



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. L. v Minister of Employment and Social Development*, 2020 SST 742

Tribunal File Number: GP-19-1205

BETWEEN:

**N. L.**

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: Antoinette Cardillo

Videoconference hearing on: December 19, 2019

Date of decision: February 7, 2020

## **DECISION**

The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension or the Post-Retirement Disability Benefit (PRDB).

## **OVERVIEW**

[1] The Minister received the Appellant's application for the CPP disability pension on August 3, 2017<sup>1</sup>. The Appellant was in receipt of the CPP retirement pension since April 2015. The Minister denied the disability application initially and on reconsideration because the Appellant had been receiving the retirement pension for more than 15 months before applying for the disability pension. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

[2] The Minister stated that the Appellant cannot cancel her retirement pension in favour of a disability pension as the maximum retroactivity permitted does not allow her to be deemed disabled prior to the date her retirement pension first became payable as required by the legislation. The Minister added that effective January 1, 2019, a new benefit called a PRDB provides disability protection for CPP retirement pensioners, like the Appellant, who are disabled on or after their retirement pension start date but who have not reached age 65. However, after review, the Minister determined that the Appellant did not meet the criteria to receive a PRDB.

## **ISSUES**

[3] Is the Appellant entitled to cancel her retirement pension in favour of a disability pension?

[4] Is the Appellant entitled to the PRDB?

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<sup>1</sup> GD2-47

## APPLICABLE LAW

### *i. CPP Disability and CPP Retirement Pension*

[5] The Appellant is in receipt of the CPP retirement pension since April 2015. The CPC<sup>2</sup> states that once a person starts to receive a CPP retirement pension, that person cannot apply or re-apply, at any time, for a disability pension. The CPP does however provide certain exceptions to this provision.

[6] The CPP<sup>3</sup> allows a person to cancel a benefit after it has started if the request to cancel the benefit is made, in writing, within six months after payment of the benefit has started. If a person does not cancel a benefit within six months after payment of the benefit has started, the only way a retirement pension can be cancelled in favour of a disability benefit is if the person is deemed to be disabled before the month the retirement pension first became payable<sup>4</sup>. The CPP also states that the earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Respondent.

[7] The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favor of the disability pension where the disability application is made fifteen months or more after the retirement pension started to be paid.

### *ii. Post-Retirement Disability Benefit (PRDB)*

[8] A post-retirement disability benefit<sup>5</sup> is payable to a beneficiary of a retirement pension who has not reached 65 years of age, is disabled and who has made base contributions for not less than the minimum qualifying period (MQP).

[9] A contributor is deemed to have made base contributions<sup>6</sup> for not less than the minimum qualifying period only if the contributor has made base contributions on earnings that are not less than the contributor's basic exemption,

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<sup>2</sup> Subsection 70(3) of the CPP

<sup>3</sup> Section 66.1 of the CPP and section 46.2 of the CPP Regulations

<sup>4</sup> Subsection 66.1(1.1) of the CPP

<sup>5</sup> Paragraph 44(1)(h) of the CPP

- (a) for at least four of the last six years;
- (b) for at least 25 years of which at least three are in the last six years; or
- (c) for each year after the month of cessation of the contributor's previous disability pension or post-retirement disability benefit.

[10] The contributions made to the CPP are on earnings that are equal to or greater than the basic exemption of the contributor<sup>7</sup>. The Year's Basic Exemption (YBE) since January 1, 1998, is frozen at \$3,500; however, this does not apply for disability cases<sup>8</sup>. For a disability benefit, a contribution is considered valid if the earnings are above the year's basic exemption for disability (YBE for DSB).

[11] As the PRDB did not come into effect until January 2019, an Appellant must have an MQP into January 2019 or later in order to be considered for PRDB. An MQP ending prior to January 2019 results in the Appellant failing to meet the contributory requirements for a PRDB.

## **ANALYSIS**

### *i. CPP Disability and CPP Retirement Pension*

[12] The Appellant applied for the CPP retirement pension in November 2014. She began receiving the retirement pension in April 2015.

[13] Her application for disability benefits was received by the Minister in August 2017.

[14] As stated, if a person does not cancel a benefit within six months after payment of the benefit has started, the only way a retirement pension can be cancelled in favour of a disability benefit is if the person is deemed to be disabled before the month the retirement pension first became payable<sup>9</sup>. In this case,

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<sup>6</sup> Subsection 44(4) of the CPP

<sup>7</sup> Subsection 20(2) of the CPP

<sup>8</sup> Paragraph 44(2)(a) of the CPP

<sup>9</sup> Subsection 66.1(1.1) of the CPP

- 1) given that the Appellant began receiving the retirement pension in April 2015, she would have to be found disabled by March 2015; however,
- 2) the CPP states that the earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Respondent.

[15] The Appellant's application was received in August 2017, which means that the earliest she could be found disabled is May 2016. Consequently, since the Appellant's disability application was received more than 15 months after she began receiving the retirement pension, she cannot be found disabled the month before the start of her retirement pension (March 2015).

[16] I find that the Appellant is not entitled to cancel her retirement pension in favour of a disability pension because the disability application was made 15 months after she began receiving the retirement pension.

#### *ii. Post-Retirement Disability Benefit (PRDB)*

[17] As stated, to meet the eligibility criteria to receive a PRDB, an applicant must have an MQP in January 2019 or later.

[18] In addition, the MQP<sup>10</sup> refers to four of the last six calendar years; 25 calendar years of which at least three are in the last six calendar years.

[19] Based on the evidence<sup>11</sup>, the Appellant has 25 years of valid earnings and contributions in her contributory period. However, she does not have three years of valid contributions in the last six years, which would allow her to meet the contributory requirements for the PRDB.

[20] More precisely, from 2014 to 2019 (last six years), her pensionable earnings in 2015 (\$4637) and in 2017 (\$4175) are below the YBE for disability: \$5300 for 2015 and \$5500 for 2017. Therefore, her MQP cannot be established in 2019 or later.

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<sup>10</sup> Subsection 44(4) of the CPP

<sup>11</sup> GD2-66 and GD1-5

[21] I find that the Appellant's MQP is December 31, 2018 and she is not entitled to the PRDB since her MQP is not in 2019.

**CONCLUSION**

[22] The appeal is dismissed.

Antoinette Cardillo  
Member, General Division - Income Security