



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. P. v Minister of Employment and Social Development*, 2019 SST 430

Tribunal File Number: GP-18-2803

BETWEEN:

**M. P.**

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: Pierre Vanderhout

Videoconference hearing on: April 1, 2019

Date of decision: April 2, 2019

## **DECISION**

[1] The Minister did not act judicially when it refused to grant the Claimant an extension of time to request a reconsideration of the Minister's decision regarding her Canada Pension Plan ("CPP") survivor's pension. This is because the Minister failed to consider a relevant factor when making that decision. As a result, I had to make the decision that the Minister should have made. However, I ultimately arrived at the same conclusion: an extension cannot be granted because the Claimant did not meet the criteria for getting an extension.

## **OVERVIEW**

[2] The Minister received the Claimant's application for a CPP survivor's pension on December 19, 2017. In a letter dated either February 2 or February 6, 2018 (the "Pension Decision Letter"), the Minister granted the Claimant a CPP survivor's pension, with retroactive payments going back to January 2017. The survivor's pension was with respect to her late husband Francisco Martinez (the "Contributor"), who died on November 29, 2011. As the Claimant wanted to receive retroactive payments back to 2011, she asked for a reconsideration of the decision in the Pension Decision Letter. The Minister received this request on July 24, 2018.

[3] A person must usually file their reconsideration request within 90 days of receiving the decision. As the Minister received the Claimant's reconsideration request more than 90 days after she had received the Pension Decision Letter, the Minister had the discretion to deny her request by not extending the 90-day filing period. In this case, the Minister decided not to provide an extension. A person who is not satisfied with a ministerial decision about not granting further time may appeal that decision to the Social Security Tribunal ("Tribunal").<sup>1</sup> The Claimant therefore appealed that decision to the Tribunal.

## **ISSUES**

[4] When did the 90-day reconsideration request deadline expire?

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<sup>1</sup> Section 82 of the *Canada Pension Plan*

[5] Did the Minister act judicially, in refusing to grant the Claimant an extension of the 90-day period to request a reconsideration of the Pension Decision Letter?

[6] If not, what decision should the Minister have made with respect to allowing an extension?

## **ANALYSIS**

[7] A person may, within 90 days of being notified in writing of a decision, make a request to the Minister for a reconsideration of that decision. The Minister may, but is not required to, allow a longer period to make that request. The Minister must be satisfied that there is a reasonable explanation for requesting a longer period, and the person has demonstrated a continuing intention to request a reconsideration.<sup>2</sup>

[8] The Minister's decision to allow or refuse a late reconsideration request is considered a discretionary decision. The Minister's discretion must be exercised judicially and judiciously.<sup>3</sup>

[9] The Tribunal can only interfere with the Minister's discretionary power in certain situations. The Tribunal should not interfere with a discretionary power unless the Minister exercised its discretion in a non-judicial manner or the Minister acted in a perverse or capricious manner without regard to the material before it. Discretionary power is not exercised judicially if the Minister:

- acted in bad faith;
- acted for an improper purpose or motive;
- took into account an irrelevant factor;
- ignored a relevant factor; or
- acted in a discriminatory manner.<sup>4</sup>

[10] My role at this stage of the analysis is not to determine whether the Minister made the right decision. Instead, I must decide whether the Minister exercised its discretion judicially and judiciously. As there appears to be a minor discrepancy about the actual date of the Pension

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<sup>2</sup> Subsection 81(1) of the *Canada Pension Plan* and subsection 74.1(3) of the *Canada Pension Plan Regulations*

<sup>3</sup> *Canada (Attorney General) v. Uppal*, 2008 FCA 388

<sup>4</sup> *Canada (Attorney General) v. Purcell*, [1996] 1 FC 644

Decision Letter, I will first make findings about that decision's date and the precise timing of the 90-day period to request a reconsideration of that decision.

**When did the 90-day reconsideration request deadline expire?**

[11] The Tribunal file does not contain a copy of the Pension Decision Letter. At the hearing, the Claimant said the letter was dated February 6, 2018. However, in the Tribunal file, both the Minister and the Claimant refer to February 2, 2018, as the date of that letter.<sup>5</sup> At the hearing, the Claimant also acknowledged that the Pension Decision Letter identified a 90-day deadline for requesting a reconsideration.

[12] I have no reason to disbelieve the Claimant's oral evidence. I found her to be a very candid and honest witness. In the absence of an actual copy of the Pension Decision Letter, and giving the Claimant the benefit of the doubt, I will consider February 6, 2018, as the date of that letter. However, I also need to determine when the Claimant received the Pension Decision Letter, so that I can calculate the 90-day deadline.

[13] The Claimant also could not recall exactly when she received the Pension Decision Letter. However, she previously gave written evidence that she received the Pension Decision Letter in February 2018.<sup>6</sup> I take judicial notice of the fact that mail within Canada is generally received within 10 days of being mailed. Accordingly, I find that the Claimant received the Pension Decision Letter on February 16, 2018. This means that the 90-day deadline for requesting a consideration would have been May 17, 2018. As this is long before the Claimant filed her reconsideration request, I will now consider whether the Minister acted appropriately in declining to accept her request because it was late.

**Did the Minister act judicially, in refusing to grant the Claimant an extension for requesting a reconsideration of the Pension Decision Letter?**

[14] I see no evidence that the Minister acted in bad faith, acted for an improper purpose or motive, or acted in a discriminatory manner. Upon receiving the Claimant's late reconsideration request, the Minister told her that she needed to provide an explanation for the delay and to explain how she demonstrated an intent to request a reconsideration.<sup>7</sup>

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<sup>5</sup> GD2-5, GD2-15, GD2-17, and GD3-2

<sup>6</sup> GD2-14

<sup>7</sup> GD2-15

[15] The Minister's request for additional information shows that the Minister had not prejudged the matter and intended to make a well-informed decision. I will now consider whether the Minister considered an irrelevant factor or ignored a relevant factor.

*Did the Minister consider an irrelevant factor?*

[16] In her letter of August 21, 2018, the Claimant addressed the Minister's request for an explanation for the delay. She also provided some information about the continuing intention to request a reconsideration. However, on September 19, 2018, the Minister requested additional information about the nature of her relationship with the Contributor up to his death in 2011.<sup>8</sup> It was only after receiving this additional information about the Contributor that the Minister made a decision on the late reconsideration request.

[17] It is difficult to see how this additional information could be considered relevant to the reconsideration request. However, the Minister's September 2018 request clearly states that it was made in order to confirm her ongoing entitlement to the CPP survivor's pension: it was not made with respect to her late reconsideration request. The Minister's subsequent decision on the late reconsideration request also did not mention the Claimant's response to the September 2018 request.<sup>9</sup> I am therefore satisfied that the Minister did not take an irrelevant factor into account.

*Did the Minister ignore a relevant factor?*

[18] The Minister's decision on November 9, 2018, does not explain why the Claimant's explanation for the delay (or her description of how she demonstrated a continuing intention to request a reconsideration) was inadequate. The Minister only acknowledged receiving and considering the Claimant's explanations.<sup>10</sup>

[19] The Claimant did not suggest that she always intended to request a reconsideration. This intention only existed once she had discussed her pension situation with her co-workers. Her August 2018 letter strongly suggests that she did not read beyond the first page of the Pension Decision Letter and only took action a "few months" later after discussing the matter with her

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<sup>8</sup> GD2-10 and GD2-14

<sup>9</sup> GD2-5 and GD2-10

<sup>10</sup> GD2-5

co-workers.<sup>11</sup> However, the Minister did not address the possibility that the discussion with her co-workers could have taken place before May 17, 2018. It was important for the Minister to know this information: an intention to request a reconsideration within the 90-day appeal period would have been a very relevant factor to consider.

[20] I find that the Minister failed to consider a relevant factor when it did not specifically address the Claimant's discussion with her co-workers or attempt to clarify when this might have taken place. As a result, I must conclude that the Minister failed to act judicially when it denied the Claimant an extension for her reconsideration request.

**If the Minister did not act judicially, what decision should the Minister have made with respect to allowing an extension?**

[21] I must now make the decision that the Minister should have made when considering the Claimant's reconsideration request. In doing so, I can also consider evidence that I heard at the hearing. This is important, because the Claimant gave evidence that clarified the events after the Pension Decision Letter was sent.

[22] At the hearing, the Claimant she was initially satisfied just to start receiving the CPP survivor's pension. She said she did not discuss the Pension Decision Letter with her co-workers until at least June and possibly July of 2018. Although she could not identify a specific date, she said this would have happened after the 90-day period had expired. After that discussion, she decided to pursue a reconsideration and promptly sought help from the Seniors Resource Centre. She went there on the same day she delivered her reconsideration request to the Minister. I therefore find that the Claimant did not take any action, or intend to do so, until after the 90-day deadline expired on May 17, 2018.

[23] As a result, I must conclude that the Claimant did not demonstrate a continuing intention to request a reconsideration of the Pension Decision Letter. Any such intention existed for perhaps a month prior to filing her request, and possibly much less. Regardless of the exact length of that intention, it was not continuous from the date she initially received the Pension

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<sup>11</sup> GD2-14

Decision Letter, nor was it continuous from any point before the 90-day deadline expired. This, in itself, means that her appeal cannot succeed.

[24] As for the reasonable explanation for the delay, the Claimant was very open about the fact that she only looked at the first page of the Pension Decision Letter and did not appreciate that an appeal was possible.<sup>12</sup> She readily admitted her failure to review the letter in full, and suggested that this failure was consistent with her general lack of knowledge of the CPP program. I accept that she was not familiar with the CPP; once again, I found her evidence quite believable on this issue. However, it is also very difficult to find that her delay in appealing the Pension Decision Letter was reasonable when she did not read the entire letter. I must therefore conclude that there was not a reasonable explanation for requesting a longer period.

[25] As the Claimant did not provide a reasonable explanation for requesting a longer period, and did not demonstrate a continuing intention to request a reconsideration, I cannot grant the Claimant a longer period to request a reconsideration of the Pension Decision Letter. She needs to meet both of those criteria, in order to receive an extension.

## **CONCLUSION**

[26] Although the Minister did not act judicially when it denied an extension of the period to make a reconsideration request, and I had to make the decision that the Minister ought to have made, the ultimate outcome is the same. I find that the Claimant did not meet the criteria to get an extension for filing her reconsideration request.

[27] The appeal is dismissed.

Pierre Vanderhout  
Member, General Division - Income Security

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<sup>12</sup> GD2-14; this was also reiterated at the hearing.