



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. L. v Minister of Employment and Social Development*, 2020 SST 741

Tribunal File Number: AD-20-560

BETWEEN:

N. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shirley Netten

DATE OF DECISION: August 28, 2020

DECISION AND REASONS

Decision Overview

[1] The appeal is allowed.

[2] N. L. (Claimant) began receiving her Canada Pension Plan (CPP) retirement pension in April 2015. In August 2017, she applied for a CPP disability pension. Service Canada¹ denied the application because the Claimant was too late to cancel her retirement pension in favour of a disability pension. The Claimant did not appeal Service Canada's January 2018 reconsideration decision to the Social Security Tribunal's General Division.

[3] The Claimant applied for the post-retirement disability benefit (PRDB) in January 2019. Service Canada decided that the Claimant was not entitled to the PRDB because she did not have "sufficient earnings and contributions to meet the minimum qualifying period of January 2019 or later."² The Claimant appealed Service Canada's May 2019 reconsideration decision to the General Division.

[4] The General Division decided that the Claimant was not entitled to the CPP disability pension or the PRDB. I have concluded that the General Division had no authority to decide the issue of the Claimant's entitlement to a CPP disability pension. I have also concluded that the General Division made an error of law about the PRDB. I have found that the Claimant met the contribution requirement for the PRDB in January 2019.

Issues

[5] The issues in this appeal are:

1. Did the General Division make an error of jurisdiction when it decided the Claimant's entitlement to the disability pension?

¹ On behalf of the Minister of Employment and Social Development (Minister).

² GD2-8.

2. Did the General Division make an error of law when it decided whether the Claimant met the contribution requirement for the PRDB?
3. If the General Division erred, how should I correct the error(s)?

1. Disability Pension: Error of Jurisdiction

The General Division exceeded its jurisdiction when it decided the Claimant's entitlement to the disability pension.

[6] One of the grounds of appeal to the Appeal Division is that the General Division acted beyond its jurisdiction.³

[7] The Tribunal's jurisdiction (its power or authority to decide certain matters) comes from the law. The *Canada Pension Plan* says that parties who are dissatisfied with a reconsideration decision can appeal the decision to the Tribunal.⁴ The *Department of Employment and Social Development Act* (DESDA) gives the Tribunal's General Division the authority to decide these appeals.⁵

[8] Both parties agree that the General Division made an error of jurisdiction.

[9] The Claimant did not appeal the reconsideration decision about the disability pension to the Tribunal. She also did not ask the General Division to add this decision to the issue that she had appealed. Because the Claimant did not appeal this reconsideration decision, the General Division acted beyond its jurisdiction when it decided the disability pension issue.

2. Post-retirement disability benefit: Error of law

The General Division misinterpreted and misapplied the law about the contribution requirement and the minimum qualifying period for the PRDB.

[10] Another ground of appeal to the Appeal Division is that the General Division made an error of law in making its decision.⁶

³ *Department of Employment and Social Development Act* (DESDA), s 58(1)(a).

⁴ *Canada Pension Plan*, s 82.

⁵ DESDA, ss 52–54.

⁶ DESDA, s 58(1)(b).

[11] Section 44(1)(h) of the *Canada Pension Plan* says that the PRDB shall be paid to a person who is under 65 years of age, disabled, receiving a retirement pension, and “has made base contributions for not less than the minimum qualifying period.”⁷ The minimum qualifying period for the PRDB (which I will call the PRDB MQP) is set out in section 44(4):

[T]he contributor is deemed to have made base contributions 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, calculated without regard to subsection 20(2),

(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.

[Emphasis added]

[12] Section 44(4)(b) applies in this case because the Claimant made valid contributions to the CPP for over 25 years.

The “last six years” are the preceding full calendar years.

[13] The General Division found that the Claimant did not meet the requirement to have valid contributions in three of the last six years, based on the “last six years” being 2014 to 2019.⁸

[14] At the hearing, both the Claimant and the Minister’s representative agreed that the “last six years,” in relation to the Claimant’s January 12, 2019 PRDB application, were the years 2013 to 2018 inclusive. Both parties agreed that the Claimant met the contribution requirement for the PRDB found in section 44(4)(b), based on valid contributions in 2013, 2014, and 2016.

[15] However, in post-hearing submissions, the Minister’s representative stated that using the year of application and the five preceding years (2014 to 2019) was an alternative approach.⁹ She did not provide any supporting arguments for this statement.

⁷ There are two alternative criteria (for late applicants and those with a division of unadjusted pensionable earnings) not relevant to this appeal: See sections 44(1)(h)(ii) and (iii).

⁸ At paragraph 20.

[16] When considering which are the “last six years” mentioned in section 44(4), I have to consider the text, context, and purpose of the provision.¹⁰ I will start with the text.

[17] Sometimes, the “last” number of years refers to the final years at the end of a fixed period;¹¹ for example, the last year of their marriage, the last five years of her career, or the last six years of his contributory period. Section 44(4) does not mention the contributory period or any other period within which the six years must fall. Because of this, “the last six years” cannot mean the final six years within a particular period.

[18] If it is not within a fixed period, the “last” number of years refers to the preceding years.¹² The six preceding years from January 12, 2019, could be January 12, 2013 to January 11, 2019 (six January-to-January years). However, the definitions section of the *Canada Pension Plan* says that a “*year* means a calendar year.”¹³ A calendar year is a period of 12 consecutive months from January 1 to December 31.¹⁴ Section 44(4) does not give the option of considering periods that are only partly within a calendar year. As a result, the “last six years” must refer to the six preceding full calendar (January through December) years. This is its ordinary and grammatical meaning.

[19] The text of section 44(4) is especially important to its interpretation because the words used have only one reasonable meaning.¹⁵ Nevertheless, I still have to look at the context and purpose, to make sure that my understanding of the words is not mistaken.¹⁶

[20] The PRDB is one of a variety of CPP benefits granted upon disability, retirement, or death. Disability pensions are payable to age 65, whereas retirement pensions can start as early as age 60. It is possible to switch from an early retirement pension to a disability pension, but only for a limited time.¹⁷ This may disadvantage those who become disabled after starting their retirement pension and before age 65. The PRDB was introduced specifically for disabled early

⁹ AD5-2.

¹⁰ *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 115–122.

¹¹ In this sense, “last” means “belonging to the final stage”: Merriam-Webster Dictionary.

¹² In this sense, “last” means “next before the present”: Merriam-Webster Dictionary.

¹³ *Canada Pension Plan*, s 2(1).

¹⁴ *Interpretation Act*, s 37(1)(a).

¹⁵ *Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54 at para 10.

¹⁶ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4 at para 48.

¹⁷ *Canada Pension Plan*, ss 70(3), 66.1, and 44(2)(b) and *Canada Pension Plan Regulations*, s 46.2.

retirees: an amount equal to the flat-rate component of the disability pension¹⁸ is paid on top of the CPP retirement pension, until age 65.

[21] The CPP operates like an insurance scheme, where entitlement depends on contributions. The disability pension, death benefit, survivor's pension, disabled contributor's child's benefit, orphan's benefit, and PRDB all require "base contributions for not less than the minimum qualifying period."¹⁹ The minimum qualifying period is different for different benefits.²⁰ The purpose of a minimum qualifying period is to restrict benefits to those with a certain level of contributions to the CPP.

[22] When Parliament introduced the PRDB, it created a contribution requirement that was different from the one in place for the disability pension. In section 44(2), the minimum qualifying period for the disability pension is three or four years of the "last six calendar years included either wholly or partly in the contributor's contributory period," with the contributory period ending with the month of disability. In section 44(4), the minimum qualifying period for the PRDB is simply three or four of the "last six years"; the phrase is not qualified any further.

[23] It was a deliberate choice not to tie the PRDB MQP to the contributory period and not to consider partial years. Parliament could have extended the definition in section 44(2) to the PRDB, but it did not. Parliament could have chosen a fixed period for the PRDB MQP and included partial years (such as, "the last six calendar years included either wholly or partly in the period ending with the date of disability"), but it did not.

[24] It was also a logical choice to use a different qualifying period. Those applying for the PRDB are already receiving a retirement pension, and their contributory period could have ended up to five years earlier.²¹ Eliminating the contributory period from the equation allows for consideration of more recent contributions. In this context, it makes sense for Parliament to have chosen a different and simpler qualifying test for the PRDB, while still achieving the purpose of restricting entitlement to those with a certain level of recent contributions.

¹⁸ \$505.79 in 2020.

¹⁹ *Canada Pension Plan*, ss 44(1)(b)(i), 44(1)(c), 44(1)(d)(ii), 44(1)(e)(i), 44(1)(f), and 44(1)(h)(i).

²⁰ *Canada Pension Plan*, ss 44(2), 44(3), and 44(4).

²¹ The contributory period ends the month before the start of the retirement pension: *Canada Pension Plan*, s 49(b)(iii).

[25] Related provisions in the *Canada Pension Plan* address the amount of the PRDB, when payments start and end, in what circumstances the PRDB can be reinstated, and whether an estate can apply for the PRDB.²² None of these provisions mentions the contribution requirement or gives any direction about which six years are the “last six years” for the purposes of the minimum qualifying period.

[26] To summarize, I see no inconsistency between the ordinary meaning of the “last six years” in section 44(4), the relevant context, and the purpose of the contribution requirement for the PRDB within the *Canada Pension Plan*.

[27] I conclude that the “last six years,” in section 44(4), refers to the six preceding full calendar (January through December) years. When the Claimant applied for the PRDB on January 12, 2019, the six preceding full calendar years were the years 2013, 2014, 2015, 2016, 2017, and 2018. The General Division made an error of law when it interpreted section 44(4) to require consideration of the current year plus the preceding five years, rather than simply the preceding six calendar years.

The Claimant does not have “an MQP” of December 31, 2018.

[28] In addition to (and likely because of) its misinterpretation of section 44(4), the General Division misstated the Claimant’s MQP.

[29] The General Division said that the Claimant’s “MQP is December 31, 2018.”²³ This is wrong. The General Division mistakenly applied the practice and method of calculating a fixed date MQP for the disability pension (which I will call the Disability Pension MQP) to the PRDB MQP. The Minister’s representative appears to have made the same error, when she argued that the Claimant could not “establish an MQP” after December 31, 2018.²⁴

²² *Canada Pension Plan*, ss 59.2, 70.01, 70.02, 70.1, and 60(2.1).

²³ At paragraph 21.

²⁴ AD5-2.

[30] There is a longstanding practice of describing the Disability Pension MQP as a single date. For the disability pension, a claimant must meet the contribution requirement within their contributory period, and the contributory period ends the month they became disabled.²⁵

44(2) For the purposes of [the disability pension and the associated disabled contributor's child's benefit],

(a) a contributor is deemed to have made base contributions for not less than the minimum qualifying period only if the contributor has made base contributions during the contributor's contributory period on earnings that are not less than the contributor's basic exemption, calculated without regard to subsection 20(2),

(i) for at least four of the **last six calendar years included either wholly or partly in the contributor's contributory period** or, where there are fewer than six calendar years included either wholly or partly in the contributor's contributory period, for at least four years,

(i.1) for at least 25 calendar years included either wholly or partly in the contributor's contributory period, of which at least three are **in the last six calendar years included either wholly or partly in the contributor's contributory period**, or

(ii) for each year after the month of cessation of the contributor's previous disability benefit; and

(b) the contributory period of a contributor shall be the period

(i) commencing January 1, 1966 or when he reaches eighteen years of age, whichever is the later, and

(ii) **ending with the month in which he is determined to have become disabled for the purpose of paragraph (1)(b)**,

[...]

[Emphasis added]

[31] To figure out whether the contribution requirement has been met, you need to know the contributory period; and to know the contributory period, you need to know the date of disability. For example, if a person became disabled in July 2020, their contributory period would end in July 2020. The last six calendar years included wholly or partly in their contributory period would be 2015, 2016, 2017, 2018, 2019, and 2020. And, if they had valid

²⁵ *Canada Pension Plan*, s 44(2).

contributions in 2016, 2017, and 2018 (plus 25 years overall), they would meet the contribution requirement in section 44(2)(a)(i.1).

[32] Because the date of disability isn't known when a person applies, Service Canada developed a practice of determining the latest date by which the person may be found to be disabled and still be eligible for the disability pension. Service Canada calls this date the MQP, even though it isn't actually the minimum qualifying period in section 44(2)(a). To calculate this date, Service Canada looks for the latest six-year period with enough years of contributions. The end date of this period could be in the past, or it could extend into the future. In the example above, the Disability Pension MQP would be described as December 31, 2021. But the actual minimum qualifying period under section 44(2)(a)(i.1) would be 25 years plus three years in the period 2015 to 2020 (because the contributory period ended in 2020). Once Service Canada knows the date of disability, it verifies that the person met the contribution requirement.

[33] In short, the single MQP date reflects Service Canada's determination of when a person's eligibility for disability benefits would end, rather than the minimum qualifying period that ultimately applies to their situation.

[34] This practice of describing the minimum qualifying period as a single date is unique to the Disability Pension MQP. While Service Canada calculates a fixed MQP date for the disability pension for practical purposes, there is no basis for a similar approach to the PRDB MQP.²⁶ The PRDB MQP does not depend on an as-yet-undetermined contributory period; it simply requires consideration of the preceding six calendar years. Whether a claimant meets the contribution requirement can easily be determined on the date of application.²⁷ There is no need to calculate a single date for the PRDB MQP.

²⁶ This is also true of the death benefit, survivor's pension, and orphan's benefit. The MQP for these benefits is defined in section 44(3) of the *Canada Pension Plan*.

²⁷ Or, at an earlier date when all of the entitlement criteria were met, under the late applicant provision: *Canada Pension Plan*, s 44(1)(h)(ii).

[35] As set out in section 44(4), the PRDB MQP is a qualifying period. In this case, the Claimant's minimum qualifying period requires at least 25 years of valid contributions, of which at least three years are in the six years 2013 to 2018 inclusive.²⁸

[36] Even if it were important to know the latest date that the Claimant met the PRDB MQP, that date would not be December 31, 2018. The calculation would not follow the same process as the Disability Pension MQP, because a different qualifying period is under consideration. The Claimant made valid contributions for over 25 years, including in 2013, 2014, and 2016. She met the contribution requirement (otherwise expressed as "met the MQP") when she applied for the PRDB on January 12, 2019 — a date later than December 31, 2018. The Claimant would have met the contribution requirement up to the end of 2019, because the PRDB MQP requires consideration of the six preceding full calendar years. She would not have met the MQP in 2020, because by January 2020 she would no longer have valid contributions in three of the preceding six years.

3. Remedy (How to Fix the Errors)

There is no need to return this matter to the General Division.

[37] The General Division based its decision on a misinterpretation of the contribution requirement for the PRDB, which is an error of law. As a result, I have the option of giving the decision that the General Division should have given about the PRDB.²⁹ I can decide any question of law or fact related to the Claimant's benefit entitlement.³⁰

[38] The underlying facts of this appeal are not in dispute, and no further evidence is needed to resolve this appeal. I will decide the issue that was appealed to the General Division: Was the Claimant disentitled from the PRDB because she did not make enough contributions?

[39] In doing so, I will set aside the General Division decision. This will also resolve the error of jurisdiction about the disability pension.

²⁸ See *Canada Pension Plan* s 44(4)(b) and paragraphs 11 and 28 of this decision.

²⁹ DESDA, s 59(1).

³⁰ DESDA, ss 64(1) and 64(2)(a).

The Claimant met the contribution requirement for the PRDB in January 2019.

[40] As previously noted, the Claimant made valid contributions to the CPP for over 25 years and most recently in 2013, 2014, and 2016.

[41] I agree with the Claimant's position in this appeal: When she applied for the PRDB on January 12, 2019, she had made valid contributions for over 25 years and in three of the last six calendar years (2013 to 2018 inclusive). I conclude that the Claimant met the contribution requirement for the PRDB, set out in section 44(4)(b) of the *Canada Pension Plan*, in January 2019. In other words, the Claimant "met the MQP" in January 2019.

The effect of section 70.01

[42] Section 70.01 of the *Canada Pension Plan* addresses the start date of the PRDB. It says:

70.01 Subject to section 62, if payment of a post-retirement disability benefit is approved, the benefit is payable for each month commencing with the fourth month following the month after December 2018 in which the applicant became disabled³¹

[43] The Minister's representative argued that, even if the Claimant met the contribution requirement in section 44(4), she couldn't get the PRDB because of the effect of section 70.01. The Minister's representative wrote: "As mentioned above, the effect of [section 70.01] is that an applicant must have an MQP on or after January 2019 to be eligible to receive the PRDB. A valid MQP for the purposes of subsection 44(4) is therefore one that is on or after January 2019."³² She also relied on the language used in Service Canada's general correspondence, which states that a claimant must "have sufficient earnings and contributions to meet the minimum qualifying period as of January 2019 or later" (emphasis added).³³

[44] Section 70.01 suggests that payment of the PRDB will start only if a claimant became disabled after December 2018. Being disabled is one of the PRDB entitlement criteria in section 44(1)(h). The Minister's representative seems to be saying that, for PRDB payments to start under section 70.01, the entitlement criteria in section 44(1)(h) would also have to be met

³¹ The section goes on to describe an exception, but it is not relevant to this appeal.

³² AD5-3.

³³ GD4-3.

after December 2018. In other words, the combined effect of sections 44(1)(h) and 70.01 is that the contribution requirement defined in section 44(4) (as well as the other entitlement criteria) must be met in January 2019 or later. This is consistent with the introduction of the new PRDB benefit at the end of 2018, without retroactive effect.³⁴

[45] I accept that the Claimant had to meet the contribution requirement in January 2019 or later. I have already found that the Claimant met this requirement (she “met the MQP”) in January 2019. Nothing further is needed in the way of earnings or contributions, under section 70.01.

The Claimant is not disentitled from the PRDB because of insufficient contributions.

[46] The Claimant met the contribution requirement for the PRDB in January 2019. As a result, she is not disentitled from the PRDB due to insufficient contributions, whether under section 44 or 70.01 of the *Canada Pension Plan*.

Entitlement to the PRDB remains to be decided.

[47] Under section 44(1)(h), the PRDB must be paid to a person who is under 65 years of age, disabled, receiving a retirement pension, and has made base contributions for not less than the minimum qualifying period. Although the Claimant meets three of these four criteria, the Minister has not made an initial determination about whether the Claimant meets the test for disability in the *Canada Pension Plan*. Because of this, I cannot decide the Claimant’s PRDB entitlement.³⁵

[48] My decision is limited to finding that the Claimant is not disentitled from the PRDB for insufficient contributions, because she met the contribution requirement in January 2019. The

³⁴ *Budget Implementation Act, 2018*, ss 372(4), 372(7), 389, 402, and *Order Fixing the day after the day on which this Order is made as the day on which Division 19 of Part 6 of the Act Comes into Force*, SI/2018-0114, (2018) C Gaz II, 152.

³⁵ It is also too soon to address the question of commencement date, if the claimant is found to be disabled. Section 70.01 ties the commencement date to a date of disability that is after December 2018. With a contribution requirement of three or four of the last six years, it would not be uncommon for a claimant to meet the MQP in 2019, 2020, or 2021 but have become disabled before January 2019. The Minister’s representative advised that, in such circumstances, “the Minister will establish the date of onset on or after January 2019, regardless of the date of the disabling event” (AD5-3). Presumably she means that the Minister would determine that the individual met the test for disability in or after January 2019. Since the Claimant met the MQP in January 2019, it appears that this practice could be followed if the Claimant is found to be disabled.

Minister will now need to decide whether the Claimant is disabled and, if so, when she became disabled and whether she is entitled to the PRDB. The Minister must make these decisions on the basis that the Claimant met the contribution requirement for the PRDB (“met the MQP”) in January 2019. The Minister’s decisions will be subject to the usual recourse rights.³⁶

Conclusion

[49] The General Division decision is rescinded.³⁷

[50] The General Division had no authority to decide the issue of the Claimant’s entitlement to a CPP disability pension.

[51] On the issue of the contribution requirement for the PRDB, I am replacing the General Division’s decision with the following: The Claimant met the contribution requirement for the PRDB in January 2019, and therefore she is not disentitled from the PRDB for insufficient contributions.

Shirley Netten
Member, Appeal Division

HEARD ON:	June 23, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. L., Appellant Hilary Perry, Representative for the Respondent

³⁶ These include the right to request a reconsideration from the Minister, and the right to appeal to the Tribunal.

³⁷ This means that the General Division decision is set aside or cancelled; it is no longer in effect.