



Citation: *DJ v Minister of Employment and Social Development*, 2022 SST 847

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

Decision

Appellant: D. J.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 20, 2021 (issued
by Service Canada)

Tribunal member: Antoinette Cardillo

Type of hearing: Teleconference

Hearing date: June 21, 2022

Hearing participant: Appellant

Decision date: September 1, 2022

File number: GP-21-2349

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. J., isn't eligible to receive payments of the Canada Pension Plan (CPP) retirement pension earlier than April 2021. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant filled an application for the CPP retirement pension on November 17, 2020. She said she wanted payments to start as soon as she qualified. Payments of the Appellant's retirement pension started in April 2021. The Appellant said that she filled the application at her MP's office and the application was sent from the MP's office the next day, therefore she should qualify as of January 2021 not April 2021.¹

[4] The Minister of Employment and Social Development (the Minister) stamped the application as received on March 31, 2021 and said that based on the CPP, the earliest effective date of the Appellant's retirement pension was April 2021.

[5] The Appellant asked the Minister to reconsider its decision about the start date. The Minister refused to change its decision because the Appellant's CPP retirement pension application was received on March 31, 2021; the Appellant was under 65 years of age at the time of her application and although the Appellant indicated that she wished her retirement pension to commence "as soon as she qualified", the CPP does not provide for retroactive payments for individuals who have not reached age 65. Accordingly, the earliest effective date of the Appellant's retirement pension was April 2021.²

¹ See application at GD2-18.

² Subsection 67(3.1) of the CPP.

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

What I Have to Decide

[7] I have to decide if the Appellant's CPP retirement pension start date is January 2021 or April 2021.

Reasons for my decision

- **What does the CPP and the CPP Regulations say about the start date of a retirement pension**

[8] The CPP says that for a retirement pension that commences to be payable on or after January 1, 2012, if payment of the retirement pension is approved, the pension is payable for each month commencing with the latest of

- (a) the month in which the applicant reached sixty years of age,
- (b) the month following the month in which the application was received if they were under sixty-five years of age when they applied,
- (c) the eleventh month preceding the month in which the application was received if they have reached sixty-five years of age when they applied, but in no case earlier than the month in which they reached sixty-five years of age, and
- (d) the month chosen by the applicant in their application.³

[9] The CPP also says that no benefit is payable to any person unless an application has been made and payment of the benefit has been approved. An application for a benefit shall be made to the Minister in prescribed manner and at the prescribed location; the Minister shall forthwith on receiving an application for a benefit, consider it and may approve payment of the benefit and determine the amount payable or may

³ Subsection 67(3.1) of the CPP.

determine that no benefit is payable and; the Minister shall notify the applicant in writing of the decision.⁴

[10] The CPP Regulations say that an application for a benefit shall be made by submitting it to the Minister in writing.⁵

[11] Therefore, for a person who is under 65, the CPP says a retirement pension is payable starting with the latest of:

- the month the applicant reached age 60;
- the month after the application was received, and
- the month the applicant chose in their application.

[12] Also, based on the CPP, a benefit is not payable until it has been approved by the Minister and the Minister cannot grant approval until an application for the benefit has been received.

[13] Once an application is approved, the commencement date of the benefits is determined based on certain dates.

- **What the evidence says**

[14] In the Appellant's case, the relevant dates are:

- the month she reached age 60 : December 2020;
- the month after the application was received : January 2021 or April 2021, depending on whether I accept the Appellant's argument or the Minister's argument;

⁴ Subsections 60(1), 60(6) and 60(7) of the CPP.

⁵ Subsection 43(1) of the CPP Regulations.

- the month the Appellant chose in her application : January 2021, because that is the earliest she would qualify.

[15] Therefore, the latest possible date for the commencement of the benefit is the month following the month in which the application was received because the Appellant was under 65 years of age when she applied. In her notice of appeal, the Appellant said that her application was received in December 2020 given that it was sent in November 2020 and that her benefits start date should be January 2021.

[16] At the hearing, the Appellant said that she asked her MP's office to enquire as to why her application sent in November 2020 was only received by the Minister in March 2021. Through discussions between the MP's office and the Minister (Service Canada), it would appear that the Minister said that their offices were closed due to Covid-19 and there was no one to open the mail. The Appellant never spoke to Service Canada herself, all communications were done through the MP's office.

[17] The Appellant added that I should consider a Tribunal's decision where the facts were similar to her case. The Tribunal rendered a decision changing the start date of the payment.⁶

[18] First, I am not bound by decisions of the Tribunal, however, we do strive to be consistent in our decisions.⁷

[19] Second, the facts of the Appellant's case can be distinguished from the Tribunal's case she cited. In that case, there was evidence that the CPP retirement application was signed and mailed. In the Appellant's case, I have no evidence of when the application was mailed. The Appellant said that the application was mailed by her MP's office the same day or the day after it was made, however, she asked to obtain a

⁶ *GC v Minister of Employment and Social Development*, 2020 SST 1241.

⁷ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. at paragraph 129.

date stamp or envelope and she was not able to get any evidence as to when the application was actually mailed. The Appellant also said that the person at the MP's office who helped her was on leave but someone else at the MP's office said that there were notes indicating that the application was sent on November 17 (date it was made and signed by the Appellant) or the next day but no other information was available. I cannot presume how long it would have taken Canada Post to deliver the mail given that it was during the pandemic. Moreover, I don't have any evidence if Canada Post was used as the mail carrier. Therefore, I cannot determine when the application was actually mailed and even less when it could have been received by the Minister.

[20] Third, although I am not bound by decisions of the Tribunal, I am bound by Federal Court decisions.

[21] The Federal Court left the interpretation of when an application was made to the Tribunal.⁸ Before the Federal Court, the issue was the date the appellant applied for her benefits.⁹

[22] So in deciding when the Appellant's application was received, I have to consider what the CPP and the CPP Regulations say about how an application is made.

[23] The CPP says that no benefit is payable to any person unless an application has been made [emphasis added] in prescribed manner; the Minister shall forthwith on receiving [emphasis added] an application for a benefit, consider it and may approve [emphasis added] payment of the benefit or may determine that no benefit is payable.¹⁰

[24] The CPP Regulations say that an application for a benefit shall be made by submitting it to the Minister in writing [emphasis added].¹¹

⁸ *Mason v. Minister of Employment and Social Development*, 2017 FC 358.

⁹ The Federal Court suggested that delivery to Canada Post as agent for Canada might constitute delivery to the Minister.

¹⁰ Subsections 60(1), 60(6) and 60(7) of the CPP.

¹¹ Subsection 43(1) of the CPP Regulations.

[25] Therefore, in the Appellant's case, the only way that she can be successful is if her application was made in prescribed manner as required by the CPP and submitted in writing, as required by the CPP Regulations. Once made, the application also has to be received by the Minister. The word "made" and "received" are not synonymous. There is a process in the CPP starting with the making of an application to the receipt of the application by the Minister and its approval.

[26] The date received by the Minister is important because the CPP says that the CPP retirement pension is payable to an appellant under 65 for each month commencing with the latest of (1) when they turn 60; (2) the month after the application was received; or (3) the month chosen in their application. In the Appellant's case, the latest date is the month after the application was received, whether I accept her argument that it was received in December 2020 or the Minister's argument that it was received in March 2021.

[27] I find that the date an application is turned over to Canada Post or another mail carrier is irrelevant. The legislation specifically defines what must take place for an application to be successfully made. The prescribed manner makes no reference to the date an application might have been put into the mailing system. An application is made when it is submitted in writing to the Minister, and the approval and commencement date of the payment are dependent on when the application is received by the Minister. When an application is made is different than when an application is received.

[28] I have carefully considered all of the evidence submitted as well as the decision of the Federal Court. The Appellant has stated that the application was mailed by her MP's office the same day or the day after it was made, however, she was not able to get any other evidence. Unfortunately, her application was not received by the Minister until March 31, 2021.

[29] It is the March 2021 application that was received by the Minister and it is that application that the Minister could approve. Once approved, the CPP dictates the commencement date of the benefit. The latest possible date for the commencement of

the benefit is the month following the month in which the application was received (since the Appellant was under 65 years of age when she applied), which in this case is April 2021.

[30] Even if I were to find that the application was mailed in November 2020, I have to apply the provisions of the CPP and the CPP Regulations that applications have to be approved before a benefit becomes payable. The receipt of an application is the triggering event for the Minister to approve or not the application it received [emphasis added]. In this case, the Minister received the application in March 2021.

[31] I therefore conclude that the Appellant's application was received by the Minister in March 2021 and her payments start date is April 2021, the latest possible date which is the month after her application was received by the Minister.

Conclusion

[32] I find that the Appellant isn't eligible to receive payments of the CPP retirement pension earlier than April 2021.

[33] This means the appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section