



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. P. v Minister of Employment and Social Development*, 2020 SST 738

Tribunal File Number: GP-18-341

BETWEEN:

M. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Date of decision: July 7, 2020

DECISION

[1] The Minister correctly determined the Claimant's Canada Pension Plan ("CPP") retirement pension to be \$614.92 per month, effective August 2017.

OVERVIEW

[2] The Claimant's CPP disability pension started in December 2011, following a car accident. He received the CPP disability pension (up to \$939.25 per month) until July 2017, when he reached the age of 65. Starting in August 2017, he received a CPP retirement pension (initially \$614.92 per month) instead.¹ He also started receiving an Old Age Security ("OAS") pension in August 2017. He asked the Minister to reconsider the amount of his CPP retirement pension in September 2017. On reconsideration, the Minister upheld the original decision. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] The CPP disability pension is only paid until age 65.² The Claimant does not dispute this. However, he says his CPP retirement pension should be increased because he couldn't contribute to the CPP while he was disabled. He also alleges discrimination, because of his disability.³

PRELIMINARY MATTERS

[4] The Claimant's appeal was initially a "Charter appeal", because of his discrimination allegations. However, he did not file a Charter Argument notice by the final deadline of May 28, 2020. The Tribunal had extended that deadline on two prior occasions.⁴ As a result, on May 29, 2020, the Tribunal told the parties that this matter would proceed as a regular appeal. This means I cannot consider any Charter arguments.

[5] I conducted this hearing by written questions and answers, for the reasons set out in the June 4, 2020, Notice of Hearing (the "Notice"). The Tribunal sent the Notice to the Claimant by e-mail on June 5, 2020. The e-mail address was the same one used by the Claimant earlier this

¹ A person receiving a CPP disability pension up to their 65th birthday is deemed to have applied for his CPP retirement pension in that month. The CPP retirement pension would then start in the following month. See s. 70(2) of the *Canada Pension Plan*.

² Paragraphs 44(1)(b) and 70(1)(c) of the *Canada Pension Plan*.

³ GD1A-8

⁴ The deadline and extensions are at GD6-1.

year, when communicating with the Tribunal. I see no evidence of any problems with sending the Notice. I find that the Notice was communicated to the Claimant on June 5, 2020. The Claimant had until July 3, 2020, to answer the written questions.⁵

[6] As of today, the Tribunal has not received any answers from the Claimant. The Tribunal told the Claimant that, if he did not reply by the deadline, I could make a decision without those answers and based only on the information already in the file.⁶ This is what I have done.

ISSUES

[7] Did the Minister grant the correct CPP retirement pension, as of August 2017?

[8] If not, what was the Claimant's correct CPP retirement pension?

ANALYSIS

Did the Minister grant the correct CPP retirement pension, as of August 2017?

[9] For the reasons set out below, I find that the Minister granted the correct CPP retirement pension to the Claimant.

[10] The CPP retirement pension is equal to 25% of a person's average monthly pensionable earnings ("AMPE"). The AMPE is equal to the person's total pensionable earnings divided by the number of contributory months.⁷

[11] The Minister first calculated the Claimant's CPP retirement pension in 2011, as the CPP disability pension is based partly on the CPP retirement pension amount. The Minister found that the Claimant's CPP retirement pension would have been \$557.50 per month in 2011. The Minister increased the CPP retirement pension annually, due to increases in the cost of living. This resulted in a CPP retirement pension of \$614.92 per month in 2017.⁸

⁵ GD0-1 to GD0-2.

⁶ GD0-1

⁷ See ss. 46(1), 47, and 48(1) of the *Canada Pension Plan*.

⁸ GD2-5 to GD2-8

[12] In the Notice, the Claimant was asked if he disagreed with the Minister's calculation of his CPP retirement pension. If he did disagree, he was also asked to explain how the Minister's calculation was wrong. However, as noted, he did not respond to the written questions.⁹

[13] I am not persuaded that the Minister erred in calculating the Claimant's CPP retirement pension. The onus is on the Claimant to prove his case on a balance of probabilities.¹⁰ I find that he has not met this onus. Most notably, he did not answer questions that went to the heart of his appeal. I will now comment briefly on the issue of fairness, as this underlies his appeal.

Fairness and the Canada Pension Plan

[14] Although CPP retirement pensions are usually less than CPP disability pensions, the OAS pension usually offsets this. The OAS pension begins at age 65. In the Claimant's case, he started to get an OAS pension of \$601.45 per month in August 2017.¹¹ This means his federal pension income increased from \$939.25 per month to \$1,216.37 per month after he turned 65.

[15] More generally, I cannot ignore the CPP's provisions. The Tribunal was created by legislation. It only has the powers granted to it by its governing statute. As a Tribunal member, I must interpret and apply the provisions as they appear in the CPP. I cannot waive or change them, even if they seem unfair. I cannot contradict Parliament's intent.¹²

If the Claimant did not get the correct retirement pension, what should it have been?

[16] As I found that the Claimant received the correct CPP retirement pension, I do not need to answer this question.

CONCLUSION

[17] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

⁹ GD0-2

¹⁰ *Glover v. Canada (Attorney General)*, 2017 FC 363.

¹¹ GD2-9

¹² See, for example, the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22, at paragraph 101.