



Citation: *AZ v Minister of Employment and Social Development*, 2022 SST 1170

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

Decision

Appellant: A. Z.

Respondent: Minister of Employment and Social Development
Representative: Ian McRobbie

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 15, 2021 (issued by
Service Canada)

Tribunal member: Virginia Saunders

Decision date: October 17, 2022
File number: GP-21-2104

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. Z., can't have his Canada Pension Plan (CPP) retirement pension payments start before February 2019. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant turned 70 in July 2017. He didn't apply for his CPP retirement pension because he was still working full-time. He planned to apply after he retired.

[4] In most cases, a CPP benefit can't be paid to a person unless they apply for it and the application has been approved.¹ In January 2020, a new law came into effect that created an exception to this rule. The new law allowed the Minister of Employment and Social Development (Minister) to waive the application requirement for a CPP retirement pension if a person is 70 or older, has contributed to the CPP, and was receiving a government pension or had filed an income tax return in the previous year.²

[5] In March 2021, the Minister informed the Appellant that he had been "proactively enrolled" in the CPP because of the change in the law. The Appellant was deemed to have applied for a retirement pension in January 2020. He would start receiving the pension with payment retroactive to February 2019. The Minister explained that this was because the maximum retroactivity allowed was 11 months before the new legislation came into effect.³

[6] The Appellant objected to only receiving 11 months of retroactive payments. He wanted to be paid back to August 2017 rather than February 2019.⁴ The Minister

¹ See section 60(1) of the *Canada Pension Plan*.

² See section 60(1.2) of the *Canada Pension Plan*.

³ See GD2-6-10.

⁴ See GD2-11. The Appellant didn't claim retroactive payments back to when he turned 65. If a person waits until they are over 65 for their retirement pension to start, their pension increases for each month they defer, up to age 70.

refused to change its decision on reconsideration, so the Appellant appealed to the Social Security Tribunal.

[7] In his Notice of Appeal, the Appellant said he disagreed with the reconsideration decision because

- The decision was an unjust application of the rules without due consideration of the facts, and required necessary discernment.
- He wasn't given advance warning that he would only receive benefits back to February 2019.
- The rules are inflexible and draconian, and resulted in a vulnerable senior being robbed of his full entitlement to CPP benefits.
- Paying him the full amount (which he calculated to be about \$30,000.00) was not an extra expense for the CPP, because it was part of his normal benefits and should have been paid to him.⁵

The Appellant's Charter claim

[8] After talking with a Tribunal registry officer, the Appellant decided he wanted to argue that the law infringed upon his rights under the *Canadian Charter of Rights and Freedoms* (Charter).

[9] A Charter claim raises issues about the constitutional validity, applicability, or operability of the *Canada Pension Plan*. To pursue a Charter claim at the Tribunal, the Appellant had to fulfil several requirements. The first was to file a notice setting out the provisions at issue, with submissions in support.⁶

[10] In March 2022, the Appellant filed a notice that fulfilled this requirement. He said that sections 60(1.2), 60(1.3), and 67(3.2) of the *Canada Pension Plan* discriminated against him on the basis of age, contrary to section 15 of the Charter.

⁵ See GD1-5.

⁶ See section 20(1)(a) of the *Social Security Tribunal Regulations*.

[11] The Appellant said the discrimination came about because of the deemed application date of January 1, 2020, and the 11-month retroactivity rule. As a person who turned 70 before February 2019, he was denied full retroactivity of his pension back to age 70. This was in contrast to people who turned 70 between February 2019 and January 2020. They would receive full benefits back to age 70.⁷

[12] The appeal then moved onto the second requirement for a Charter appeal at the Tribunal. I held a pre-hearing conference and explained what the parties had to do next. In a letter of May 4, 2022, I directed the Appellant to file a record that

- identified the provisions he was challenging
- identified the rights he says were violated
- explained how the provisions violated the protected rights
- set out the facts that supported his case
- included a copy of all the evidence he was relying on
- included a copy of all relevant legislation and case law he was relying on⁸

[13] The Appellant filed his record in August 2022. The record mostly repeated what he had already said. He identified two groups and said that seniors in one group were being penalized because the legislation deprived them of full CPP benefits.⁹

[14] But the Appellant didn't explain how the law discriminated. A law that treats groups of people differently only discriminates if it creates a disadvantage by perpetuating prejudice or stereotyping.¹⁰ The Appellant didn't include any evidence, submissions or case law to support an argument that the law discriminated by creating such a disadvantage.

⁷ See GD4 and GD8.

⁸ See GD13. Section 20(3) of the *Social Security Tribunal Regulations* allows the Tribunal to make this kind of order. The Federal Court of Canada endorsed the Tribunal's two-step process in *Canada (Attorney General) v Stewart*, 2018 FC 768.

⁹ See GD14.

¹⁰ See *Withler v Attorney General of Canada*, 2011 SCC 12 at paragraph 30.

[15] I decided the Appellant's record wasn't sufficient to support a Charter appeal. I gave him another chance to provide a record that complied with my direction.¹¹ He filed a new record on October 1, 2022.¹²

What I have to decide

[16] I have to decide if the Appellant's record complies with my direction of May 4, 2022.

[17] If the record doesn't comply, I have to decide whether to give the Appellant another chance to file a sufficient record. If I decide not to give him another chance, the appeal will proceed without the Appellant's Charter claim.

[18] If the appeal proceeds without the Appellant's Charter claim, I have to decide if the Appellant's pension can be paid before February 2019.

Reasons for my decision

[19] The Appellant's record doesn't comply with my direction of May 4, 2022. I will not give him another chance to file a sufficient record. As a result, he cannot proceed with a Charter claim. I will discuss his other grounds for appeal later in this decision. The result is that I am dismissing his appeal.

– The Appellant's record doesn't comply with my direction

[20] The Appellant's record doesn't comply with my direction because it doesn't explain how the legislation violates protected rights. Nor does it provide any evidence, submissions, or case law to support an explanation.

[21] As with the Appellant's first effort, the amended record doesn't explain how the provisions of the *Canada Pension Plan* **discriminate** against him. He has identified two distinct groups that he says receive unequal benefits. But he hasn't provided any

¹¹ See GD17.

¹² See GD18.

evidence of prejudice or stereotyping in the legislation or in its effect. He hasn't provided any arguments or case law discussing this issue.

[22] The Appellant's record doesn't set out the explanation, evidence, arguments, or case law that is necessary for me to make a decision about his claim. This means the record doesn't comply with my direction of May 4, 2022.

– **The appeal will proceed without the Appellant's Charter claim**

[23] I will not give the Appellant another chance to file a sufficient record. I have already given him two chances and several months to do so. He believes the material he filed is obvious proof of a Charter violation.¹³ Giving him another opportunity is unlikely to lead to him filing a sufficient record.

[24] As a result, the Appellant cannot raise a constitutional issue (a Charter claim) in this appeal.¹⁴

– **The Appellant's pension can't be paid before February 2019**

[25] The Appellant made other arguments that aren't part of his Charter claim. None of these arguments help him in this appeal. I didn't see how having a hearing to discuss them would help the Appellant.

[26] Because I decided that no hearing was required, I am writing this decision on the basis of the documents and submissions already filed.¹⁵

[27] The fact that the Appellant wasn't personally given advance warning of his waiver or of the change in the law doesn't matter. The law was passed by Parliament and given royal assent. It doesn't say the Minister has to notify a person of the waiver.

¹³ See GD18-2.

¹⁴ In *Canada (Attorney General) v Stewart*, 2018 FC 768, the Federal Court of Canada decided the Tribunal can refuse to consider a Charter claim that doesn't comply with an order made under section 20(3) of the *Social Security Tribunal Regulations*.

¹⁵ Section 28 of the *Social Security Tribunal Regulations* requires me to write a decision without delay if it is more than 365 days since the appeal was filed, and if I have decided no further hearing is required. The appeal was filed on October 12, 2021.

[28] The Appellant argued that the rules had been applied in an inflexible and draconian way, without regard to the facts. The Tribunal doesn't have any discretion. I can't consider extenuating circumstances or look at individual cases to see if I should apply the law.

[29] Nor can I consider the Appellant's argument that, if he had applied earlier, he would have received the funds he now claims. The fact is, he **didn't** apply earlier. I can only look at whether the Minister followed the law in waiving his application as of January 1, 2020, and starting payments as of February 2019.

[30] The Minister followed the law. The Minister was satisfied that the Appellant met the requirements to allow a waiver, so it waived the requirement for an application on January 1, 2020, the day the new law came into effect. As a result, the Appellant was deemed to have applied that day.¹⁶ The Minister couldn't have waived the Appellant's application before that, because the law didn't exist.

[31] The Minister also followed the law in starting payments as of February 2019. The new law provides for payment to start the month after the application requirement is waived, and for the 12 months before that month in which the person had reached age 70.¹⁷ In the Appellant's case, the 12 months started as of February 2019.

Conclusion

[32] The appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section

¹⁶ See sections 60(1.2) and (1.3) of the *Canada Pension Plan*.

¹⁷ See section 67(3.2) of the *Canada Pension Plan*. This isn't a feature peculiar to waived retirement applications. Where a person applies after turning 65, the law already limits retroactive payments to a maximum of 11 months from the date of application. A person who wants their retirement pension to start between ages 60 and 65 gets no retroactive payments at all. See section 67(3.1) of the *Canada Pension Plan*.