



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. T. v. Minister of Employment and Social Development*, 2016 SSTGDIS 102

Tribunal File Number: GP-15-3665

BETWEEN:

**S. T.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

DECISION BY: Raymond Raphael

DATE OF DECISION: December 12, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant's *Canada Pension Plan* (CPP) disability pension was converted to a CPP retirement pension in September 2015, the month after he turned 65. On September 18, 2015 the Appellant disputed the amount of his retirement pension because there was a reduction in the amount that he was receiving from \$1,065 to \$979.13. [GD2-15]

[2] On October 14, 2015 the Respondent denied the Appellant's request for reconsideration. The Respondent advised the Appellant that when he turned 65 his disability pension automatically converted to a retirement pension and that the amount of his retirement pension is based on his valid earnings and contributions to the CPP and his contributory period. The Respondent enclosed a detailed schedule setting out the Appellant's pensionable earnings from 1968 through to 2015; setting out his contributory period and the applicable drop out periods for disability and for the 15% lowest months' earnings; and also setting out the calculation of the amount of his retirement pension benefit. The letter advises the Appellant that because of the drop-out provisions a total of 73 months and a total of \$49,672 in earnings were removed which left a new contributory period of 411 months and a new total adjusted pensionable earnings of \$1,467,352. [GD2-16 to 20]

[3] The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on October 28, 2015. [GD1]

[4] This appeal was heard by Questions and answers because 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.

### *Question and Answer*

[5] In the notice of hearing the Appellant was referred to the letter dated October 14, 2015 (see paragraph 2, *supra*) and asked to provide detailed reasons why he believes the calculation of his retirement pension is wrong. [GDO]

[6] In his response dated June 10, 2016 the Appellant stated that he was an active maximum contributor to CPP from 1969 until 2002; that since 2003 he was unable to continue contributing the maximum amount because of severe health issues; that his retirement pension should be adjusted to current day value; that in March 2010 he successfully applied for CPP disability and received the maximum amount; and that his retirement pension has been incorrectly calculated because his contribution period has been unfairly reduced from 564 months to 411 months. He also raised potential constitutional issues. [GD6]

***Potential Constitutional Issues***

[7] On October 31, 2016 the Tribunal sent a notice to the Appellant pursuant to subsection 20(1)(a) of the Tribunal Regulations. [GD7]

[8] The notice advised the Appellant that in his answer to the question he made the following submissions that raised constitutional issues with respect to the Canadian Charter of Rights and Freedoms:

The respondent, reduced my contribution and submitted sections that these sections of the Canada Pension Plan, disproportionately impact men with disabilities (like me) and that these sections therefore infringe upon the Appellant's equality rights under section 15 of the Canadian charter of rights and freedoms.

[9] The Appellant was notified that if he wished to pursue a constitutional challenge before the Tribunal he must file a notice in accordance with subsection 20(1)(a) of the Tribunal Regulations by Friday, December 2, 2016. A copy of this provision was attached to the notice. The Appellant was also notified that if he did not file the required notice by that date, his appeal will proceed as a regular appeal and that he will not be given the opportunity to raise any constitutional issues during the appeal process.

[10] The Appellant responded on November 3, 2016. He set out Section 15 of the Canadian Charter of Rights and Freedoms and stated that since 2003 he could not make contribution to the CPP because of his physical disability; that he unsuccessfully attempted to work in 2004 and 2005 as well as 2008; and that he received the maximum CPP disability from 2010 until he reached 65 in 2015. [GD8]

[11] On November 16, 2016 the Tribunal notified the Appellant that it had determined that his response does not comply with requirements of subsection 20(1)(a) of the Tribunal Regulations because it does not set out any of provisions of the applicable statutes or regulations that are being challenged and submissions in support. The Appellant was notified that he shall have until December 9, 2016 to file a notice that complies with the requirements of subsection 20(1)(a). The Appellant was notified that if he fails to file the required notice by that date the appeal will proceed as a regular appeal and that he will not be given the opportunity to raise any constitutional issues during the appeal process. [GD9]

[12] The Appellant responded on November 24, 2016. With respect to the provision at issue he stated that this “Is My physical disability.” With respect to support of the issue he stated, “I have been receiving the Maximum CPP Disability benefit from 2010 to 2015.”

[13] Subsection 20.(1) of the Tribunal Regulations provides as follows:

If the constitutional validity, applicability or operability of any provision of the *Canada Pension Plan*, the *Old Age Security Act*, the *Employment Insurance Act*, Part 5 of the *Department of Employment and Social Development Act* or the regulations made under any of those Acts is to be put at issue before the Tribunal, the party raising the issue must

- a) file a notice with the Tribunal that
  - i. sets out the provision that is at issue, and
  - ii. contains any submissions in support of the issue that is raised; ...

[14] Despite being given two opportunities the Appellant has failed to file a notice that complies with the requirements of subsection 20(1)(a). He merely reiterates the facts that are set out in his response dated June 10, 2016 (see paragraph 6, *supra*) and does not set out any provisions of the applicable statutes or regulations that are being challenged and submissions in support.

[15] In view of the Appellant’s failure to comply with the requirements of subsection 20(1)(a) the Tribunal has determined that the Appellant has not properly raised any charter issues and that the appeal should proceed as a regular appeal.

## **THE LAW**

[16] Subsection 70(1)(c) of the CPP provides that a disability pension ceases to be payable for the month in which the beneficiary reaches sixty-five years of age.

[17] Section 46 of the CPP sets out the provisions for the calculation of the amount of a retirement pension.

## **ISSUE**

[18] Has the Respondent correctly calculated the amount of the Appellant's retirement pension?

## **EVIDENCE**

[19] The Appellant turned 65 in August 2015 and as of that month his CPP disability pension was automatically replaced by a retirement pension. The amount that he was receiving was reduced from \$1,065 to \$979.13.

## **SUBMISSIONS**

[20] The Appellant submitted:

- a) that he was an active maximum contributor to CPP from 1969 until 2002;
- b) that since 2003 he was unable to continue contributing the maximum amount because of severe health issues;
- c) that the retirement pension should be adjusted to current day value;
- d) that in March 2010 he successfully applied for CPP disability and received the maximum amount;
- e) and that his retirement pension has been incorrectly calculated because his contribution period has been unfairly reduced from 564 months to 411 months.

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

- a) The Appellant's contributory period was properly reduced by 80 months for the period from April 2009 to August 2015 during which he received CPP disability and by 73 months for his lowest earning months. This left a contributory period of 411 months;
- b) The amount of a CPP disability pension is comprised of two portions. A flat-rate portion and an earnings portion. The flat-rate portion is not payable under the CPP retirement benefit and it is effectively replaced by the Old Age Security pension which the Appellant started to receive when he turned 65;
- c) The amount of the Appellant's retirement pension has been calculated in accordance with the applicable CPP provisions.

## **ANALYSIS**

[22] The Appellant is disputing the amount of his CPP retirement pension.

[23] Although the calculations are complex, the applicable CPP provisions and calculations are set out in the Respondent's submissions (GD3) and in its October 14, 2015 letter denying the Appellant's request for reconsideration (see paragraph 2, *supra*). These calculations take into consideration and exclude from his contributory period the months during which he received CPP disability and the drop out period of 15% for lowest months' earnings.

[24] The Appellant submitted that the calculation is incorrect because his contributory period was reduced from 564 months to 411 months. This reduction in his contributory period was in accordance with the applicable CPP provisions and increased the amount of his retirement pension because it dropped out 80 months during which he received CPP disability and had no pensionable earnings and 73 months during which he had his lowest earnings. If these months had not been dropped out his retirement pension benefit would be lower.

[25] The Appellant also submitted that his retirement pension should be adjusted to current day value. This however was done and it increased the Appellant's retirement pension from \$892.55 to \$979.13 (see October 14, 2015 letter at GD2-13).

[26] The Tribunal recognizes that the Appellant believes that the amount that he is now receiving is too low since it is less than the amount he was receiving for CPP disability. He, however, has the onus to demonstrate why the calculation is incorrect and he has failed to establish that an error was made.

[27] The Tribunal is bound by the CPP provisions. It is not empowered to exercise any form of equitable power in respect of the appeals coming before it. It is a statutory decision-maker and is required to interpret and apply the provisions as they are set out in the CPP: *MSD v Kendall* (June 7, 2004), CP 21690 (PAB). The Tribunal has no authority to make exceptions to the provisions of the CPP nor can it render decisions on the basis of fairness, compassion or extenuating circumstances.

[28] The Tribunal finds that the Respondent has correctly calculated the Appellant's retirement pension.

## **CONCLUSION**

[29] The appeal is dismissed.

Raymond Raphae  
Member, General Division - Income Security