



Citation: *ZM v Minister of Employment and Social Development*, 2021 SST 549

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant (Claimant): Z. M.
Respondent (Minister): Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated February 4, 2021 (issued by Service Canada)

Tribunal member: Gerry McCarthy
Type of hearing: Teleconference
Hearing date: August 10, 2021
Hearing participants: Appellant
Respondent's representative
Decision date: August 11, 2021
File number: GP-21-841

Decision

[1] The appeal is dismissed.

[2] The Claimant, Z. M., is not entitled to a higher Canada Pension Plan (CPP) retirement pension rate. Furthermore, the Claimant has not shown that the Minister's calculation of his contributory period was incorrect. This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant applied for a CPP disability pension on February 21, 2017, and was approved for CPP disability benefits starting in March 2016. The Claimant's disability pension was converted to a CPP retirement pension in May 2020 because the Claimant had turned 65-years-old. The Claimant requested a reconsideration of the amount of his retirement pension. The Minister maintained the retirement pension amount.

[4] The Claimant says the period of time he could not work in Canada should be excluded from the calculation of his retirement pension. The Claimant further says the listing of zero contributions in his contributory period from 1973 to 1996 should be described as "no data."

[5] The Minister says the Claimant's retirement pension is being paid correctly in accordance with the CPP legislation (GD4-7).

What the Claimant must prove

[6] For the Claimant to succeed, he must show he was entitled to a higher CPP retirement pension rate. Furthermore, the Claimant must show the Minister's calculation of his contributory period was incorrect.

[7] Where a disability pension ceases to be payable by virtue of the beneficiary reaching age 65, an application for retirement pension under section 60 of the CPP legislation is deemed to have been made and received in the month in which he or she reached age 65.¹

¹ *Canada Pension Plan*, subsection 70(2)

[8] A retirement pension payable to a contributor is a basic monthly amount equal to the aggregate of 25 percent of their average monthly pensionable earnings.²

[9] Where a retirement pension becomes payable to a contributor commencing with any month after December, 1975, his average monthly pensionable earnings are an amount calculated by dividing his total pensionable earnings by the total number of months in his contributory period or by the basic number of contributory months, whichever is the greater.³

[10] The contributory period of a contributor is the period commencing January 1, 1966 or when he reaches eighteen-years of age, whichever is the later, and ending

(a) where a benefit other than a disability pension commences before the end of 1986, when he reaches sixty-five years of age, or if he makes a contribution for earnings after he reaches sixty-five years of age, with the month for which he last made such a contribution, and in any case not later than the month in which he dies, or

(b) where a benefit other than a disability pension commences after the end of 1986, with the earliest of

(i) the month preceding the month in which he reaches seventy years of age,

(ii) the month in which he dies, or

(iii) the month preceding the month in which the retirement pension commences, but excluding

(c) any month that was excluded from the contributor's contributory period under this Act or under a provincial pension plan by reason of disability, and

² *Canada Pension Plan*, subsection 46(1)

³ *Canada Pension Plan*, subsection 48(1)

(d) in relation to any benefits payable under this Act for any month after December, 1977, any month for which the contributor was a family allowance recipient in a year for which the contributor's base unadjusted pensionable earnings were equal to or less than the contributor's basic exemption for the year.⁴

Reasons for my decision

Was the Claimant entitled to a higher CPP retirement pension rate?

[11] I find the Claimant was not entitled to a higher CPP retirement pension rate, because the Minister correctly calculated the retirement pension rate as shown in their detailed written submissions (GD4).

[12] I recognize the Claimant submitted that he should be exempt for the period he was not able to work in Canada. Specifically, the Claimant argued that he was subject to a "legal disability" to work in Canada from 1973 to 1996 and this period should be excluded from the calculation of his pension rate. However, there was no option to amend the start of the contributory period to begin when a person enters Canada. The CPP legislation clearly states that the contributory period commences January 1, 1966, or when a person reaches the age of 18 (whichever is later). In short, the contributory period starts for each person *whether or not* they were in Canada on January 1, 1966 (or when they reached the age of 18-years-old).

[13] I further realize the Claimant submitted the CPP legislation was "not fair" and affected immigrants to Canada. Nevertheless, I must apply the CPP legislation and cannot change the law even in the interest of compassion.

Has the Claimant shown that the Minister's calculation of his contributory period was incorrect?

[14] I find the Claimant has not shown the Minister's calculation of his contributory period was incorrect. Specifically, the Minister has followed the legislation and correctly

⁴ *Canada Pension Plan*, section 49

calculated the Claimant's contributory period as shown in their written submissions (GD4). I realize the Claimant submitted that his contributory period should indicate "no data" instead of "zero" contributions because he was working in another country. The Claimant further argued that the period he could not work in Canada should be treated in the same way as the CPP disability pension drop-out factor. However, the Claimant simply made no contributions to the CPP for the period 1973 to 1996 and there was no provision under the CPP legislation to apply a drop-out factor in the manner he described (GD4-6).

[15] I also recognize the Claimant was unhappy with the zero contributions listed in his contributory period from 1973 to 1996. Still, I must apply the CPP legislation to the evidence and cannot change the law.

Conclusion

[16] I find the Claimant is not entitled to a higher CPP retirement pension rate. I also find the Claimant has not shown that the Minister's calculation of his contributory period was incorrect.

[17] This means the appeal is dismissed.

Gerry McCarthy

Member, General Division – Income Security Section