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**Legal
brief***

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AM I ENTITLED TO A DISABILITY PENSION?

I have had serious health problems for years and I'm not 60 years old yet. I am unable to work. Am I entitled to a disability pension?

THE FACTS

The applicant appealed a review decision rendered by the Régie des rentes du Québec, in October 2008, refusing to grant her a disability pension within the meaning of section 95 of the *Act respecting the Québec Pension Plan*.

In July 2007, the Régie had received a claim for disability benefits from the applicant who was then 53 years old. She had stopped working on May 31, 1999 due to health reasons.

The medical report in support of her application had been signed by a general practitioner in August 2007. The physician had declared that the applicant suffered from severe fibromyalgia accompanied by tension headaches and tinnitus, a chronic condition. According to this physician, the applicant would not be able to eventually go back to work or take on any other paying work.

THE ISSUE

Did the applicant satisfy the definition of disability within the meaning of the *Act respecting the Québec Pension Plan* which applies to persons under the age of 60, as such term is defined in section 95 of the said Act:

“A person shall be considered to be disabled only if the Board declares him to be suffering from a severe and prolonged mental or physical disability. A disability is severe only if by reason thereof the person is incapable regularly of pursuing any substantially gainful occupation.

[...]

A disability is prolonged only if it is likely to result in death or to be of indefinite duration.”

THE DECISION

The Tribunal allowed the recourse and overturned the review decision rendered on October 31, 2008. It recognized that the applicant was disabled within the meaning of section 95 of the *Act respecting the Québec Pension Plan* and it declared that the disability should be recognized as of one year prior to the date of the application and that the pension was

payable to her as of four months after the disability, in accordance with the Act.

THE GROUNDS

The applicant and her husband testified at the hearing, stating that the applicant had suffered pain for more than 25 years. Her condition had deteriorated over the past 10 to 12 years, notwithstanding the fact that she had stopped working in 1999.

It was not contested that the applicant had fibromyalgia or that this was a condition liable to result in a long-term disability. The parties clashed on the conclusion to the effect that the applicant's disability was not serious enough to prevent her from doing any kind of work.

In matters of disability, the evidence must be of a medical nature and testimony must be taken into account to assess the entirety of the applicant's condition as regards the perception she has of her condition, her motivation in seeking out relief and the extent to which she has sought out relief.

The medical evidence was straightforward: The applicant had been monitored since 1990 and the diagnosis of fibromyalgia had been made as of 1995. There were no other clinical opinions in the file contradicting that of the applicant's general physician.

As for the applicant, she had delivered a very clear message. She showed an uncommon sense of self-awareness. She demonstrated a high degree of autonomy in terms of managing her health problems and being vigilant and pro-active in seeking out solutions. The Tribunal found the applicant's testimony to be credible. It was also conclusive.

Reference

D.N. v Régie des rentes du Québec, Administrative Tribunal of Québec (A.T.Q.) SAS-Q-150927-0811, 2009 QCTAQ 10832, October 28, 2009; Administrative judges: Jules Brodeur and Daniel Lagueux. (www.jugements.qc.ca)

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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