



Citation: *FA v Minister of Employment and Social Development*, 2022 SST 635

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

Decision

Appellant: F. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated September 9, 2021 (issued by Service Canada)

Tribunal member: Connie Dyck

Type of hearing: Teleconference

Hearing date: June 15, 2022

Hearing participants: Appellant
Appellant's witness
Respondent's representatives

Decision date: June 27, 2022

File number: GP-21-2316

Decision

[1] The appeal is dismissed.

[2] The Appellant, F. A., isn't entitled to payment of his Canada Pension Plan (CPP) retirement pension before November 2020. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a CPP retirement pension on October 21, 2020.¹

[4] The Minister of Employment and Social Development (Minister) approved his application. Payment started the following month, in November 2020. The Appellant asked the Minister to reconsider the start date. He wanted it to start in January 2020, when he was 60 years old.

[5] The Minister denied the Appellant's request. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division

[6] He said he should be allowed to have his retirement pension start earlier. He was in a serious car accident on November 15, 2019. He couldn't apply earlier because of his medical conditions, hospitalization, and medications. He says he was both mentally and physically incapacitated after his car accident.

[7] The Minister says the Appellant was capable of forming or expressing an intention to apply for the retirement pension before his application date.

What I have to decide

[8] Is the Appellant entitled to payment of his CPP retirement pension before November 2020?

¹ The CPP retirement pension application is at GD 2-4.

Reasons for my Decision

[9] I have decided the Minister was right to start paying the Appellant's CPP retirement pension in November 2020. The Appellant did not meet the test for incapacity, so his retirement pension could not be paid before that date.² I reached this decision by considering the following issues.

The incapacity test

[10] When the Appellant applied for an early CPP retirement pension, he was under the age of 65. The earliest his retirement pension could be paid is the month after he applied. This would be November 2020.³ A person's CPP application can be treated as if they applied before they actually did, if the incapacity provision applies.⁴

[11] To be able to use the incapacity provision, the Appellant had to prove it is more likely than not that he was continuously incapable of forming or expressing an intention to make an application before October 2020. This is no different than having the capacity to form an intention to make other relevant choices in life.⁵

[12] I know the Appellant has health problems and challenges since his accident in November 2019. But, he does not meet the test for incapacity. The CPP test for incapacity is not the same as a medical disability. Having disabilities is not the same as incapacity.

[13] The test for incapacity is much stricter. A person must show that they were "incapable of forming or expressing an intention to make an application before the day on which the application was actually made".⁶ Also, there must be evidence that shows a continuous period of incapacity.⁷

² The incapacity provision is found in the *Canada Pension Plan* in Subsections 60(8), (9) and (10).

³ See s. 67(3.1) of the CPP.

⁴ This information is found in Section 60 of the *Canada Pension Plan*.

⁵ The Federal Court of Appeal decision called *Canada (Attorney General) v. Kirkland*, 2008 FCA 144 explains this.

⁶ See s. 60(9)(a) of the CPP.

⁷ The Federal Court discusses these issues in decisions called *Attorney General of Canada v. Danielson*, 2008 FCA 78 and *Grosvenor v Attorney General of Canada*, 2018 FC 36.

– **The medical evidence doesn't show incapacity**

[14] The only medical evidence on file is a Declaration of Incapacity. I find the Declaration of Incapacity doesn't support a finding of incapacity⁸:

[15] In the Declaration of Incapacity, Dr. Nwadike (family doctor) said the Appellant's car accident caused heart issues, a spinal cord fracture, and facial damage. These injuries caused incapacitation and the Appellant was still undergoing some rehabilitation. There is no doubt that the Appellant had serious injuries from the car accident. But this does not show that the Appellant was incapable of forming or expressing an intention to apply for a CPP disability. It shows that he had physical injuries that required rehabilitation.⁹

[16] The Appellant says that his emotional and psychological state of mind and the medications for pain treatment made him incapable of applying earlier.¹⁰ He said while he was in the hospital, he was prescribed Tramacet and Citalopram. These medications were for pain and grief because of the death of his wife several months before the accident. He argued that these medications when combined rendered him mentally incapacitated to a level of being unfit to sign or negotiate all other legal contracts including a CPP application.¹¹ There is no medical evidence that supports this.

[17] While I recognize that the Appellant has experienced considerable hardship because of his serious injuries, I find the medical evidence does not show that the Appellant was continuously incapable of forming or expressing an intention to apply for the retirement pension before his application date. I explain below why I believe the Appellant's activities show that he does not meet the test for incapacity.

⁸ This Declaration of Incapacity is at GD 1-12.

⁹ This information is provided by the Appellant at GD 2-11.

¹⁰ This statement is at GD 1-5.

¹¹ The Appellant's statements are at GD 1-5.

– **The Appellant’s activities don’t show incapacity**

[18] Dr. Nwadike says the Appellant’s incapacity began on November 15, 2019. On July 19, 2021, he said the incapacity was still ongoing. But being capable of forming or expressing the intent to apply for the CPP retirement pension is no different than being capable of forming or expressing the intention to make other relevant choices in life.¹² These choices include participating in medical care and making applications for other benefits.

[19] The Appellant had many medical appointments between November 2019 and October 2020. He told me that his goddaughter drove him to the appointments. If needed, she would help him at the appointments. He testified that he spoke with the doctor, answered questions, and participated in decisions regarding his care and recovery. Attending these medical appointments and participating in decisions about his medical care are not consistent with a finding of incapacity under the CPP.

[20] Between November 15, 2019, and October 2020, he had several other forms to complete. These included a Workers Compensation claim, a police report, and a claim with the vehicle insurance agency. The Appellant testified that he couldn’t concentrate, so he gave his brother permission to complete the forms. He would answer any questions his brother needed help with and then he signed the forms. No power of attorney exists or existed for the Appellant.

[21] The Appellant said he was at a rehabilitation centre where he was learning to walk again. He participated in his own recovery including with exercises and physiotherapy.

[22] The test for incapacity is strict, and I find that the Appellant’s activities described above are not consistent with a finding of incapacity under the CPP.

¹² The Federal Court of Appeal decision called *Canada (Attorney General) v. Kirkland*, 2008 FCA 144 explains this.

Conclusion

[23] I sympathize with the Appellant. He has suffered a tremendous amount from his injuries. I understand that he believes that his conditions and circumstances left him incapable of applying earlier. However, the law about incapacity is narrowly defined as having the capacity to form or express the intention to apply. I have applied the law as it is set out in the *Canada Pension Plan*. I can't disregard the law for compassionate reasons.

[24] I find it more likely than not that the Appellant was not continuously incapable of forming or expressing an intention to make a disability application between November 15, 2019, and October 2020. He does not meet the test for incapacity. His application can't be considered to have been made earlier than October 2020. Payment cannot start before November 2020.

[25] The Minister's representative told the Appellant he may be entitled to other CPP benefits such as the disability pension or the post-retirement disability benefit. He suggested the Appellant contact Service Canada to discuss these possibilities. I encourage the Appellant to do this.

[26] The appeal is dismissed.

Connie Dyck
Member, General Division – Income Security Section