workers and clients	
deliver a quality product or service	
follow a work schedule set by your employer and/or clients	



## APPENDIX B

# Functional Capacity Scale©

**This scale was designed by:**

**Drs. Alison Bested and Lynn Marshall, Environmental Health Clinic,**

**Women's College Hospital, Toronto, ON**

### **YOUR ACTIVITY LOG:**

1. Keep it in a handy place.
2. Complete it every day.
3. Take your completed logs to your doctor/other health care provider at follow-up visits.
4. Your logs assist your doctor/other health care provider to adjust your treatment plan as needed.
5. Completed logs may reassure your insurance company of your active ongoing participation in your treatment.

### **COMPLETING YOUR ACTIVITY LOG:**

1. You may change the times on the left hand side of the log to suit your usual schedule (e.g. if you usually get up at 10:00 a.m. and go to bed at 2:00 a.m., write 10:00 a.m. in as the first time, and adjust the other times accordingly).
2. Please note your activities with one or two word(s) in the appropriate time slots (e.g. dressed, made bed, nap).
3. Rest is defined as lying down, eyes shut, meditating or sleeping.

## APPENDIX B

### FUNCTIONAL CAPACITY SCALE:

The Functional Capacity Scale incorporates energy rating, symptom severity, and activity level. The description after each scale number should help you to rate your functional capacity at the beginning and end of each day.

0. No energy, severe symptoms including very poor concentration; bed ridden all day; cannot do self-care (e.g. need bed bath to be given).
1. Severe symptoms at rest, including very poor concentration; in bed most of the day; need assistance with self-care activities (bathing).
2. Severe symptoms at rest, including poor concentration; frequent rests or naps; need some assistance with limited self-care activities (can wash face at the sink) and need rest afterwards for severe post exertional fatigue.
3. Moderate symptoms at rest, including poor concentration; need frequent rests or naps; can do independent self-care (can wash standing at the sink for a few minutes) but have severe post exertion fatigue and need rest.
4. Moderate symptoms at rest, including some difficulty concentrating; need frequent rests throughout the day; can do independent self-care (can take a shower) and limited activities of daily living (e.g. light housework, laundry); can walk for a few minutes per day.
5. Mild symptoms at rest with fairly good concentration for short periods (15 minutes); need a.m. and p.m. rest; can do independent self-care and moderate activities of daily living, but have slight post exertion fatigue; can walk 10-20 minutes per day.
6. Mild or no symptoms at rest with fairly good concentration for up to 45 minutes; cannot multitask; need afternoon rest; can do most activities of daily living except vacuuming; can walk 20-30 minutes per day; can do volunteer work – maximum total time 4 hours per week, with flexible hours.
7. Mild or no symptoms at rest with good concentration for up to ½ day; can do more intense activities of daily living (e.g. grocery shopping, vacuuming), but may get post exertion fatigue if 'overdo'; can walk 30 minutes per day; can work limited hours, less than 25 hours per week; no or minimal social life.
8. Mild intermittent symptoms with good concentration; can do full self-care, work 40 hours per week, enjoy a social life, do moderate vigorous exercise three times per week.
9. No symptoms; very good concentration; full work and social life; can do vigorous exercise three to five times a week.
10. No symptoms; excellent concentration; over achiever (sometimes may require less sleep than average person).

NUMBER OF USABLE HOURS / DAY = Number of hours NOT asleep or resting/meditating with eyes closed.

## ACTIVITY LOG

Name: \_\_\_\_\_

Date Commencing: \_\_\_\_\_

DAY	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
<b>SLEEP:</b> Write number of hours slept and quality 1 = very poor 2 = poor 3 = fair 4 = good 5 = very good <b>Functional Capacity Scale:</b> Record your activity and energy rating every hour using the scale 1-10/10 <b>Activities:</b> (please specify)							
6 a.m.							
7 a.m.							
8 a.m.							
9 a.m.							
10 a.m.							
11 a.m.							
12 p.m.							
1 p.m.							
2 p.m.							
3 p.m.							
4 p.m.							
5 p.m.							
6 p.m.							
7 p.m.							
8 p.m.							
9 p.m.							
10 p.m.							
11 p.m.							
# of minutes walked							
# of usable hours / day							

Dr. Alison Bested ©  
 Dr. Rosemary Underhill

# Independent Medical Examinations (IME)

*“ . . . a person whose disability is to be or has been determined pursuant to the Act may be required from time to time . . . to undergo such special examinations and to supply such reports as the Minister deems necessary for the purpose of determining the disability of that person.” [CPP Regulations, Section 68(2)]*

Independent Medical Examinations (IMEs) are feared because of their use by the less scrupulous private insurers to obtain “evidence” that an individual is not disabled. These companies commission the examinations from individual examiners or agencies whose services have been used in the past, and who can be relied upon to give the “correct” opinion. The insurer’s choice of independent examiner is generally not negotiable.

CPP, however, will commission an IME because the adjudicator who is reviewing the file believes the applicant may be disabled, but considers the evidence to be insufficient. CPP selects an appropriate specialist or agency from the list of those who are practising in the region. The choice of examiner is usually negotiable.

An IME may be requested at the Reconsideration stage, or after Leave to Appeal to the SST Appeal Division has been granted. The IME will be with a specialist (the choice will depend on the circumstances); or it may be a Functional Capacity Evaluation (FCE) conducted in a clinic by an occupational therapist or physiotherapist. Very occasionally a neuropsychological IME, involving cognitive and other testing by a clinical psychologist, may be requested.

There will usually be an initial contact by phone to you or your representative, to suggest who is to do the examination and a possible date. Ask for a couple of days’ grace before you confirm the arrangements. Use this time to find out what you can about the proposed examiner. **The bottom line is, you want the examination to be done by someone who makes their living treating patients, not by doing contract work for insurance companies.** If the proposed examiner does not meet this requirement, ask for a change.

Before the IME, make an appointment with your own doctor for as soon after the examination as possible. The stress of the IME may cause a “crash”, and this should be documented by someone other than yourself.

If possible, do not go to the IME alone. You may need help getting home after the experience. Ideally, you would like to have a witness to the proceedings, but only another physician has the right to observe a physician’s examination. The examining physician may or may not allow your companion to observe.

If the IME is for a Functional Capacity Evaluation, ask your doctor for a note requesting that your heart rate, blood pressure and blood oxygen levels be monitored throughout the examination and that the examination be spread over two or more days (to document the effects of fatigue), and (if appropriate) specifying the amount of physical activity you can safely undertake. (A competent clinic should do these things as a matter of course).

## APPENDIX C

After your appointment, make notes:

1. How long was the examination? When did it start and finish?
2. Was a medical history taken? What questions were asked, who asked them, and what answers did you give?
3. Was there was a physical exam? If there was, who conducted it; the doctor or a nurse? Record the details of the examination.
4. Were you asked how you have been getting along at work or home? What questions were asked, who asked them, and what answers did you give?
5. Were any tests taken? If so what were they and what were the results?
6. How did the experience affect your symptoms, and for how long?

It is standard procedure that the IME report is the property of the agency paying for it. You can ask that a copy be sent to your family doctor (this should be done automatically if the report includes treatment recommendations). If the IME is in conjunction with an appeal, the report will be filed with the Social Security Tribunal as an exhibit and you will receive a copy. And in any event, a copy will always be placed on your CPP file, and you always have access to that.

**If the IME report is negative**, what can you do? First, discuss it with your doctor: Why do you think it is negative? Did the examiner(s) get all the facts correct but express a negative opinion? Does your doctor agree? Is there any merit in asking for a second opinion (your doctor can make a referral), or have you already been assessed by someone with the same or equivalent qualifications? Does the report make treatment recommendations which have already been considered (or tried) and rejected as unproductive? In a perfect world, one of your treating physicians would be willing to write a formal rebuttal for the record, but this rarely happens. That does not stop you from submitting your comments. The ultimate responsibility for resolving any contradictions lies with the adjudicator or appeal panel.

# Commonly Used Abbreviations

<b>CFS</b>	<b>CHRONIC FATIGUE SYNDROME</b>
<b>CPP-D</b>	<b>CANADA PENSION PLAN DISABILITY</b>
<b>CRP</b>	<b>CHILD REARING PROVISION</b>
<b>DCCB</b>	<b>DISABLED CONTRIBUTOR CHILD BENEFIT</b>
<b>DOA</b>	<b>DATE OF APPLICATION</b>
<b>DOO</b>	<b>DATE OF ONSET</b>
<b>DTC</b>	<b>DISABILITY TAX CREDIT</b>
<b>EI</b>	<b>EMPLOYMENT INSURANCE</b>
<b>ESDC</b>	<b>EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA</b>
<b>FM</b>	<b>FIBROMYALGIA</b>
<b>FCE</b>	<b>FUNCTIONAL CAPACITY EVALUATION</b>
<b>ISP</b>	<b>INCOME SECURITY PROGRAMS</b>
<b>IME</b>	<b>INDEPENDENT MEDICAL EXAMINATION</b>
<b>LTD</b>	<b>LONG TERM DISABILITY</b>
<b>LTDI</b>	<b>LONG TERM DISABILITY INSURANCE</b>
<b>ME</b>	<b>MYALGIC ENCEPHALOMYELITIS</b>
<b>MLA</b>	<b>MEMBER OF LEGISLATIVE ASSEMBLY</b>
<b>MP</b>	<b>MEMBER OF PARLIAMENT</b>
<b>MPP</b>	<b>MEMBER OF PROVINCIAL PARLIAMENT</b>
<b>MQP</b>	<b>MINIMUM QUALIFYING PERIOD (i.e. Period of Coverage)</b>
<b>SST</b>	<b>SOCIAL SECURITY TRIBUNAL</b>
<b>SST-GDIS</b>	<b>SOCIAL SECURITY TRIBUNAL-GENERAL DEVISION-INCOME SECURITY</b>
<b>SST-AD</b>	<b>SOCIAL SECURITY TRIBUNAL APPEALS DIVISION</b>



## APPENDIX E

# Key Contacts

### National ME/FM Action Network

The National ME/FM Action Network has extensive information on Myalgic Encephalomyelitis and Fibromyalgia. We maintain a list of support groups across the country. We also maintain a list of legal professionals across Canada who are familiar with these illnesses. Contact us if you are looking for a lawyer.

**Internet:** <http://mefmaction.com>

**Email:** [mefminfo@mefmaction.com](mailto:mefminfo@mefmaction.com)

**Telephone:** 613 829-6667. Fax 613 829-8518

**Address:** 512 – 33 Banner Rd, Nepean, ON K2H 8V7

**Charitable registration number:** (BN) 89183 3642 RR0001

### Service Canada

Information about Canada Pension Plan – Disability (CPP-D) can be obtained from Service Canada. Service Canada offers single-window access to a wide range of Government of Canada programs and services for citizens through more than 600 points of service located across the country, call centres, and the Internet.

**Internet:** <http://servicecanada.gc.ca>

**Telephone (toll-free):** 1-800 277-9914 TTY: 1-800-255-4786

The nearest Service Canada office to you \_\_\_\_\_

### Your Health Care Provider

Your primary health care provider will have an important role in your application.

Name and contact information: \_\_\_\_\_

### Advisor or Representative

You may call on others to help you prepare your application. You can appoint someone to be your official representative when dealing with CPP-D issues.

Name and contact information: \_\_\_\_\_

## APPENDIX F

# Key Resources

This Guide, along with additional material of interest, can be found at:

[http://mefmaction.com/index.php?option=com\\_content&id=425&Itemid=364](http://mefmaction.com/index.php?option=com_content&id=425&Itemid=364)

**For patients with ME: *Overview of the Canadian Consensus Document for ME/CFS***

Available at: <http://mefmaction.com/images/stories/Overviews/ME-Overview.pdf>  
or contact the National ME/FM Action Network

**For patients with FM: *Overview of the Canadian Consensus Document for Fibromyalgia Syndrome***

Available at: <http://mefmaction.com/images/stories/Overviews/FMSOverview08.pdf>  
or contact the National ME/FM Action Network

**For patients exploring whether or not they have ME combined with depression or anxiety:  
*Assessment and Treatment of Patients with ME/CFS. Clinical Guidelines for Psychiatrists* by Dr.  
Eleanor Stein.**

<http://eleanorsteinmd.ca/download/260/>

**The website for Canada Pension Plan – Disability**

<http://www.servicecanada.gc.ca/eng/services/pensions/cpp/disability/benefit/index.shtml>

**Canada Pension Plan Act**

<http://laws-lois.justice.gc.ca/eng/acts/C-8/index.html>

**CPP-D Adjudication Reference Tool for Fibromyalgia, Chronic Pain Syndrome, Chronic Fatigue Syndrome and Multiple Chemical Sensitivities 2006**

[http://mefmaction.com/images/stories/\\_CPP/FM\\_CPS\\_CFS\\_Adj\\_RefTool.pdf](http://mefmaction.com/images/stories/_CPP/FM_CPS_CFS_Adj_RefTool.pdf)



## NEW MEMBERSHIP or RENEWAL fees

**ANNUAL MEMBERSHIP FEE :**  
\$30.00 per year including quarterly newsletter Quest

**IN ADDITION**, I would like to donate \*\$\_\_\_\_\_ to help with the many projects of the National ME/FM Action Network.

*\*Tax Receipt issued for all donations*

### TOTAL PAYMENT:

\$\_\_\_\_\_

### PAYMENT OPTIONS

☐ Cheque

*Please make Cheque Payable to the:*

NATIONAL ME/FM ACTION NETWORK

☐ VISA

☐ Master Card

☐ Other \_\_\_\_\_

Card Number:

\_\_\_\_\_

Expiry Date:

month \_\_\_\_\_ year \_\_\_\_\_

CVV \_\_\_\_\_ (3 digit code on back of card)

Name on Card:

\_\_\_\_\_

Signature:

\_\_\_\_\_

# MEMBERSHIP APPLICATION or RENEWAL FORM

*For online application and renewals goto to  
[MEFMaction.com](http://MEFMaction.com)*

Date: \_\_\_\_\_

Name / Organization

\_\_\_\_\_

Contact Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

City \_\_\_\_\_

Province/State \_\_\_\_\_ Postal Code/Zip \_\_\_\_\_

Country \_\_\_\_\_

Email \_\_\_\_\_

Phone \_\_\_\_\_

Website \_\_\_\_\_

☐ Please send news updates to my email address

☐ **Do not** send news updates to my email address

\_\_\_\_\_

☐ Please send an electronic version of the Quest newsletter

☐ Please send the Quest newsletter to my mailing address

### MAIL FORM & PAYMENT TO:

NATIONAL ME/FM ACTION NETWORK  
512-33 Banner Road  
Nepean, ON K2H 8V7

## THANK YOU FOR YOUR SUPPORT!

CREDIT CARD TRANSACTIONS CAN BE FAXED TO 613-829-8518

