



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. R. v Minister of Employment and Social Development*, 2019 SST 404

Tribunal File Number: GP-18-2343

BETWEEN:

**C. R.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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

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Decision by: Virginia Saunders

Date of decision: March 7, 2019

## **DECISION**

[1] The appeal is allowed. The Claimant is granted a longer period to request reconsideration of the decision to deny her application for a *Canada Pension Plan* (CPP) survivor's pension. The Claimant's application is returned to the Minister for reconsideration on its merits.

## **OVERVIEW**

[2] In March 2016 the Claimant applied for a CPP survivor's pension as the common-law partner of the deceased contributor, Y. P.<sup>1</sup>. The Minister asked her to send original or certified copies of documents supporting the common-law relationship<sup>2</sup>.

[3] The Claimant provided documents that were not certified, so the Minister advised it would not process her application until she rectified that or supplied something more<sup>3</sup>.

[4] In October 2016 the Minister wrote to the Claimant and told her it would deny her application if the requested documents were not received within thirty days<sup>4</sup>. The Claimant did not respond, so the Minister denied the application in November 2016<sup>5</sup>.

[5] In February 2018 the Claimant requested reconsideration of the Minister's decision<sup>6</sup>. This was well beyond the 90 day time limit for such requests<sup>7</sup>. After seeking further information from the Claimant<sup>8</sup>, the Minister refused to accept the request for reconsideration on July 11, 2018<sup>9</sup>. The Claimant appealed that refusal to the Social Security Tribunal.

## **ISSUE**

[6] Did the Minister exercise its discretion judicially when it refused to allow the Claimant a longer period to request reconsideration of the November 2016 decision?

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<sup>1</sup> GD2-110-115

<sup>2</sup> GD2-91-92

<sup>3</sup> GD2-86-89

<sup>4</sup> GD2-83

<sup>5</sup> GD2-80-82

<sup>6</sup> GD2-76-77

<sup>7</sup> Subsection 81(1) *Canada Pension Plan*

<sup>8</sup> GD2-8

<sup>9</sup> GD2-4-7

## ANALYSIS

[7] A person who is dissatisfied with a decision that a CPP benefit is not payable to her may request reconsideration within 90 days of being notified of the decision<sup>10</sup>. The Minister may allow a longer period to request reconsideration in certain conditions. The Minister must be satisfied there is a reasonable explanation for requesting a longer period, and that the person demonstrated a continuing intention to request reconsideration<sup>11</sup>. Because the Claimant made her request more than 365 days after she was notified of the decision, the Minister also had to be satisfied the request had a reasonable chance of success, and that no prejudice would be caused to the Minister or to another party if a longer period was allowed<sup>12</sup>.

[8] The Minister's decision about whether to extend the time to request reconsideration beyond the 90 day time limit is a discretionary one, and so must be exercised in a judicial manner<sup>13</sup>. A discretionary power is not exercised judicially if, among other things, the decision-maker ignores a relevant factor or takes into account an irrelevant factor<sup>14</sup>.

[9] The Minister's adjudicator explained the decision not to extend time in a Decision Document attached to the letter sent to the Claimant<sup>15</sup>. After reviewing the adjudicator's reasons, I am satisfied the Minister did not exercise its discretion in a judicial manner, because it ignored relevant factors and took into account an irrelevant factor in deciding not to extend the time.

### **The Minister ignored relevant factors**

#### ***Reasonable explanation for requesting a longer period***

[10] According to the Decision Document, the Minister decided there was no reasonable explanation for the delay in requesting reconsideration because the Claimant "noted psychological and emotional impact of the loss of common-law spouse and that additional documentation was located in another province"<sup>16</sup>. The Claimant had provided extensive detail

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<sup>10</sup> Subsection 81(1) *Canada Pension Plan*

<sup>11</sup> Subsection 74.1(3) *Canada Pension Plan Regulations*

<sup>12</sup> Subsection 74.1(4) *Canada Pension Plan Regulations*

<sup>13</sup> *Panopoulos v. Canada (Attorney General)*, 2010 FC 877; *Canada (A.G.) v. Uppal*, 2008 FCA 388

<sup>14</sup> *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

<sup>15</sup> GD2-6-7

<sup>16</sup> GD2-6

about the cause for the delay, both in her February 2018 letter<sup>17</sup> and in her response to the Minister's request for more information<sup>18</sup>. These included that her common-law spouse of ten years had died by suicide, causing debilitating and overwhelming shock and emotional upset for many months; that she could not afford to ship her documents to British Columbia from storage in Ontario and so had to wait for friends to bring them to her; and that she then discovered Y. P. had discarded many papers. This caused further upset and further delay, as she had to find the relevant documents elsewhere, which was extremely difficult and time-consuming.

[11] This information was relevant to the question of whether the delay was reasonable, yet the Decision Document does not show that any of it was analyzed, and does not explain why these compelling reasons did not justify the delay. I find the Minister ignored these relevant factors in making its decision.

***Continuing intention to seek reconsideration***

[12] The Decision Document shows the adjudicator decided the Claimant did not demonstrate a continuing intention to seek reconsideration because no intent was demonstrated until the letter of February 2018<sup>19</sup>. However, the legislation does not require an applicant to notify the Minister of his or her intentions. The Minister ignored the Claimant's information about how she tried to obtain the requested information in the months between when the application was denied and when she requested reconsideration. This information was relevant to the issue of the Claimant's continuing intention to request reconsideration, but was ignored by the adjudicator.

***Reasonable chance of success***

[13] The Decision Document shows the adjudicator decided the appeal did not have a reasonable chance of success because "Survivor application denied as client did not provide requested documentation. Client did provide further documentation with late reconsideration request"<sup>20</sup>.

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<sup>17</sup> GD2-10-13, 76-77

<sup>18</sup> GD2-10-13, 76-77

<sup>19</sup> GD2-6

<sup>20</sup> GD2-6

[14] In May 2016 the Claimant provided evidence of a common-law relationship, including a statutory declaration<sup>21</sup>, and an affidavit with a certified copy of pension information showing she was Y. P.'s beneficiary<sup>22</sup>. With her reconsideration request she provided further evidence, including certified copies of residential tenancy agreements and financial information that showed a common-law relationship going back many years. The Decision Document does not show if or how the adjudicator considered this information in deciding there was no reasonable chance of success. I find these relevant factors were ignored<sup>23</sup>.

### **The Minister took into account irrelevant factors**

#### ***Prejudice to the Minister***

[15] The Decision Document stated there was unfairness to the Minister because of the significant lapse between the decision date and the request for reconsideration<sup>24</sup>. But, the reason there is a discretion to grant an extension of time is that sometimes people cannot act within the legislated time limits. The legislation explicitly contemplates that the delay can be more than 365 days. In this context, delay alone is not evidence of unfairness or prejudice. Without evidence and analysis to show how the delay disadvantaged the Minister, the fact there was a delay is not relevant.

### **What decision should the Minister have made?**

[16] I find that in ignoring relevant factors on three of the matters under consideration, and in taking into account an irrelevant factor on the fourth, the Minister did not exercise its discretion judicially when it made its decision of July 11, 2018. As a result, I have authority to give the decision the Minister should have given<sup>25</sup>.

[17] As discussed above, the Claimant had a reasonable explanation for needing a longer period to request reconsideration. She had mental health issues, and significant practical difficulties in obtaining documents requested by the Minister. Despite these obstacles, she

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<sup>21</sup> GD2-116

<sup>22</sup> GD2-95-96

<sup>23</sup> GD2-29-71

<sup>24</sup> GD2-7

<sup>25</sup> Subsection 54(1) *Department of Employment and Social Development Act*

persisted in attempts to provide the information for approximately two years, and so demonstrated a continuing intention to request reconsideration. She eventually filed persuasive evidence of a common-law relationship, which shows her request has a reasonable chance of success. There is no evidence the Minister has been or will be prejudiced by allowing a longer period to request reconsideration. Given the Minister's resources, its ability to make a reconsideration decision would not be unduly affected by allowing the Claimant a longer period to make the request.

### **CONCLUSION**

[18] The appeal is allowed.

Virginia Saunders  
Member, General Division - Income Security