



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. J. C.*, 2018 SST 41

Tribunal File Number: AD-17-379

BETWEEN:

**Minister of Employment and Social Development**

Appellant

and

**J. C.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: January 16, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is allowed.

### **OVERVIEW**

[2] This is an appeal from the decision of the General Division rendered on February 13, 2017. The Appellant, the Minister of Employment and Social Development, submits that the General Division erred in calculating the retroactive Canada Pension Plan retirement pension of the Respondent, J. C., by failing to consider subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*. The Appellant claims that had the General Division considered and properly applied these provisions, it would have calculated a net overpayment to the Respondent. I granted leave to appeal on November 6, 2017, on the basis that the General Division may have failed to consider whether these subsections applied in the Respondent's circumstances. I found it unnecessary to address any other alleged errors.<sup>1</sup>

### **ISSUE**

[3] The issue before me is as follows:

Did the General Division miscalculate the Respondent's retroactive Canada Pension Plan retirement pension?

### **GROUND OF APPEAL**

[4] Subsection 58(1) of the *Department of Employment and Social Development Act* sets out the grounds of appeal as being limited to the following:

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<sup>1</sup> *Mette v. Canada (Attorney General)*, 2016 FCA 276.

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[5] The Appellant submits that the General Division made several errors of law.

## **ANALYSIS**

### **Did the General Division miscalculate the Respondent's retroactive Canada Pension Plan retirement pension?**

[6] In July 2013, the Respondent applied for a Canada Pension Plan retirement pension pursuant to a social security agreement between Canada and the United States. At that time, he was 66 years and 3 months of age. The Appellant approved the Respondent's application with an effective date of July 2012, a total monthly amount of \$129.75, and a retroactive payment of \$1,932.51.

[7] The Respondent requested a reconsideration of the effective date of commencement, along with the total monthly amount of the pension. He claimed that he had requested a payment start date of March 2012. The Appellant denied the reconsideration request, on the basis that the maximum amount of retroactive payment that could be paid was 11 months. The Appellant also informed the Respondent that it had correctly calculated the monthly retirement pension.

[8] The Respondent appealed this reconsideration decision to the General Division. The Appellant ultimately conceded a payment start date of March 2012. (The Old Age Security International Operations Division determined that an application had been received in September 2012.) In November 2016, the Appellant calculated that a retroactive payment of \$497.96 was payable to the Respondent.

[9] In February 2017, the General Division allowed the appeal, approving a start date of March 2012. It also calculated a monthly retirement pension of \$124.49 and a retroactive payment of \$432.80. (The monthly rate was recalculated to reflect the fact that payment of the pension started in March 2012, rather than in September 2012.)

[10] The Appellant accepts the General Division's calculation of the net monthly amount but argues that it erred in calculating that a net retroactive payment of \$432.80 is payable to the Respondent. The Appellant argues that the General Division's miscalculation stems from the fact that it failed to apply subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*. Subsection 45(2) of the *Canada Pension Plan* provides for an annual adjustment, while subsection 62(1) of the *Canada Pension Plan Regulations* provides for an adjustment of the result in paragraph 45(2)(a) of the *Canada Pension Plan* to the nearest cent.

[11] The General Division referred to an adjustment factor, indicating at paragraphs 41 and 55 that an adjustment factor of 0.64 percent was added to each of the months between the month after the Respondent turned 65 and the month when he began to receive his pension. At paragraph 65, the General Division also noted that the Respondent's monthly retirement pension had been further reduced because of the decrease in the value of the adjustment factor. However, these adjustments were unrelated to the annual adjustments provided for under subsection 45(2) of the *Canada Pension Plan*, and were made to account for the fact that the Respondent began receiving a retirement pension after he had already turned 65 years of age.

### **March 2012 to September 2013**

[12] It appears that when calculating the retroactive amount, the General Division neglected to apply the adjustments under subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*. In paragraph 65, for instance, the General Division calculated the retroactive amount over 19 months, apparently without making any annual adjustments provided for under these subsections. This can be illustrated as follows:

### General Division calculation

Year	Number of Months	Rate of Entitlement	Total
2012	19	\$124.49	\$2,365.31

[13] The Respondent had been paid \$1,932.51. From this, the General Division calculated that there remained an outstanding payment of \$432.80 (\$2,365.31 - \$1,932.51).

[14] The Appellant argues that the General Division overlooked the fact that there had been a previous miscalculation involving an escalated 2013 monthly rate of \$129.75 from January to September 2013. (This amount can be disregarded for the purposes of calculating any retroactive amount, given that the retirement pension had not been fully paid for this time frame.) The Appellant claims that the correct escalated monthly rate that should have been used for 2013 is \$126.73.

[15] The pensionable amount for 2013 is derived by using the base monthly amount of \$124.49 and multiplying it by the Pension Index for the following year. The *Canada Pension Plan* provides for indexed increases so that benefits keep up with the cost of living.

[16] The Pension Index increases for the years 2013 to 2018 are as follows:

Year	Pension Index (%)
2013	1.018
2014	1.009
2015	1.018
2016	1.012

2017	1.014
2018	1.015

[17] In 2013, the Consumer Price Index increase, on which the Pension Index is based, was 1.8%. Therefore, the 2013 monthly rate is  $\$124.49 \times 1.018 = \$126.73$ . This same calculation can be used to obtain the pensionable monthly amounts for subsequent years, taking into account the applicable Pension Index increase.

[18] The Appellant asserts that, taking these considerations into account, the correct retroactive amount owing to the Respondent for the period from March 2012 to September 2013 was \$452.96—a difference of \$20.16 from the General Division’s calculation, in favour of the Respondent—based on the following:

**Retroactive amount payable to Respondent, from March 2012 to September 2013**

Year	Number of Months	Rate of Entitlement	Total Entitlement
2012	10	\$124.49	\$1,244.90
2013	9	\$126.73	\$1,140.57
			\$2,385.47
\$2,385.47 - \$1,932.51 (amount paid to the Respondent) = \$452.96			

[19] I agree with this calculation, as it properly reflects the annual adjustment under subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*.

**October 2013 to March 2017**

[20] As for the time frame between October 2013 and March 2017, the Appellant argues that there is an overpayment of \$130.38 (see AD1 and AD2), calculated below.

**Overpayment from October 2013 to March 2017**

<b>Year</b>	<b>Number of Months</b>	<b>Rate at Which Respondent Was Paid<sup>1</sup></b>	<b>Rate of Entitlement<sup>1</sup></b>	<b>Difference (monthly difference x number of months)</b>
2013	3	\$129.75	\$126.73	\$9.06
2014	12	\$130.92	\$127.87	\$36.60
2015	12	\$133.28	\$130.17	\$37.32
2016	12	\$134.88	\$131.73	\$37.80
2017	3	\$136.77	\$133.57	\$9.60
<b>TOTAL</b>		<b>\$5,588.52</b>	<b>\$5,458.14</b>	<b>\$130.38</b>
Overpayment from October 2013 to March 2017: \$5,588.52 - \$5,458.14 = \$130.38				

<sup>1</sup>The rate for subsequent years is calculated by using the previous year's rate and multiplying it by the Pension Index increase: e.g. \$129.75 x 1.009 = \$130.92.

[21] I agree with these calculations, as they properly reflect the annual adjustment under subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*.

[22] The Appellant did not update its calculations to December 2017, the date of its most recent submissions.

**April 2017 to December 2017**

[23] Between April 2017 and December 2017, I calculate an overpayment as follows:

**Overpayment from April 2017 to December 2017**

<b>Year</b>	<b>Number of Months</b>	<b>Rate at Which Respondent Was Paid</b>	<b>Rate of Entitlement</b>	<b>Difference (monthly difference x number of months)</b>
2017	9	\$136.77	\$133.57	\$28.80
Overpayment from April 2017 to December 2017: $9 \times (\$136.77 - \$133.57) = \$28.80$				

**January 2018 to Present**

[24] Based on a Pension Index increase of 1.5% for 2018, I calculate the 2018 overpayment per month as follows:

<b>Year</b>	<b>Number of Months</b>	<b>Rate at Which Respondent Was Paid</b>	<b>Rate of Entitlement</b>	<b>Difference / Month</b>
2018		$\$136.77 \times 1.015 =$ \$138.82	$\$133.57 \times 1.015 =$ \$135.57	\$3.25
Overpayment per month in 2018: $\$138.82 - \$135.57 = \$3.25$				

**Summary**

[25] I agree with the Appellant's calculations up to March 2017. The same formula can be used to calculate the net payable or owing to 2018. The net retroactive retirement pension payable to the Respondent from March 2012 to December 2017 can therefore be summarized as follows:

<b>Time Period</b>	<b>Retroactive Payable to Respondent / (Overpayment Owing by Respondent)</b>
March 2012 to September 2013	\$452.96
October 2013 to March 2017	(\$130.38)
April 2017 to December 2017	(\$28.80)
<b>Net retroactive payable to Respondent from March 2012 to December 2017</b>	<b>\$293.78</b>

[26] The appropriate amount for 2018 can be deducted from any retroactive payment owing to the Respondent.

#### **RELIEF SOUGHT**

[27] The Appellant requests that I exercise my power under subsection 59(1) of the *Department of Employment and Social Development Act* to rescind the General Division decision and give the decision that the General Division should have given. The Appellant argues that the General Division decision should have read as follows, “that subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations* which speaks to the annual adjustments of the basic monthly benefit of the retirement pension be applied in the Respondent’s case.”

[28] I agree that this remedy is appropriate under the circumstances. It would serve no purpose for me to return this matter to the General Division to apply the appropriate sections under the *Canada Pension Plan* and the Regulations thereto, when these calculations can be readily made.

## CONCLUSION

[29] As I have determined that the General Division erred in law, the appeal is allowed and the decision of the General Division is rescinded and replaced with the following:

Subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations* apply in the Respondent's case, such that there shall be annual adjustments of the basic monthly amount of the retirement pension. In this regard, if I accept the provided rates at which the Respondent has already been paid, the net retroactive payment from March 2012 to December 2017 is \$293.78. If any amounts have been paid in respect of 2018, there may be appropriate adjustments taken, in accordance with the calculation above.

Janet Lew  
Member, Appeal Division