



Citation: *DM v Minister of Employment and Social Development*, 2022 SST 286

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant (Claimant): D. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated November 2, 2021
(GP-20-1092)

Tribunal member: Kate Sellar

Decision date: April 19, 2022

File number: AD-22-185

Decision

[1] I am not granting an extension of time to apply for leave (permission) to appeal. The appeal will not go ahead. These reasons explain why.

Overview

[2] D. M. (Claimant) applied for a Canada Pension Plan (CPP) disability pension. The Minister refused his application and he appealed to this Tribunal.

[3] The General Division allowed his appeal. He proved he had a severe and prolonged disability starting in June 1991 when he stopped working.¹ But the Claimant's payments start from March 2018.

[4] The Claimant asks for leave to appeal the General Division's decision. He argues that if he has been disabled since 1991, his payments should not start so many years later in 2018.²

[5] The Claimant's application for leave to appeal is late. I must decide whether to grant the Claimant an extension of time.

[6] The Claimant's argument about the General Division's error does not have a reasonable chance of success. There are some rules that apply to the Claimant's appeal, and they result in payments starting many years after the Claimant's disability actually started. There is no choice about applying those rules. Without a reasonable chance of success on appeal, it is not in the interests of justice to allow the extension of time. The appeal will not go ahead.

Issues

[7] The issues in this appeal are:

- a) Was the application to the Appeal Division late?

¹ See paragraph 47 of the General Division decision.

² See AD1.

b) If so, should I extend the time for filing the application?

Analysis

The application was late

[8] The General Division decision is dated November 2, 2021. The Claimant confirms that he received the decision on November 3, 2021.³

[9] The Claimant had 90 days from the date the General Division communicated its decision to request leave to appeal.⁴

[10] The Appeal Division received the Claimant's application for leave to appeal on March 23, 2022.

[11] The Claimant's application was past that 90-day mark and was therefore late.

I am not extending the time for filing the application

[12] When deciding whether to grant an extension of time, I have to consider the following factors:

- a) Is there a reasonable explanation for the delay?
- b) Was there a continuing intention to pursue the application?
- c) Is there prejudice to the other party?
- d) Does the application disclose an arguable case?⁵

[13] The importance of each factor may be different depending on the case. Above all, I have to consider if the interests of justice are served by granting the extension.⁶

³ See AD1-3.

⁴ See section 81(1) of the *Canada Pension Plan*.

⁵ The Federal Court set out this test in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

⁶ The Federal Court of Appeal outlined this test in *Canada (Attorney General) v Larkman*, 2012 FCA 204.

[14] The Claimant gave a reasonable explanation for the delay: at first, he sent his application for leave to appeal to Service Canada instead of the Tribunal.⁷ The Claimant is not the first person to make that mistake because the difference between Service Canada and this Tribunal is not clear to everyone. The explanation for the delay is reasonable.

[15] The appeal the Claimant sent to Service Canada was also past the 90-day mark. As a result, I do not have evidence that the Claimant showed a continuing intention to appeal within the 90-day limit.

[16] I have no concern that the Minister would suffer any prejudice as a result of this delay, which was only a matter of about two months.

[17] The problem, however, is that the Claimant's appeal does not show an arguable case. An arguable case is a case that has a reasonable chance of success on appeal.

[18] The Claimant agrees with the General Division's decision that he became disabled when he stopped working in 1991. He argues that the General Division made an error by stating that payments start so many years later in 2018.

[19] The Claimant does not have a reasonable chance of success on appeal. Given how important that factor is to the overall analysis, I will not grant the extension of time.⁸

[20] There are a few rules in the *Canada Pension Plan* that apply to the Claimant and help to explain how the General Division decided that the Claimant became disabled in 1991, but his payments don't start until 2018. I will explain.

⁷ AD1-1 and AD1-5.

⁸ The Federal Court and Federal Court of Appeal have given particular weight to the arguable case factor, see for example *McCann v Canada (Attorney General)*, 2016 FC 878, and *Maqsood v Canada (Attorney General)*, 2011 FCA 309.

How to decide when disability pension payments start

[21] The General Division allowed the Claimant's appeal and found that he was eligible for the disability pension. So how does the General Division (or Service Canada) decide when disability pension payments start?

[22] There are four important rules that apply to the Claimant:

- The pension coverage rules

These rules help Service Canada decide whether and when a Claimant is covered under the Canada Pension Plan.

- The disability during the coverage period rule

This rule helps Service Canada decide whether the Claimant has a disability during a time when they had coverage under the Canada Pension Plan.

- The rule on the earliest a person can be considered disabled for payment

This rule helps Service Canada decide how far back the payments can go if the Claimant already showed they had a disability during their coverage period.

- The waiting period payment rule

This is a general rule about waiting for payment that applies to everyone who meets all the other rules for a disability pension under the Canada Pension Plan.

– The pension coverage rules

[23] The first rule about the CPP is that a benefit can only be available to people who have contributed (paid in) to the CPP. You contribute to the CPP by working and the employer takes money off your paycheque and sends it to the CPP.⁹

⁹ It works a bit differently if a person is self-employed.

[24] The Claimant needed to show that he contributed enough to have coverage under the CPP.

[25] At the time he applied, the Claimant had not contributed enough into the CPP. He needed to have paid the minimum amount into the CPP:

- in 4 of the last 6 years, or
- for at least 25 years including 3 of the last 6 years.

[26] The Claimant didn't have enough contributions under either of those requirements.

[27] However, there is another pension coverage requirement that helped the Claimant. When claimants apply late for a disability pension (like the Claimant did), Service Canada can ask: when was the last time that the Claimant contributed enough into the CPP to meet the minimum requirements?

[28] There is a requirement that says claimants can qualify for the disability pension if they contributed enough to the CPP in 5 out of the 10 years between 1987 and 1997.

[29] By December 31, 1995, the Claimant had met that 5 out of 10 requirement. Since the Claimant had enough contributions back then, it no longer matters that he hadn't contributed enough when he applied.

[30] This does not mean that the Claimant gets disability pension payments starting back to 1995 when he had coverage under the CPP because he contributed enough back then. There are more rules to apply. The next rule is about disability.

– **The disability during the coverage period rule**

[31] The disability rule is: if claimants are applying for the disability pension, they must show they have a severe and prolonged disability that started before their coverage period ended.

[32] Remember: the Claimant's coverage period ends December 31, 1995.

[33] So to have a disability pension, the Claimant had to show that he had a “severe and prolonged” disability on or before December 31, 1995 (when his coverage period ended) and ongoing after that.¹⁰

[34] The General Division decided that the Claimant showed that his disability was severe and prolonged when he stopped working in June 1991. This was the main part of the General Division’s decision. The General Division considered all of the evidence here about the Claimant’s disability, his treatment, work history, and his personal circumstances (like his education and his history of working in physical jobs).

[35] The Claimant showed he had a disability starting in 1991, which was before the end of his coverage period in 1995.

[36] This does not mean that the Claimant gets payment from 1991 when he became disabled. There are more rules to apply next.

[37] I have already explained that there is a rule that allowed the Claimant to meet the starting point requirement for coverage under the CPP even though he didn’t meet those requirements at the time he applied.

[38] There is another rule that applies when claimants apply to the CPP late – this one is about payment.

– **Rule on the earliest a person can be considered disabled for payment**

[39] The Claimant applied for the disability pension in February 2019. This was a long time after he actually became disabled.

[40] The rule that had the greatest impact on the Claimant is this: for **paying** the disability pension, a person’s disability cannot be considered to have started any earlier than 15 months before the person applied.¹¹

¹⁰ The definition of a severe and prolonged disability is in section 42(2) of the *Canada Pension Plan*.

¹¹ See section 42(2)(b) of the *Canada Pension Plan* for this rule.

[41] Therefore, even though the Claimant showed that his disability was severe and prolonged in 1991, he applied for the disability pension many, many years later. The rule about the earliest a person can be considered disabled for the purpose of payment applies to the Claimant.

[42] The earliest we can say that his disability started, for the purpose of **paying** the CPP disability pension, is 15 months before the Claimant applied in February 2019. Fifteen months before February 2019 is November 2017.

[43] Since the Claimant applied late, he can only be considered disabled for the purpose of payment as early as November 2017.

[44] But this does not mean that the Claimant gets payment starting in November 2017. There is one more rule to apply about payment.

– **The waiting period payment rule**

[45] The next rule that applies is the waiting period. The waiting period rule means that payments start 4 months after the date the Claimant is considered disabled for the purpose of payment (the date we calculated in the previous rule above).¹²

[46] Four months after November 2017 is March 2018.

[47] There are no more rules that apply. The Claimant's payments start March 2018.

The General Division applied the rules: no argument for an error

[48] The General Division applied these rules to calculate the Claimant's start date for payments.¹³

¹² See section 69 of the *Canada Pension Plan*.

¹³ The General Division applied the coverage rule at paragraph 6, the disability rule at paragraphs 16-54, and both the late application rule for payment and the waiting period rule at paragraphs 56-58 of its decision.

[49] The Claimant's concern on appeal is this: he wonders why he had to prove that he was disabled way back in 1995 if in the end, he only gets payments starting so much later in 2018.

[50] The answer to the Claimant's question is that each rule applies, one at a time. Some rules require considering dates for the purpose of **coverage** and **proving disability**, and some rules require considering dates for the purpose of **payment**.

[51] The Claimant didn't have enough contributions to qualify for a pension at the time he applied. However, based on past contributions, he could qualify for a pension if he proved a disability on or before December 31, 1995. While the claimant proved he had a disability by December 31, 1995 so he **qualified** for the pension, the Minister cannot **pay** a pension until much later because he applied late.

[52] The earliest he could be considered to have become disabled is 15 months prior to the date of his application and payments can only start 4 months after that date. The General Division had no choice but to apply these rules. There is no argument here that the General Division made an error about the dates for the Claimant's coverage, disability, payment, or waiting period.

[53] The Claimant does not have an argument about those dates that has a reasonable chance of success.

[54] The rules that applied to the Claimant's case can be confusing, so I am hopeful that this explanation helps the Claimant to understand why Service Canada cannot pay him starting from the date he stopped working.

Conclusion

[55] I am denying the extension of time. This means that the appeal will not go ahead.

Kate Sellar

Member, Appeal Division