



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. B. v. Minister of Employment and Social Development*, 2016 SSTGDIS 74

Tribunal File Number: GP-15-854

BETWEEN:

**D. B.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Shane Parker

DATE OF DECISION: September 23, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disabled contributor child benefit (DCCB) was date stamped by the Respondent on December 24, 2012. On January 30, 2013 the Respondent approved the application with payment of benefits effective January 1, 2012. In a letter received by the Respondent on October 10, 2014, the Appellant sought a reconsideration of the January 30, 2013 decision. In this letter the Appellant expressed her reasons for the late request, amongst other things (GD2-12). On November 6, 2014 the Respondent asked the Appellant to provide an explanation for the delay behind the late reconsideration request; how she kept the Respondent informed of her intent to request a reconsideration; and the reasons she disagreed with the initial decision of January 30, 2013 (GD2-9). The Appellant replied to the Respondent's request by letter received on December 3, 2014 (GD2-8). On December 9, 2014 the Respondent denied the Appellant's late reconsideration request (GD1A-6). The Appellant appealed this decision to the Social Security Tribunal (Tribunal), but did not file all required information on time. On August 13, 2015 the Tribunal relieved the Appellant from compliance with its Regulations and determined that the appeal could proceed.

[2] This appeal was decided on the basis of the documents and submissions filed for the following reasons:

- a) The member has decided that a further hearing is not required.
- b) There are no gaps in the information in the file or need for clarification.
- c) Credibility is not a prevailing issue.
- d) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[3] By Notice dated July 5, 2016 the Tribunal gave the parties an opportunity to provide further written information and argument. The Appellant advised that she had no further information to provide and no further information was filed by the parties.

## **THE LAW**

[4] In order to receive benefits under the CPP, one must apply and the application must be approved under the CPP (subsection 60(1) of the CPP). After receiving an application for a benefit, the Department (Respondent) shall consider it and may approve payment of the benefit and determine the amount thereof payable under the CPP or may determine that no benefit is payable, and the Respondent shall thereupon in writing notify the applicant of the Respondent decision (subsection 60(7) of the CPP).

[5] Reconsideration rights are found in section 81 of the CPP which provides that, in this case, where the Appellant may, within ninety days after the day on which she was notified in the prescribed manner of the decision or determination, or within such longer period as the Minister may either before or after the expiration of those ninety days allow, make a request to the Minister in the prescribed form and manner for a reconsideration of that decision or determination.

[6] In other words, the Appellant had 90 days from the time she received the January 30, 2013 decision, to request a reconsideration of this decision. The Respondent has the discretion to allow a longer period in which to make a reconsideration request, under section 81.

[7] Subsections 74.1(3) and 74.1(4) of the CPP Regulations set out the criteria by which the Respondent can allow a longer period to consider a reconsideration request:

(3) For the purposes of subsections 81(1) and (1.1) of the Act and subject to subsection (4), the Minister may allow a longer period to make a request for reconsideration of a decision or determination if the Minister is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.

(4) The Minister must also be satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused to the Minister or a party by allowing a longer period to make the request, if the request for reconsideration

(a) is made after the 365-day period after the day on which the person is notified in writing of the decision or determination;

(b) is made by a person who has applied again for the same benefit; or

(c) is made by a person who has requested the Minister to rescind or amend a decision under subsection 81(3) of the Act.

[8] The Respondent's decision to refuse such a longer period is subject to appeal to the Tribunal pursuant to section 82 of the CPP which provides:

**82** A party who is dissatisfied with a decision of the Minister made under section 81, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*.

## ISSUE

[9] The Tribunal must determine if the Respondent exercised its discretion judicially when it refused to allow a longer period of time for the Appellant to request reconsideration of the initial decision letter providing a CPP disabled contributor's child benefit effective January 1, 2012.

## EVIDENCE

[10] The Appellant applied for the CPP disabled contributor's child benefit on December 24, 2012. On January 30, 2013 the Respondent granted the application with benefits effective January 1, 2012. The Appellant requested a reconsideration of this decision over 365 days later, on October 10, 2014. She gives the following explanation for the late reconsideration request:

We applied late because we were not aware of the child benefit and found out by accident. We received eleven months back pay but were recently told by the CRA, our MP'S office as well as a representative (sic) with CPP Winnipeg office that there is an appeal process that

we were not aware of. This process allows our claim to be considered if it is legitimate and deserving from June 1996 to 2012 the time when benefits were not paid.

[...]

I was not aware of the Canada child benefit as well but October 6 2014 CRA determined our claim rightful and legitimate and are going back to June 3 1996 (my daughters birth date). The CRA representative (sic) advised us that there is always an appeal process if the claim is deserving and that discretion can always be applied to a file.

(GD2-12)

[11] The Appellant provided the following reasons for the late reconsideration request on November 29, 2014: she was unaware she could make such a request sooner; “we have had more that our share of serious health problems to deal with” so requesting a reconsideration “was not on the forefront of our minds”; and she was “not fluent with government programs” (GD2-8). After reviewing this letter, the Respondent refused to allow a late reconsideration on December 9, 2014 (GD1A-6), and enclosed its Decision Document (GD1A-16 to 17) which contained the following reasons:

- A review of the file and [the Appellant’s] letter dated November 29, 2014; does not identify any exceptional or extenuating circumstances nor has a reasonable explanation for the late reconsideration request been given that would have prevented her from requesting a reconsideration (of the date of onset of the DCCB) within the 90 day time limit. Therefore the criterion of a reasonable explanation has not been met.
- There is no evidence that [the Appellant] has contacted the department between the date the client was granted DCC benefit until the late reconsideration request was received, therefore continuing intent was not met.
- In a conversation with [the Appellant] and her husband on November 5, 2014 revealed that they in fact did receive a notice of entitlement. They also indicated that they found out about the DCCB initially on the internet. This would indicate that [the Appellant] would have been able to request an appeal within the 90 [day] time limit for reconsideration.

[...]

[The Appellant] was given the legislated maximum benefit for the DCC benefit when the application was granted. She would have received a notice of entitlement stating the appeal rights. Since there is no exceptional or extenuating circumstances and the maximum retroactive benefits were granted there is no reasonable chance of success.

[details from Decision Document found further below at page GD1A-17 but omitted here]

[...]

There is no evidence of unfairness to the Minister.

[12] The Appellant filed some medical reports with the Tribunal which post-dated the Respondent's decision to deny a late reconsideration request in December 2014. These reports were prepared in 2015 (see: GD1-6 to 7).

## **SUBMISSIONS**

[13] The Appellant submitted that the January 30, 2013 decision should be reconsidered late because:

- a) She was unaware of reconsideration rights until "recently" (before October 7, 2014);
- b) Her claim is legitimate on its merits in that had she been aware sooner, she would have applied sooner for the CPP disabled contributor's child benefit, whereby the Appellant's child could have benefited from the payment of this benefits from her date of birth June 3, 1996 (and not missed out on payments between then and January 2012);
- c) This is an appropriate case for the Respondent to exercise its discretion and allow a late reconsideration.

(GD2-12)

- d) She was preoccupied with her husband's health (GD1-1 to 2).

[14] The Respondent submitted that the reconsideration request should not be allowed because:

- a) The Appellant did not demonstrate a continuing intention to pursue the reconsideration between the date of the initial decision (January 30, 2013) and the reconsideration request October 10, 2014);
- b) There is no reasonable explanation for the delay behind the late reconsideration request;
- c) The Appellant received the maximum retroactivity of the DCCB according to law and therefore her argument for greater retroactivity to the date of her daughter's birth has no reasonable chance of success.

## ANALYSIS

[15] The decision of the Minister/Respondent to grant or refuse a late reconsideration request is considered a discretionary decision. Case law indicates that the Minister's discretion must be exercised judicially (*Canada (A.G.) v. Uppal* 2008 FCA 388).

[16] A discretionary power is not exercised "judicially" (*Canada (A.G.) v. Purcell*, [1996] 1 FC 644) if it can be established that the decision-maker (in this case the Respondent):

- a) acted in bad faith,
- b) acted for an improper purpose or motive,
- c) took into account an irrelevant factor,
- d) ignored a relevant factor, or
- e) acted in a discriminatory manner.

[17] In the present case, there is no evidence that the Respondent behaved in any of the ways listed in the previous paragraph. The evidence established that the Respondent followed subsections 74.1(3) and 74.1(4) of the CPP Regulations. In its Decision Document at GD1A-16 to 17, the Respondent provided detailed reasons whereby it considered whether there was a reasonable explanation for the delay; a continuing intention to pursue a reconsideration; whether the Appellant's appeal had a reasonable chance of success; and whether there would be prejudice to the Respondent in allowing a reconsideration over a year past the time the initial decision was communicated to the Appellant. Aside from the prejudice criterion, the Respondent found in the negative to the other criteria.

[18] The criteria of reasonable explanation for delay and continuing intention must be satisfied in accordance with subsection 74.1(3) of the CPP Regulations. The Respondent considered the Appellant's reason that she was unaware of the right to request a reconsideration until "recently" before doing so on October 10, 2014 to be unsatisfactory. The Tribunal agrees. Ignorance of the law is not a valid explanation which would justify, on its own, an extension beyond the statutory time limit of 90 days to request a reconsideration. On December 3, 2014 the Appellant stated to the Respondent that she was contending with various health issues (GD2-8). The Respondent acknowledged reviewing the explanation and found that it "does not identify any exceptional or extenuating circumstances nor has a reasonable explanation for the late reconsideration request been given that would have prevented her from requesting a reconsideration." (GD1A-16). Indeed some medical reports were filed with the Tribunal, but these were not presented to the Respondent when it requested reasons for the delay, prior to December 2014. As such, the Tribunal cannot now consider them in determining the outcome of this appeal.

[19] Also pursuant to subsection 74.1(3) the Respondent reviewed its records and found no evidence of a continuing intention by the Appellant to pursue a reconsideration after the decision of January 30, 2013 was conveyed to her. In fact the Appellant admitted that this was not a priority given her focus on health problems (GD2-8).

[20] In summary, the criteria in subsection 74.1(3) of the CPP Regulations were not met. The Respondent gave these factors due consideration. The Respondent also considered the factors in subsection 74.1(4) of the CPP Regulations. This was correct procedure. Paragraph 74.1(4)(a) provides that the Minister must also consider whether the reconsideration request has a reasonable chance of success and whether any prejudice would be caused to the Minister if the request is made over 365 days after the reconsideration is communicated to the Appellant. In the present case, the Appellant requested a reconsideration well over 365 days after receiving the reconsideration. The Respondent found that there were no exceptional circumstances and the Appellant had no reasonable chance of success because she was given the maximum benefit for the DCCB. The Respondent also found no evidence of unfairness in allowing a late reconsideration. (GD1A-17)



## **CONCLUSION**

[21] The Respondent considered the factors under subsections 74.1(3) and 74.1(4) of the CPP Regulations in refusing to allow a late reconsideration. It exercised its discretion judicially.

[22] The appeal is dismissed.

Shane Parker  
Member, General Division - Income Security