



Citation: *AS v Minister of Employment and Social Development*, 2022 SST 715

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

**Decision**

**Appellant:** A. S.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Tiffany Glover

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated November 8, 2019 (issued  
by Service Canada)

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**Tribunal member:** Shannon Russell

**Type of hearing:** Videoconference

**Hearing date:** January 18, 2022 and post hearing submissions

**Hearing participants:** Appellant (via written submissions only)  
Respondent's representative  
Respondent's witnesses  
Respondent's observers

**Decision date:** July 21, 2022

**File number:** GP-19-2041

## Decision

[1] The Appellant, A. S., is not eligible for a higher Canada Pension Plan (CPP) retirement pension. This decision explains why I am dismissing the appeal.

## Overview

[2] The Appellant is a 63-year-old man who disagrees with the amount of his CPP retirement pension. He believes his pension should be higher.

[3] The Appellant applied for his CPP retirement pension in July 2018.<sup>1</sup> The Minister approved the application, and awarded the Appellant a monthly pension of \$401.92 effective January 2019.<sup>2</sup>

[4] In November 2018, the Minister sent the Appellant a letter explaining how his retirement pension was calculated.<sup>3</sup>

[5] The Appellant disagreed with the amount of his pension, and so he asked the Minister to reconsider the calculation. He explained that he is disabled, and that he believes the years when he was unable to work because of his disability should be removed (or dropped out) from “the calculation”. He added that the inability to drop out periods of disability amounts to discrimination against people who were completely disabled from working, yet ineligible for CPP disability benefits.<sup>4</sup>

[6] The Minister reconsidered, and decided that its calculation was correct. The Minister provided a detailed explanation for how the Appellant’s retirement pension was calculated. The Minister also explained that periods of disability can only be removed from a person’s contributory period if the person was receiving the CPP disability benefit. The Minister further explained that because the Appellant was not eligible for

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<sup>1</sup> See page GD2-12.

<sup>2</sup> See page GD2-26.

<sup>3</sup> The Minister’s letter is at pages GD2-13 to GD2-16.

<sup>4</sup> The Appellant’s request for a reconsideration is at page GD2-18.

the CPP disability benefit, the Minister could not remove periods of disability from his contributory period.<sup>5</sup>

[7] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division. In his Notice of Appeal, he argued that the legislation discriminates against persons who are disabled because they are unable to contribute to the CPP.

### **I have issued a decision about the Appellant's Charter Argument**

[8] The Appellant's Charter appeal was heard on January 18, 2022. After that, each party exchanged post-hearing submissions.

[9] I issued my decision about the Appellant's Charter argument on June 14, 2022. I found that the Appellant did not show that subsection 49(c) of the CPP infringes subsection 15(1) of the Charter.

### **What happened after I issued the Charter decision**

[10] In my Charter decision, I explained that the remaining issue to be decided is whether the Appellant's retirement pension has been calculated in accordance with the CPP legislation. I also explained that I would invite submissions on this issue.<sup>6</sup>

[11] On July 4, 2022, I wrote to the Appellant and provided him with the opportunity to raise any residual arguments (non-Charter arguments) about his CPP retirement pension. I pointed him to the Respondent's explanation for how his retirement pension had been calculated and I explained that if he thought his pension had not been calculated in accordance with the CPP legislation then he should set out his arguments in writing and cite the relevant provisions of the CPP.<sup>7</sup>

[12] The Appellant replied to my letter on July 4, 2022 and again on July 6, 2022. In his letters, he said that because of his disability he was unable to work and contribute to

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<sup>5</sup> The Minister's reconsideration decision is at pages GD2-29 to GD2-33.

<sup>6</sup> Paragraphs 135 and 136 of the Charter decision.

<sup>7</sup> My letter is at page GD83-1.

the CPP for as long as he had hoped. He said that if he had been able to work, he may have made enough contributions to the CPP to qualify for CPP disability benefits. He added the legislation is unfair because his years of complete and permanent disability are included in his contributory period, resulting in a substantial reduction in his CPP retirement pension.<sup>8</sup>

### **The Appellant's CPP retirement pension has been calculated in accordance with the CPP legislation**

[13] The Appellant's argument is about the disability exclusion from the contributory period, and the fact that the CPP does not allow those who are disabled but not receiving CPP disability benefits to remove the years of disability from their contributory period.

[14] I explained the law about the disability exclusion in detail in my Charter decision, and so it is not necessary for me to explain it again. All that is needed to say here is that it is settled law that the disability exclusion only applies to those who have been determined to be disabled under the CPP or Québec Pension Plan (QPP).<sup>9</sup>

[15] I am sympathetic to the Appellant's circumstances. However, I cannot ignore or change what the law says. My job is to apply the law to the facts of the case.

[16] The Appellant was not eligible for CPP (or QPP) disability benefits, and so I cannot remove his years of disability from his contributory period.

[17] The Appellant has not raised any other arguments about the calculation of his CPP retirement pension.

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<sup>88</sup> The Appellant's letters are at pages GD84 and GD85.

<sup>9</sup> *Canada (Attorney General) v. Storto*, [1994], A-54-94. See also *K.D. v. Minister of Employment and Social Development*, 2020 SST 631.

## **Conclusion**

[18] The appeal is dismissed.

Shannon Russell  
Member, General Division – Income Security Section