



CANADA PENSION PLAN DISABILITY APPLICATION & APPEALS GUIDE

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

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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.

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Forward

You want to work but you are having great difficulty because of your health or you find that you can't work at all. You have worked in the past and you wonder if you could receive Canada Pension Plan Disability payments.

If you want to receive payments, you have to apply in writing. You have to fill out a questionnaire and you need a physician to fill one out as well. Your application package has to convince a decision-maker of two things:

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

Applications are often turned down at the first stage, but there is an opportunity for a second, a third and possibly even a fourth opinion.

We believe that if you qualify for CPP-D benefits you should receive them. Unfortunately, some people do not receive their benefits they deserve because:

- ◆ they do not know that they qualify,
- ◆ they do not apply because they think they won't be successful,
- ◆ they think it is too difficult to apply,
- ◆ they think they are too late to qualify,
- ◆ they don't put their best case forward, or
- ◆ they don't appeal when they are turned down.

In this Guide, we hope to make the CPP-D plan and the process of applying more understandable so that you can get the benefits you are entitled to.

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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 benefits 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 for benefits 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 disability benefits is particularly challenging for people with ME/CFS or FMS. These illnesses vary in severity from person to person so the diagnosis by itself is not proof that you qualify for benefits. 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 benefits 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 benefits 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/CFS and FMS, 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 activities of daily living or at work. 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 Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (abbreviated to ME/CFS throughout this Guide) or Fibromyalgia Syndrome (FMS); 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 benefits 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 institution 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 benefit is administered by Service Canada on behalf of Human Resources and Skills Development Canada (HRSDC).
- ◆ 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 benefits.
- ◆ If you are approved, the amount you receive is based on your contributions to the Plan and not on the severity of your disability.
- ◆ If you qualify for benefits, your children may qualify for benefits as well.
- ◆ CPP-D is an all-or-nothing benefit. 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 benefits. There are no partial benefits for being partially disabled.

- ◆ The maximum monthly payment in 2011 was \$1153.37, while the average monthly payment was \$822.32.
- ◆ The CPP-D plan provides monthly payments. It does not include other benefits such as dental coverage or prescription drug costs.

Here are some key points about CPP-D applications:

- ◆ You must apply for a disability benefit in writing. The forms and questionnaires which make up the application package are available from Service Canada. You are free to add supporting material such as letters from family members or colleagues.
- ◆ 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 substantial gainful employment) and prolonged
 - ◆ that the date of onset of your disability was while you had CPP coverage
- ◆ If your application for a CPP disability benefit is not granted at the initial phase, there are three opportunities for you to have your application reviewed or reconsidered.

Once you qualify for and begin receiving a CPP disability benefit, 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 2011 was \$4,800).

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

CPP-D is just one benefit or program for Canadians with disability. 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 "Advancing the Inclusion of People with Disabilities 2009". Other federal programs include the Disability Tax Credit and medical deductions from income tax. The application processes for these

are separate. Do not assume that, if you qualify for CPP-D, these benefits will flow automatically. Do not assume that, if you are turned down for CPP-D, you won't qualify for these disability benefits.



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 you have considerable difficulty organizing your case and filling in your forms, you may formally appoint somebody to be your representative. With your signed authorization, they can access and discuss your file with CPP-D staff.

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. Other health care providers are unfamiliar with CPP-D applications, especially when it comes to ME/CFS and FMS cases.

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 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 benefits 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/CFS and FMS 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 benefit 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 qualify for benefits 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 to provide, among other benefits:

- ◆ as a pension plan, it provides retirement benefits to applicants who have reached retirement age; and
- ◆ as an insurance plan it provides disability benefits 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.

B. When Are You Covered for CPP-D?

The coverage rules of CPP are not quite the same as typical insurance plans. A typical (e.g., home or auto) insurance policy provides coverage for a specified period on payment of a premium, and the coverage ceases instantly at the end of that period unless renewed by the payment of an additional premium.

Under CPP-D, you are generally not “insured” unless you have made contributions in four of the last six calendar years. If you haven’t made contributions in four calendar years, you do not qualify. If you have made contributions for four



consecutive calendar years, you will continue to be “insured” (i.e., eligible for benefits) for two calendar years after you cease making contributions (provided you are under the age of 65). This combination, of valid contributions plus two extra years, is called the “**Minimum Qualifying Period**” (MQP). Think of your MQP as your period of coverage. Your eligibility will usually end on a December 31 because of the linkage with the tax-collection system.

C. Date of Onset (DOO)

The Date of Onset of your disability 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 for benefits.

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/CFS and FMS 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 FMS and was missing quite a few days of work (paid sick leave). She and her doctor eventually agreed that her FMS 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, 2008, they were in a relatively minor car accident, but they developed FMS 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 2008 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 in June 2009 after she had made her contributions for 2009 and completed her “minimum qualifying period”.

This illustrates a challenge for CPP-D staff. Is it fair to assign Jack a December 2008 date of onset and to assign Jill, under the same circumstances, a June 2009 date of onset?

Pauline was laid off from her job in June 2005. She wasn't feeling well and did not have the energy to look for another job. A year later (June 2006) she received a diagnosis of ME/CFS. Looking back, she realized that it was ME/CFS symptoms that prevented her from looking for work. She could apply for CPP-D benefits using June 2006 as the date of onset since the diagnosis was still during her Minimum Qualifying Period which would run out in December 2007. Alternatively, she could try to argue that the Date of Onset was in June 2005 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/CFS.

Paul was in the same situation as Pauline, but didn't get a diagnosis until June 2011. He then applied for CPP-D benefits. He would have to provide evidence that his disability started sometime before December 2007 (the end of his Minimum Qualifying Period) and had been continuous since. If he is successful, he will not receive full retroactive benefits (see Deemed Date of Onset in Section F below.)

D. Special Provisions for CPP Coverage

If you had not contributed to CPP in four of the last six years, one of these special provisions might help you.

- ◆ The Act was amended in 2008 to relax the requirement for individuals with 25 or more years of contributions, to three of the previous six years. (This applies only for applications made after March 2008 with dates of onset later than December 2006.)
- ◆ If you do not meet the “four out of six” requirement, but were disabled before the end of 1997 (such cases still occasionally occur), the former requirements were contributions in five of the previous ten years or two of the previous three years.

- ◆ **Child Rearing Provision:** If you left your job to care for children under the age of 7, that period of time may be excluded from the MQP calculation. The application form is included in the application kit for disability benefits.
- ◆ **Credit Splitting:** If you are divorced or separated, you can claim a portion of your former partner's credits. These will be added to your contribution record and used in the calculation of your MQP as if you had made them yourself. The application form for credit splitting is not in the disability application kit and must be requested separately.
- ◆ **Work Outside Canada:** If you worked and contributed in another country with which Canada has a reciprocity treaty, you should check with CPP to see if you qualify for international benefits.
- ◆ **Proration:** If you worked for only a few months in your final year of work and failed to achieve the minimum earnings for contributions, any contributions you did make will have been refunded. If you repay those contributions, the extra months will be reinstated on your record and included in the MQP calculation.

Example of Proration: Peter left work in February 2005 to go back to school. His earnings for that year were less than the minimum required to make CPP contributions, so the contributions deducted from his pay in January and February were refunded when he completed his 2005 income tax return. As a result, his MQP ended in December 2006. He was in a serious car accident in January 2007 which disabled him after his eligibility ended. Peter was allowed to repay the refunded contributions he had made in 2005. This changed the MQP to the end of February 2007 and so he was covered by the plan at the Date of Onset (January 2007) of his disability.

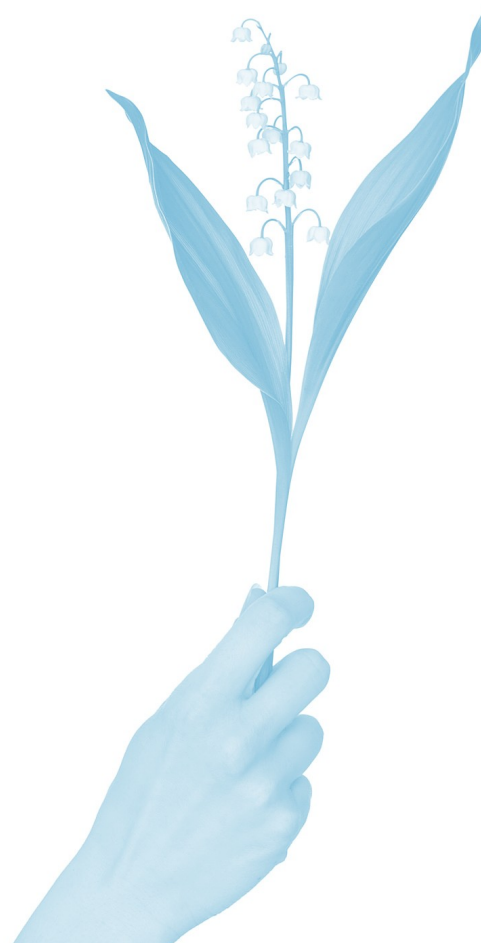
E. Deemed Date of Onset for Payment Purposes When the Application is Delayed

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 Minimum Qualifying 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.

Cathy left work in December 2004 because of her FMS. If she had applied for CPP-D before March 2006, she would have received payments starting in April 2005. However, she did not apply for CPP-D until December 2008. CPP-D agreed that she became disabled while she was covered for CPP-D. They then assigned a Deemed Date of Onset for September 2007 (15 months prior to the date of application). As a result, her payments started in January 2008, the fifth month after the deemed date of onset. Because of her delay, she missed out on payments for the period between April 2005 and December 2008.

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 benefits 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, benefits will be granted. If the adjudicator is not reasonably satisfied, s/he will deny benefits 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. You are not applying for CPP-D because you have FMS and/or ME/CFS (illnesses). You are applying because you have disabling symptoms which are a result of your illness(es).

Here is a chain that illustrates the distinction.

ILLNESS(ES) ⇒ SYMPTOMS ⇒ IMPACT ON ACTIVITIES ⇒ IMPACT ON EMPLOYMENT

Let's say you have FMS and your symptoms include pain and fibrofog. If the symptoms are mild, they will have relatively little impact on activities such as carrying on a conversation or travelling to the office. If the symptoms are severe, they will have a major impact. Since work probably involves carrying on conversations and travelling to the office, your symptoms may have a small or large impact on your ability to work.

Appendix A has three worksheets.

Sheet 1 lists a number of symptoms associated with ME/CFS and FMS. Check the ones that apply to you.

Sheet 2 lists a number of activities of living. Check the ones that are a problem for you.

Do You Qualify as Disabled?

Now ask yourself which symptoms on Sheet 1 make them a problem. You may find that other symptoms need to be added to Sheet 1. For instance, you may have difficulty carrying on conversations because of hearing loss, you may have difficulty walking because of an old hip injury, or you may have difficulty in social situations because of motivational issues due to depression. If so, add hearing impairment, hip soreness or motivational issues to Sheet 1. Similarly, you may want to add activities to Sheet 2.



Marc tried filling in these sheets. One of his symptoms was waking up chilled which made it hard to get going in the morning. He added “getting going in the morning” to Sheet 2. Another activity that causes him considerable difficulty is holding a pencil. He added that to Sheet 2, then wrote a special note about finger strength on Sheet 1.

Sheet 3 lists some requirements for the workplace – attendance, cooperation, etc. Check which ones are a problem for you.

Take a look at the job description of your old job. Are there other requirements that should be added to Worksheet 3? This will illustrate why you have difficulty with your old job. However, the test under the legislation is whether you can do “any” job. Therefore, try to generalize from what you said. If your job description involved driving a vehicle and your pain and concentration symptoms make that a problem, could you say that you would not be able to operate any machinery?

Now work back from Sheet 3 to Sheet 2 to see what activities limit your participation in the workforce, and then work back to Sheet 1 to see what symptoms are at play.

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.

The set of disabling symptoms (Worksheet 1) is the basis of your disability. The diagnosis or diagnoses explaining these symptoms form the medical explanation for your disability.

Take a look at the symptoms you have identified as important on Worksheet 1. Compare them to the diagnostic criteria in the Canadian Consensus Definitions for ME/CFS and FMS. Is there a good one-to-one fit? If so, you can base your submission on ME/CFS or FMS alone. If you find that you have included symptoms that are not ME/CFS or FMS related, base your submission on the combination of factors (e.g. ME/CFS and hearing loss, FMS and the hip injury, ME/CFS and depression.) If there isn't a good fit between ME/CFS or FMS and the symptoms on your worksheet, then you need to review your diagnosis with your health care provider.

Hint: Do not worry about having a number of illnesses listed. Here is a diagnosis that appeared in one appeal case: “The Appellant suffers from fibromyalgia, chronic fatigue, thoracic outlet syndrome, irritable bowel syndrome, panic disorder with agoraphobia, major depression and hypertension.”

Finally, think back over your the medical care you have received. What is the evidence to support the diagnosis or diagnoses? Could the evidential support be strengthened (e.g. through a consultation with a rheumatologist)? If you have encountered a health professional who has questioned your symptoms or diagnosis and these comments appear on your medical record, this may cause you problems during your application. You will have to consider how to reconcile your application with what that person has written.

Key messages:

- ◆ **determine the set of symptoms that affect your ability to carry out activities and to work,**
- ◆ **ensure that your diagnoses align with these symptoms,**
- ◆ **consider whether the evidence on your medical records supports the diagnoses. Consider also**

whether any evidence on your medical record undermines the diagnoses,

- ◆ **focus on your symptoms and activity limitations when describing your disability.**

C. Is Your Disability Severe?

One way to check if your disability is severe is to measure yourself using the Functional Capacity Scale in Appendix B. This scale was developed by Dr. Bested and Dr. Marshall of the Environmental Health Clinic of Ontario. If you generally score 6 or lower, it is very unlikely that you would be able to work. A score of 7 is borderline. At levels 8 and above, you are probably able to work unless there are other factors at play.

A second way to check if your disability is severe is to look at your work record before and after the onset of your disability. The test (outlined in CPP-D's "adjudication framework") is not clear-cut but here is a quote 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 (\$960/month in 2011), 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 incapable.

A third way to check if your disability is severe is to review the worksheets in Appendix A to see if they are showing a significant degree of activity limitation.

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/CFS and FMS 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 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 when 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?

Nobody can predict your future and CPP-D staff don't expect you or your health care provider to do so. However, it is now well known that ME/CFS and FMS can be long-term conditions and CPP-D should assume this. That being said, it is very important that the health care provider state clearly on your CPP-D application that your disability is expected to be “long-continued and of indefinite duration”.

One problem you may encounter is the issue of treatments that were recommended but which you have not followed. These may come back to haunt you. It is a good idea to explain why in your submission.

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

- ◆ What if it isn't really ME/CFS 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 medications? 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.

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 of 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 for benefits, decision-makers do not consider your assets and other income, including disability benefits 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 benefits 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.

If you decide that you need time to collect more evidence (e.g., by keeping an activity log to place yourself on the Functional Capacity Scale), submit your application first. You can always add evidence later.

5 Putting Together Your Application

Filling in the forms

A. The Application Kit

You must apply for CPP-D using the CPP-D application kit. The kit can be downloaded from the Service Canada website or you can obtain a kit from Service Canada.

In the future it may be possible to submit the application online, but for now the forms must be printed, dated and signed and then either mailed or hand-delivered to Service Canada.

If you download the application kit from the Service Canada website, you will be offered a choice of two formats: *hypertext markup language* (html) and *portable document format* (pdf). The pdf-formatted documents can be filled on the computer and printed. However, you cannot save your changes on the computer so you would have to fill in the final version of each form during a single session.

The application kit contains:

- ◆ the application form to be completed by you providing basic data – name, address, number of children etc.
- ◆ a questionnaire to be completed by you describing your disability
- ◆ a medical report form to be completed by the physician who is most familiar with your medical condition (after you fill in the first part.)
- ◆ two copies of a consent to release of information form. You fill in these forms and give one copy to your doctor and the other copy to Service Canada. This gives your doctor permission to share information with Service Canada, and gives Service Canada permission to seek additional information from your doctor if necessary.
- ◆ a CPP child rearing provision form which you should look at if you have children because it could affect your entitlements, and

- ◆ an explanatory booklet “to help you complete your application for disability benefits”

The minimum requirements for a complete application are:

- ◆ the application itself;
- ◆ the two questionnaires; and
- ◆ the consent form

These are date-stamped on receipt by Service Canada, and that date becomes the **date of application** (DOA).

Hint: If your application is submitted in stages (frequently the medical report is sent in separately), the DOA is the date on which the application form itself is received. If it is fifteen months or more since you stopped work, send in your application and the Service Canada release form while you work on the questionnaires to ensure that you receive the maximum retroactivity. The authorities will then give you about 90 days to complete and submit the questionnaires.

B. Organizing the Evidence

a) Your medical records

Select the doctor who knows your disability the best. Hopefully the doctor will already have a complete record of all investigations and treatments. Discuss with your doctor your intention to apply for disability benefits before asking the doctor to complete the Medical Report.

- ◆ 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.

- ◆ Review with your doctor's office that all the specialists you have seen have in fact sent their reports and check up on those who haven't.
- ◆ 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.

b) Other evidence.

- ◆ If you have been dealing with another agency for your condition (disability insurer, Workers' Compensation), request that a copy of your file be sent directly to CPP.
- ◆ You have the option to submit with your application supportive letters from family members, close friends, and your former employer and colleagues. This "third-party testimony" can be particularly helpful if the writers have known you for a long time and can testify to the changes in your abilities after you became ill. If you decide to do this, now is the time to ask them so that they have plenty of time to prepare their letters.

Hint: It may take some time to put together all the material for your application. Do not delay your application unduly. Additional evidence can be submitted later.

C. Specific Issues in Completing the Application

(This section should be read in conjunction with the "General Information and Guide" which is included in the application kit.)

Hint: You don't have to fit all your information into the space provided on the form. If you want to expand on any section, feel free to write the information on a separate sheet. Write "see attached" in the appropriate sections of the application. Ensure that each page is headed by your name, Social Insurance Number and the title of the relevant form.



MEDICAL REPORT

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.

- ◆ Make an appointment to see your doctor.
- ◆ Give the doctor a completed **Consent form**. This gives the doctor the necessary authority to share your medical information with CPP-D.
- ◆ Give your doctor the **Medical Report form** with the personal information section completed. To help your doctor, take your symptom list and the list of your main symptoms and their impact (see Appendix A) and, if you have it in draft form, your Questionnaire for Disability Benefits.

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.

- ◆ Ask your doctor to attach a copy of your entire chart to the Report; i.e. specialists' letters, test results, any records of your visits to hospital emergency

departments, physiotherapy (etc.) reports and the notes from your visits. You may be charged for the photocopying.

- ◆ Your doctor 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.

APPLICATION:

Be sure to provide all the required information legibly and in ink. Note the instruction to attach a voided blank cheque if you wish your benefits to be paid by direct deposit. If a representative is completing this application on your behalf, the representative must complete Part 3 on page 4 of the application.

DISABILITY QUESTIONNAIRE:

- ◆ Question 7 should be left blank unless you were self-employed. If you were self-employed, you should attach copies of your tax summaries for the last two years of business activity.
- ◆ Question 10: You may have made a formal agreement with your employer to carry a lighter workload or reduced hours of work; or you may have taken all your vacation/sick leave and leave without pay in order to rest. In either case, your answer to this question is “yes”, with the appropriate explanation.
- ◆ Questions 11 & 12: If you answer “yes” to either of these questions, your application will probably be denied. According to current interpretations of the Act, CPP does not provide benefits for temporary disability.
- ◆ Question 15: Only answer “yes” if you received **regular** EI benefits. If you received **medical** EI benefits, you should answer “no”. (Regular EI benefits are normally assumed to mean the recipient is able and willing to work. If this applies to you, it does not automatically disqualify you, but your situation will have to be explained.)
- ◆ Question 16: The date you could no longer work (your claimed Date of Onset) is usually the date you stopped work. If you believe it was a different date, say so.
- ◆ Question 18: In this section write all the diagnoses whose symptoms have a direct effect on your ability to function, e.g. ME/CFS, FMS. Include conditions which are frequently associated with the main medical

condition, such as Irritable Bowel Syndrome, and any other conditions which affect your ability to function. (See Chapter 4)

- ◆ Question 19: Worksheet 3 should identify the basic job requirements you are unable to do. Your most severe symptoms (from Worksheet 1) will explain why you are unable to do them.
- ◆ Question 21: Group your “other activities” into categories: physical recreations; social life; hobbies; volunteer work; support group participation, etc. If your condition worsened over a period of years, you probably dropped each category in a sequence as your ability to cope with its demands decreased.
- ◆ Question 22: If your case is typical, it will be difficult to do justice to your symptoms in the space on the form, and we recommend you answer this question on a separate sheet of paper.

You could say that your symptoms vary in severity from day to day; that in an average month you are housebound for (*number*) days, able to do minor essential activities (e.g. medical appointments) on (*number*) days, and able to do more strenuous activities, if at all, on the remainder. Specify what you mean by more strenuous activities. For you it might mean going to the next door neighbour's for coffee. For a healthy person, it could mean shoveling topsoil.

If otherwise routine activities (personal care, housework, cooking) take a long time or require help, or if your spouse/partner has taken over some or all of the routine tasks, say so. Worksheet 2 will help you organize your answers.

Try to relate each question to your normal activities: How long can you sit before you have to change position? If you are standing in a queue, how long is it before you have to shift or sit down? Do you ever take walks (do you have a dog?), and how far? Or what are your physical limits at the local supermarket or shopping mall - do you use a shopping cart for support, and are you able to load/unload your shopping without assistance? How difficult is it for you to reach for something on a shelf, or to unload a dishwasher?

If your mental abilities have declined, it is quite possible you have compensated without realizing you have done so. Do you avoid noisy or brightly-lit locations because they are distracting? Do you write yourself little reminders? Do you need to write down a phone number before dialing? Do you try to avoid driving after dark or during rush hour?

- ◆ Question 24: Do not restrict yourself to the last two years. List all the physicians you have seen since you became ill.
- ◆ Question 26: Attach the pharmacy printout of your medication history. If you had to discontinue some medications because of unpleasant side reactions, point this out and confirm that it was done in consultation with your doctor.
- ◆ Question 27: List all the treatments you have tried/are continuing to receive - including any “alternative medicine” approaches. If reports are available and were not included with your doctor’s report, attach them to your application.
- ◆ Question 29: Include any accommodations you have made for your condition, e.g., grab bars in the bathroom, relocating bed to main floor.
- ◆ Questions 30: Answer “Yes”, with the condition that your participation should be subject to your doctor’s agreement that it will not worsen your condition.

ADDITIONAL INFORMATION

If you feel that your completed questionnaires have not fully captured the impact of your illness on your life, you can include a covering letter to “fill in the gaps”. You can do this in the form of a personal history, emphasizing key incidents (birthdays, family gatherings, etc.) when your condition prevented you from participating, and/or by describing a “typical” day, or in any other way you choose. If you have kept a personal diary noting the day-to-day variations in your symptoms and activities, this will provide good reference material for a personal letter.

You can include any other material you think relevant.

D. Submitting the Application

Make sure you have all the documents (there is a checklist on page 10 of the information guide), and that:

- ◆ you have written your Social Insurance Number (SIN) on each page of every form;
- ◆ you have signed and dated each form where indicated; and
- ◆ each page of any attached document is identified with your name and SIN.

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 pages 4 & 5 of the information guide) 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.

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.

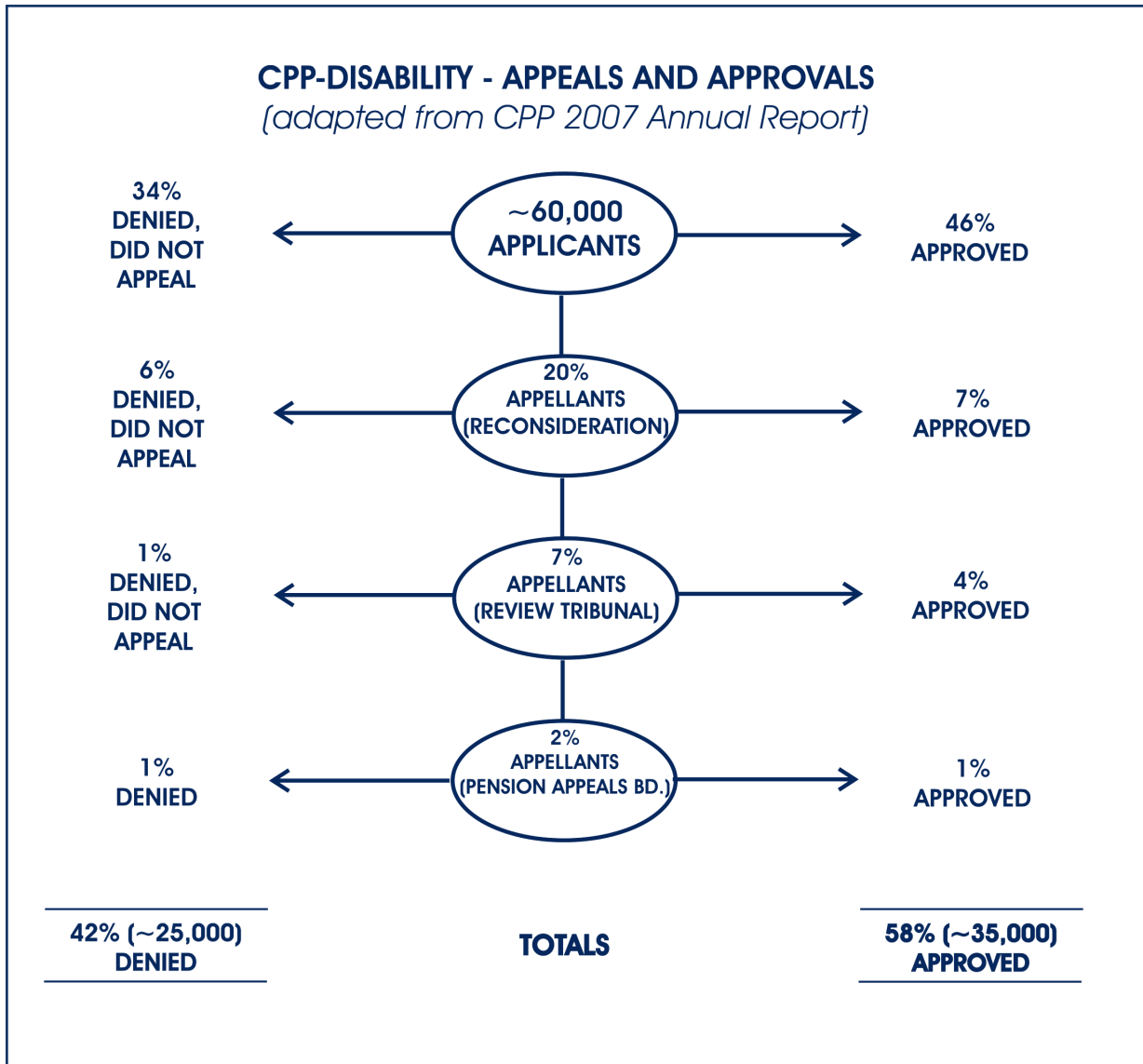
If your application is approved, you will receive a letter headed “Notice of Entitlement”; this will be discussed in Chapter 7 of this Guide.

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 to grant you benefits could be overturned.

6 If You Are Turned Down

Here is how you keep going



You may feel hurt, rejected, tired and frustrated to have your application turned down. You may not want to have anything else to do with the system. We understand that. But we would like to give you a little context.

As the chart shows, just less than half the applications are accepted at the initial application stage. You should not take a rejection personally. Many people are turned down and many people give

up at that point. However, of the people who continue, most are successful. We think that quite a few of the people who do not appeal would receive benefits if they kept going.

In this chapter, we go through the various levels of appeal. Hopefully, you won't need to go through all the stages. But an important message is that the appeal process is quite user-friendly.

A. Reconsideration

If your application has been denied, you will receive a letter stating the reasons for denial of benefits. 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.) Another possibility is that the adjudicator has concluded that the date of onset of your disability was outside your Minimum Qualifying Period.

If you still believe you should be considered for CPP-D benefits, all you have to do is send a **written request** for reconsideration within 90 days of your receipt of the letter of rejection. Include your name, address, phone number, SIN, and signature. Because you have the absolute right of appeal, you do not need to give reasons. Your letter could simply state,

“I received the denial of my application on <date>. I do not agree with your decision and I wish to appeal.”

We of course suggest writing more than that. Do you think that the adjudicator overlooked some information? Has more information become available since your application was submitted? Perhaps your health care provider has some suggestions. Just keep the 90 day appeal period in mind.

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.

If you are not sure what information CPP has, you have the right to request a copy of your file, and the request can be included in your appeal letter. However, do not delay your appeal; there will usually be an opportunity to add information after the appeal letter is sent and before any decision is made.

This first stage of appeal usually does not require legal assistance.

CPP may request that you attend an “independent medical examination”, but rarely does so at this stage (see Appendix “C” for tips on IMEs).

The time for reconsideration to be processed varies.

You will receive a Notice of Entitlement if the reconsideration results in an approval of benefits. This is discussed in chapter 7.

You will receive a letter of explanation if the reconsideration results in a denial of benefits. The denial letter will again explain your right to appeal – the right to appear before a Review Tribunal.

The bottom line: The reconsideration process is easy – all it takes is a letter and you get a second chance

B. Review Tribunal

Office of the Commissioner of CPP/OAS Review Tribunals - Contact Information:

Phone: 1-800-363-0076

Fax: 1-866-263-7916

Mailing Address: PO Box 8250, Station “T”, Ottawa, ON., K1G 5S5.

Street Address (for courier service):
282 Dupuis St., Vanier, ON.,
K1L 7H9.

Internet: <http://www.ocrt-bctr.gc.ca>

E-mail: info@ocrt-bctr.gc.ca

This is your first opportunity to tell the decision makers your story face-to-face.

Hint: While it is possible to go to the appeal hearing alone, this is the point at which you should consider seeking legal assistance. One place to look is on the OCRT website. There is a section on legal aid resources.

The Office of the Commissioner of Review Tribunals (OCRT) is an independent body, created by statute to administer the second level of appeals under the CPP and OAS (Old Age Security) legislation. The Commissioner reports to Parliament through the minister responsible for CPP (currently the Minister of Human Resources and Skills 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”.

It is important to note that, while the process is still adversarial (you against CPP), the Review Tribunal is impartial. It is also important to recognize that there are office staff and tribunal members. The office staff will provide information to appellants about how the system works to ensure that the playing field is as level as possible.

“In the case of appeals involving disability benefits which represent some 95 percent of all appeals, the simple fact is that many Appellants are ill and experiencing psychological stress because of their condition and financial pressures. If left to their own devices, most Appellants - as would be the case with most members of the general public - will remain far from expert on either the factors affecting their eligibility for benefits under the Canada Pension Plan and the Old Age Security Act or how to conduct themselves during a Review Tribunal hearing. These circumstances do not make for a level playing field.” (OCRT Annual Report for 2000-2002)

Visit the OCRT website or contact OCRT for an overview of the entire Review Tribunal process. You may also find it convenient to follow OCRT’S step-by-step guide when completing your notice of appeal. After your appeal has been submitted and acknowledged, there are additional resources to help you prepare for your appeal hearing.

Notice of Appeal: You must appeal in writing to the Office of the Commissioner of Review Tribunals **within 90 days of receiving the Reconsideration decision.** You can use the Notice of Appeal form

from OCRT’s website, or you can write your own letter. You do not need to give a reason for your appeal, other than disagreeing with the department’s decision, although if there are specific issues you should identify them. Remember to provide your SIN as well as your name, address, phone number and the date you received your denial letter and make a copy of it for your file. Send your letter of appeal by registered mail and staple the registered mail receipt to your copy.

Acknowledgement: OCRT will acknowledge receipt of your appeal and send information on what to do to prepare for the appeal hearing. You will be given an appeal number for reference purposes; this should be used in all communications with OCRT in preference to your SIN. At the same time, OCRT will request a copy of your file from CPP.

Client Service Officer: OCRT will also assign your appeal to one of its “Client Service Officers”, one of the most important people you will encounter in the entire process. Basically, the Client Service Officers are responsible for making sure that the preparations for hearings are as complete as possible. This includes not only getting all the paperwork in order, but making sure – as far as possible – that you understand the paperwork and the process, that you have been given all the resources relevant to your appeal, and that all your questions have been answered (see the “Preparing An Appeal” section on the OCRT website).

Timeline: Currently, it is about ten months to a year from the date of appeal to the date of the hearing (this may vary from region to region). The approximate timeline is summarized on the OCRT website:

- ◆ (within 30 days): Acknowledgement, appointment of Client Service Officer.
- ◆ (within 3 months): Distribution of first section of Hearing File; Client Service Officer will review with you or your representative (if you have one) the completeness of the evidence and any expectations for additional evidence and/or witnesses..
- ◆ (within 6 months): Preliminary information on the date and location of the hearing; deadline established for the submission of additional evidence.

- ◆ (at least 30 days before the hearing): Distribution of the second section of the Hearing File (a compilation of all the documents related to your appeal) and the department's "Explanation of the Decision under Appeal".

Providing New Information: You are allowed to submit new evidence (medical or other) at any time, up to and including the hearing itself, but with one very important caveat: if there is "too much" new material "too close" to the hearing date, the Tribunal is not obliged to consider it and the only alternative is to re-schedule the hearing. There is a significant cost and inconvenience associated with doing this, and OCRT is naturally concerned that it should be avoided if at all possible.

- ◆ New evidence should be sent to OCRT (**not CPP**), to the attention of your Client Service Officer.
- ◆ Your Client Service Officer will check with you or your representative well before the scheduled hearing date, to make sure that all the evidence has been submitted.
- ◆ If, for some reason, it is unavoidable that new evidence cannot be available before the hearing, you should discuss this with your Client Service Officer as soon as possible, and take **five** copies to the hearing.

Hearing Arrangements: OCRT will make all the arrangements for your appeal hearing (date, place, time, tribunal members) and will notify you and your representative several months before the date. (If the selected date is not convenient, you can ask for a postponement. The sooner this is done, the better.)

Panel Structure: Your appeal will be heard by a three-member panel: the chair will be a lawyer; one member will be a health professional, such as a doctor, nurse or

physiotherapist; and the third will be an individual from the community. The hearings are closed to the public, but you are allowed to call witnesses or have family members or friends with you for support. CPP will be represented by a member of the adjudication staff. The hearings are quite informal, and panel members are usually empathetic and considerate.

Preparing for the Hearing: When you are preparing for the hearing, accept that the panel members 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-makers face-to-face. Try to explain to the panel 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 is there to give you a fair hearing and decide on the merits of your case. Even if a Tribunal member is unfriendly and aggressive, the decision could still be in your favour. The Review Tribunal 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*".)

Allowable Hearing Expenses: You can submit an expense claim to OCRT after the hearing. Allowable expenses include: travel to and from the hearing; parking; meals, if justified by the total amount of time involved; overnight accommodation if you have to travel more than a specified distance; and the cost of retrieving medical evidence. Some of these are standard rates, allowed without a receipt. If you have any doubts about what is allowable or which expenses require a receipt, consult



your Client Service Officer. The allowable expenses **do not** include the fee or expenses of your representative.

Review Tribunal Decision: The decision of the Review Tribunal will be sent to you by registered mail, usually 8 – 12 weeks after the hearing.

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 Pension Appeals Board.

OCRT announced changes in procedure in October 2011, “..to align itself to our current financial and workload reality. We are taking steps to ensure we have the capacity to manage the expected increase in appeals while continuing to provide quality service to all parties ...” **For appellants who do not have a representative**, the process outlined here is essentially unchanged. A Client Service Officer will guide you through the process before and – if necessary – after the appeal hearing. **For appellants who do have a representative**, all the formal communication will be channelled through the representative, who will be responsible for the appellant’s paperwork and keeping the appellant fully informed of progress. Client Service Officers will still be available to respond to informal enquiries.

C. Pension Appeals Board

Pension Appeals Board (PAB):

By phone: 1.888.640.8001

By mail: PO Box 8567, Station “T”, Ottawa, ON., K1G 3H9.

Web: <http://www.pab-cap.gc.ca/index-eng.cfm>

NOTE: The Pension Appeals Board website includes a searchable database of decisions (incomplete for years prior to 2000).

Either side can appeal a Review Tribunal decision, but it is not an automatic right. An **Application for Leave To Appeal** must be sent to the Pension Appeals Board (PAB) within 90 days of receipt of the Review Tribunal’s decision. Information on how to do this and the PAB

Rules of Procedure are sent with the tribunal’s decision.

Like OCRT, PAB is an independent body, but it is much more formal. Its rules and procedures are very similar to those in the regular court system. It is based in Ottawa, but holds hearings in cities across the country, usually on a fixed annual schedule. Hearings are before a panel of (usually) three judges, CPP is represented by a lawyer, witnesses testify under oath, hearings are open to the public, and the Board’s decisions are published on the Internet. Copies of the Board’s Rules of Procedure and an information brochure are included with every Review Tribunal decision; the information brochure is particularly helpful.

Notwithstanding the Board’s statement that most claimants do not have a representative, it is highly recommended that you find one, if possible. It is worth noting that “minimal legal costs” will be covered if you win your appeal or if you won your Review Tribunal appeal and CPP is appealing it. The same travel and accommodation expenses as for a Review Tribunal hearing are also covered.

If you wish to appeal the Review Tribunal’s decision, your Application For Leave To Appeal must be sent (i.e. postmarked) to the Pension Appeals Board (PAB) **within 90 days of the date you received the decision of the Review Tribunal. Applications should be sent by registered mail or courier.** The outline for an application is Schedule 1 in the Board’s Rules of Procedure.

The challenge is to explain **why** you believe your case deserves another hearing. If there is new evidence which (for some reason) was not available for the Review Tribunal, this may be sufficient. If, however, you believe the Tribunal made the wrong judgment call, you must give reasons: did they focus on one medical report and ignore others; did they discount your own testimony or that of a



If You Are Turned Down

witness; were they misinformed about the full impact of your condition?

Your application will be reviewed by a member of the PAB, who will either grant Leave to Appeal or deny it. If Leave To Appeal is denied, the reasons will be stated.

If Leave To Appeal is granted, your application becomes the **Notice of Appeal**, and a copy is forwarded to CPP's legal unit for a response. This does not mean you will win your appeal, only that the judge who reviewed the application agrees that you have an arguable case.

If CPP is appealing the Review Tribunal's decision and is granted Leave to Appeal, a copy of the Notice of Appeal will be sent to you or your representative.

If you are the appellant, CPP has 30 days to file a Reply to the Notice of Appeal. If you are the respondent, you have the same 30 days. If this is not enough time, a written request to the Registrar of the Board for an extension will usually be granted. (Typically, CPP's Replies boil down to "you haven't made your case" - because the onus is still on you to prove that you are disabled.) If you are in the position of having to prepare a Reply by yourself to CPP's appeal, seek advice from the Board's staff.

The combination of Review Tribunal decision, Notice of Appeal and Reply to Notice of Appeal is the "Hearing File" for the PAB hearing, together with any other documents which may be filed subsequently.

Next Steps

The hearing file is sent to CPP's Medical Expertise Division for review. They may request that you attend an independent assessment (see Appendix C), and have the authority to recommend that your appeal be allowed without a hearing. (If this happens, you will receive a "without prejudice" letter offering a settlement.)

- ◆ Several months in advance, you will be notified of the date and location of your hearing. At this point (or soon after), the case will be assigned to one of CPP's lawyers.
- ◆ About a month before the hearing date, you will be sent the name and resumé of the doctor who will be called by CPP to testify as an expert witness. If you are planning to call your own expert witness, you need to file the corresponding information with the Board. (Not infrequently, CPP's "expert" is a retired general practitioner who is introduced at the hearing as an "expert in general medicine".)

- ◆ Additional evidence and/or supporting documentation may be submitted to the Board at any time up to two weeks before the hearing.

The Hearing

If you are the appellant, you will be asked to present your case with any witnesses you have arranged. If you are alone, the members of the Board will question you, otherwise your representative will do so. CPP's lawyer will cross-examine you, then call the expert witness to review the medical evidence for the Board. (In theory, the role of the expert witness is that of an impartial explainer of technical evidence, though it may not always appear that way.) The hearing concludes with closing arguments by you/your representative and CPP's lawyer.

The Decision

The PAB's written decisions may take anywhere from a few days to a few months to be released. They are final and binding for all purposes of the Act, but are subject to review by the Federal Court of Appeal.

D. Judicial Review

A request for Judicial Review of a PAB decision is very rare and 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 Board'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 MQP as the first application. However, if the second application is successful, any retroactive payment of benefits will be based on the second date of application. If you didn't appeal a Reconsideration decision, the same applies.

But a Review 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 MQP 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 Commissioner, or the Chairman of the PAB, as the case may be, has the discretion to accept a late appeal with no time limit. 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?

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 Review Tribunal 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 PAB.

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

A: Section 84(2) of the Act allows for the re-examination of a decision on the submission of "new facts". There is no 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 FMS 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 FMS 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”. However, unless there is a written record of what actually occurred, it will be a question of your word and memory against the agent’s. If you are convinced that 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 benefit you have received will be deducted from your CPP-D retroactive payment.

If you are past the 90-day time limit, and if it is **less than 15 months** since you began receiving the retirement pension, you will have to submit a new application for CPP-D. You will have to prove that you met the “severe and prolonged” criteria when your retirement benefits started.

HINT: CPP-D benefits 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 Review Tribunal experience was terrible. The panel 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 PAB. And even if the Tribunal allowed your appeal, you can still file a formal complaint with the Commissioner. The OCRT website includes a complaint procedure with a complaint form. Use this form and/or consult your Client Service Officer.



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 benefit, (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 benefits. 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 Benefits:

If you are receiving long-term disability (LTD) benefits 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 benefits you receive from CPP-D will be offset (deducted) from your LTD benefits. If this is the case, your retroactive benefits 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 benefits 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 benefits 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 benefits are taxable, you should receive a letter from the insurance company to confirm the repayment of retroactive benefits. 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 benefits are not taxable, you are responsible for all the tax on past and future CPP-D benefits.

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 benefits.

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.

Hint: Recent information on federal programs for people with disabilities is in the 2009 Report, *Advancing the Inclusion of People with Disabilities*, available from Human Resources and Skills Development Canada.

B. Long-Term

If nothing changes at all after the approval formalities have been completed, you will continue to receive CPP-D benefits until you reach the age of 65. At that time they will automatically change to CPP retirement benefits. Once a year you will receive a T4 slip from CPP which is currently accompanied by an annual newsletter, *Keeping in Touch*. http://www.hrsdc.gc.ca/eng/disability_issues/reports/fdr/2009/page00.shtml

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 for benefits. 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 benefits. The decision can be appealed in the same way as for applications (Reconsideration, Review Tribunal, and the Pension Appeals Board), 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 \$4800 in 2011) without reporting to CPP or jeopardizing your benefits;
- ◆ 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 benefits will continue; they will only cease if you continue to work; and

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?

Once you determine that you are able to do that, 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?
- ◆ 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?
- ◆ Will you be taking the bus and can you stand in the bus or in line?

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 benefits 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: SYMPTOM SEVERITY AND HIERARCHY WORKSHEET

(Adapted from the Consensus Documents)

The table includes the symptoms of ME/CFS and FMS which are most likely to cause functional limitations. Extra spaces are provided for additional symptoms if you have other medical conditions (e.g., diabetes, high blood pressure, arthritis, depression or hearing loss); include their symptoms in the blank spaces provided.

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

In the **appropriate right-hand** columns put a check-mark to rate the severity of each symptom.

RANK	SYMPTOM	ABSENT	MILD	MODERATE	SEVERE
	Post-exertional fatigue: loss of physical and mental stamina, fatigue made worse by physical exertion				
	Long recovery period from exertion:: takes more than 24 hours to recover to pre-exertion activity level				
	Fatigue:: persistent marked fatigue that substantially reduces activity level				
	Sleep disturbance: non-restorative sleep, insomnia, hypersomnia				
	Pain: in muscles and joints, headaches				
	Stiffness: that limits movement				
	Physical dysfunction: involving muscles, ligaments and joints				
	Headaches/migraines: of new type, pattern or severity				
	Memory disturbance: poor short-term memory				
	Confusion and difficulty concentrating: "brain fog"				
	Dysphasia: difficulty retrieving words, or saying the wrong word				

APPENDIX A

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

APPENDIX A

#2: SYMPTOM IMPACT WORKSHEET

SEVERITY SCALE

Number of days/month (on average) your symptoms are most severe: _____

Number of days/month (on average) your symptoms are “average”: _____

Number of days/month (on average) your symptoms are least severe: _____

In each row of the chart, estimate the extent to which your symptoms limit the activity (use “L” for low, “M” for moderate, “H” for high, or leave the box blank if there is no impact). Where you show an impact, try to describe (on a separate sheet) how the symptoms impact you. Consider examples which would illustrate the impact. This information will help you identify the important symptoms to include in your application, and should be transferred to the corresponding box in your answers to #22 in the Questionnaire for Disability Benefits.

	“WORST” DAYS	“AVERAGE” DAYS	“BEST” DAYS
PHYSICAL ACTIVITY:			
sitting/standing			
walking			
lifting/carrying			
bending/stretching			
physical stamina			
MENTAL ACTIVITY:			
concentration			
memory			
seeing/hearing			
speaking/communicating			
mental stamina			
organizing, decision-making, multi-tasking			

APPENDIX A

	“WORST” DAYS	“AVERAGE” DAYS	“BEST” DAYS
PERSONAL NEEDS:			
washing			
dressing			
bowel/bladder function			
sleeping			
eating			
breathing			
HOUSEKEEPING:			
shopping			
cooking			
cleaning/laundry			
administration – banking, bills, mail			
OTHER ACTIVITY:			
using a telephone			
using a computer			
driving a car			
passenger in car			
using public transport			
coping with bright lights			
coping with noise			

APPENDIX A

#3: BASIC WORKPLACE REQUIREMENTS WORKSHEET

The table lists requirements which are applicable to almost all employment situations. For each one, check the appropriate box to show how your condition affects your ability to perform in a job. This information will help you to answer question #19 in the Questionnaire for Disability Benefits.

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

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.

1. No energy, severe symptoms including very poor concentration; bed ridden all day; cannot do self-care (e.g. need bed bath to be given).
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 with 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
SLEEP: Write number of hours slept and quality 1 = very poor 2 = poor 3 = fair 4 = good 5 = very good Functional Capacity Scale: Record your activity and energy rating every hour using the scale 1-10/10 Activities: (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 Director 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 Pension Appeals Board 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 to the PAB, the report will be filed with the Board 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

CPP-D	CANADA PENSION PLAN DISABILITY
CRP	CHILD REARING PROVISION
DCCB	DISABLED CONTRIBUTOR CHILD BENEFIT
DOA	DATE OF APPLICATION
DOO	DATE OF ONSET
DTC	DISABILITY TAX CREDIT
EI	EMPLOYMENT INSURANCE
FMS	FIBROMYALGIA SYNDROME
FCE	FUNCTIONAL CAPACITY EVALUATION
HRSDC	HUMAN RESOURCES and SKILLS DEVELOPMENT CANADA
IME	INDEPENDENT MEDICAL EXAMINATION
LTD	LONG TERM DISABILITY
LTDI	LONG TERM DISABILITY INSURANCE
ME/CFS	MYALGIC ENCEPHALOMYELITIS / CHRONIC FATIGUE SYNDROME
MP	MEMBER OF PARLIAMENT
MPP	MEMBER OF PARLIAMENT PROVINCIAL
MQP	MINIMUM QUALIFYING PERIOD (i.e. Period of Coverage)
OCRT	OFFICE OF THE COMMISSIONER OF REVIEW TRIBUNALS
PAB	PENSION APPEALS BOARD

APPENDIX E

Key Contacts

National ME/FM Action Network

The National ME/FM Action Network has extensive information on Myalgic Encephalomyelitis / Chronic Fatigue Syndrome and Fibromyalgia Syndrome. We maintain a list of support groups across the country. We also maintain a list of medical and legal professionals across Canada who are familiar with these illnesses, available by phone or email only.

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

Email: mefinfo@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://www.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

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

Available at: <http://www.mefmaction.com/images/stories/Overviews/ME-Overview.pdf>

or contact the National ME/FM Action Network

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

Available at: <http://www.mefmaction.com/images/stories/Overviews/FMSOverview08.pdf>

or contact the National ME/FM Action Network

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

Contact the National ME/FM Action Network

The website for Canada Pension Plan – Disability

http://www.hrsdc.gc.ca/eng/oas-cpp/cpp_disability

Canada Pension Plan Act

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

CPP-D Adjudication Framework (provides guidance to adjudicators)

http://www.hrsdc.gc.ca/eng/oas-cpp/cpp_disability/adjudframe/page00.shtml

Information on the range of federal disability programs:

http://www.hrsdc.gc.ca/eng/disability_issues/reports/fdr/2009/page00.shtml



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.*

Resources \$ _____

Please see reverse.

TOTAL PAYMENT:

\$ _____

PAYMENT OPTIONS

☐ Cheque

Please make Cheque Payable to the:
NATIONAL ME/FM ACTION NETWORK

☐ VISA

☐ MasterCard

☐ Other _____

Card Number:

Expiry Date:

month _____ year _____

Name on card:

Signature:

MEMBERSHIP APPLICATION or RENEWAL FORM

Please see reverse for available network resources.

Date:

Name / Organization

Contact Name

Address

City • Province/State • Postal Code/ZIP

Phone

Facsimile

Email

Website:

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

Resources

Item	Qty	Total
Membership Fee \$30		
ME/CFS Brochure <i>free</i>		
FM Brochure <i>free</i>		
ME/CFS Overview \$2.50		
FM (Eng) Overview \$2.50		
FM (Fr) Overview \$2.50		
TEACH-ME (Eng) \$22		
TEACH-ME (Fr) \$22		
QUEST \$38 Collection II		
QUEST \$38 Collection III		
CPP Guide \$10		
Disability Manual \$70		
SUB TOTAL		

Please transfer the above "sub total" onto the front, to tally in to the total payment being made.

Thank You

THE NATIONAL ME/FM ACTION NETWORK RESOURCES

Quest Newsletter - Free with annual membership of \$30.00

When you become a member of the National ME/FM Action Network, you receive our quarterly newsletter QUEST. We keep you informed about medical research, disability and legal issues, as well as keeping you up-to-date about our many projects. "Quest" includes original articles by doctors, researchers, and lawyers. In addition, it has a new section entitled The Journey which covers support matters such as treatment and happenings in other groups.

ME/CFS and FM Brochures - FREE

If you would like to receive our free informative pamphlets on ME/CFS and/or FM, please contact us or you can print copies off our website at www.mefmaction.net.

Consensus Documents for ME/CFS and FM

Myalgic Encephalomyelitis / Chronic Fatigue Syndrome: Clinical Working Case Definition, Diagnostic and Treatment Protocols [Journal of Chronic Fatigue Syndrome, Vol. 11, No. 1, 2003. Haworth Press 2003/2004 ISBN:0-7890-2207 9] and The Fibromyalgia Syndrome: A Clinical Case Definition for Practitioners [Haworth Press, 2004 (Soft cover book) ISBN 0-7890-2574-4] can be viewed on our website at www.mefmaction.net and is also available at Amazon.com or at Chapters.ca

Or view the Consensus Documents on our website at www.mefmaction.net

ME/CFS and FM Overviews - \$2.50 each

The ME/CFS and FM Overviews are summaries of the Canadian Consensus documents entitled Myalgic Encephalomyelitis / Chronic Fatigue Syndrome: Clinical Working Case Definition, Diagnostic and Treatment Protocols and The Fibromyalgic Syndrome: A Clinical Case Definition for Practitioners.

Overviews can be ordered from Marjorie Van de Sande via email at mvandesande@shaw.ca or by regular mail at 151 Arbour Ridge Circle NW, Calgary, AB T3G 3V9 Canada, or from the NATIONAL ME/FM ACTION NETWORK Or may be viewed on our website at www.mefmaction.net

ABREGE DU CONSENSUS CANADIEN SUR LE SFC: DEFINITION CLINIQUE ET LIGNES DIRECTRICES A L'INTENTION DES MEDICINES - 2.50 \$ chacun

To order, please contact AQEM, 7400 Boul. Les Galeries, Box 410, Anjou, QC H1M 3M2 Canada or call 514.369.0386 or via email at aqem@spg.qc.ca

TEACH-ME (Second Edition) - \$22.00 - Discount on bulk orders

TEACH-ME (TRADUCTION FRANCAISE): 22 \$

Our TEACH-ME Resource Book is for Parents and Teachers of children and youth with ME/CFS and/or FM.

QUEST COLLECTION: 1993 TO 2003 - \$38.00

QUEST COLLECTION: 2004 TO 2008 - \$38.00

These are a collection of medical and legal articles that appeared in our newsletters for the periods indicated and combined for easy reference.

CANADA PENSION PLAN DISABILITY GUIDE - \$10.00

A Guide designed for those who are disabled and wish to apply for Canada Pension Plan Disability Benefits and the various steps in the process.

LEGAL & DISABILITY MANUAL - \$70.00

This manual consists of court case references and disability matters relevant to ME/CFS and FM matters.

NATIONAL LAWYERS' ROSTER

A roster of lawyers and legal advocates who are knowledgeable about ME/CFS and FM. This roster is a guide only and the National ME/FM Action Network plays no role in any decisions made by the individual or in the legal professional selected. Please contact us for more information.

NATIONAL ME/FMACTION NETWORK WEBSITE <http://www.mefmaction.com>

