



Citation: *GF v Minister of Employment and Social Development*, 2023 SST 1712

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

## Decision

**Appellant:** G. F.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 20, 2019 (issued by  
Service Canada)

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**Tribunal member:** Pierre Vanderhout

**Type of hearing:** Teleconference

**Hearing date:** September 26, 2023

**Hearing participant:** Appellant

**Decision date:** October 12, 2023

**File number:** GP-20-589

## Decision

[1] The appeal is dismissed.

[2] The Appellant, G. F., is not eligible for additional retroactive payments of his Canada Pension Plan (“CPP”) retirement pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant is nearly 81 years old. He reached age 70 in November 2012. He worked well beyond the “traditional” retirement age of 65. As a result, he did not apply for the CPP retirement pension until April 2015. He thought he had to be “retired” in order to receive that pension.

[4] The Minister granted the Appellant a CPP retirement pension effective May 2014. This effective date was based on his application date. However, the Appellant became aware that there was no advantage to delaying his pension beyond age 70. He disputed the Minister’s decision, as he wanted to receive pension payments dating back to his 70<sup>th</sup> birthday. He says he has lost out on more than \$22,000.00 because he did not apply until he was nearly 73 years old.

[5] The Appellant has made many arguments in support of his appeal. I will summarize the main ones he raised at the hearing.

[6] Firstly, the Appellant says the benefit is called a “retirement” pension. As he applied for the pension before he retired, he says he should not incur the \$22,000.00 loss. He also says the Minister should have clearly stated that he should not apply for the CPP retirement pension later than age 70. He says the CPP plan members were not notified of changes in mandatory retirement rules. He also says the Minister had a chance to correct the problem in 2019 but failed to do so.

[7] The Appellant says the CPP is not a social benefit program. Instead, it is a retirement savings instrument funded by its members. As a result, he says people

should not have to apply, and payments should start automatically at age 70. Finally, he says the Minister has a fiduciary duty to act in the interests of CPP plan members. Instead, he says the CPP fund has been unjustly enriched at its members' expense.

[8] The Appellant also made submissions on statutory interpretation but could not provide the specific statutory provision that was ambiguous. He then abandoned this argument.

[9] The Minister says it correctly determined the start date of the Appellant's pension in accordance with s. 67(3.1) of the *Canada Pension Plan* (the "Start Date Provision"). The Minister says his pension was paid as of the earliest possible start date, based on the applicable law and his particular circumstances. The Minister says the Tribunal does not have the authority to change the Appellant's pension start date.

## **Previous Decisions**

[10] This appeal has had a long history. Another member of the Tribunal's General Division summarily dismissed it in November 2019.<sup>1</sup> However, the Appellant appealed that decision. On April 20, 2020, the Tribunal's Appeal Division said the General Division erred because it should have considered a possible Charter claim by the Appellant. As a result, the matter was returned to the General Division.

[11] On June 16, 2023, I issued an interlocutory decision that dismissed the Charter aspect of the Appellant's appeal. As a result, the Appellant was not permitted to raise Charter arguments at the hearing of this appeal.

## **What the Appellant must prove**

[12] For the Appellant to succeed, he must prove he is entitled to an earlier start date for his CPP retirement pension.

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<sup>1</sup> See AD1D-1.

## Reasons for my decision

[13] The Appellant is not eligible for additional retroactive payments of his CPP retirement pension. I will now explain how I arrived at this decision.

[14] The underlying facts of this appeal are not in dispute. The Appellant was born on November 4, 1942. His 70<sup>th</sup> birthday was on November 4, 2012. The Minister received his application for the CPP retirement pension on April 22, 2015.<sup>2</sup> The Appellant wanted his CPP retirement pension to start as soon as he qualified.<sup>3</sup> The Minister approved his pension application. His pension was payable from May 2014.<sup>4</sup>

[15] The Appellant is not arguing that his CPP retirement pension was calculated wrongly. Instead, he argues that it should have started earlier. He submits that it should have started in November 2012, when he reached age 70.

[16] I will now look at how the law applies to the underlying facts of this appeal.

### The rules for the CPP retirement pension start date

[17] The Start Date Provision applies to any CPP retirement pension that starts to be payable on or after January 1, 2012. As the Appellant's application was approved, the pension is payable for each month starting with the latest of:<sup>5</sup>

- (a) The month in which he reached age 60;
- (b) The month following the month in which the application was received, if he was under age 65 when he applied;
- (c) The eleventh month preceding the month in which the application was received if he had reached age 65 when he applied, but in no case earlier than the month in which he reached age 65; and
- (d) The month chosen by him in his application.

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<sup>2</sup> See GD2-4, GD2-10, and GD2-12.

<sup>3</sup> See GD2-5.

<sup>4</sup> See GD2-9.

<sup>5</sup> See s 67(3.1) of the *Canada Pension Plan*.

[18] For the Appellant, the only possible start dates in the Start Date Provision are November 2002 and May 2014. He reached age 60 in November 2002, and May 2014 was the 11<sup>th</sup> month before his application was received in April 2015. No other start dates are possible because he was more than 65 years old when he applied. Nor did he specify a starting month in his application.<sup>6</sup>

[19] The latest date flowing from the Start Date Provision is May 2014. This is when the Minister found the Appellant's pension payable. Thus, unless the Appellant shows that the Start Date Provision rules don't dictate the outcome, his appeal can't succeed.

[20] I will now consider whether any of the Appellant's arguments enable him to avoid the Start Date Provision rules. That would be the only way he could have an earlier start date for his CPP retirement pension.

– **The Appellant's arguments**

[21] The Appellant suggests that the name of the benefit is misleading, as it appears to preclude payments before retirement. Nonetheless, he started getting the benefit before he retired. Most importantly, the Start Date Provision makes no reference whatsoever to retirement. The start date for a CPP retirement pension is based entirely on the applicant's age, the application date, and any start date the applicant proposes.

[22] While it's not necessary for the purposes of this appeal, I note that the concept of "retirement" is also elusive. The gig economy, part-time work, and investment earnings all raise questions about what it means to be "retired". The CPP itself does not define "retirement".

[23] The Appellant suggests that the Minister should have told him not to wait until after age 70 to apply for the CPP retirement pension. He also suggests that the Minister did not notify CPP plan members of changes in mandatory retirement rules.

[24] These arguments cannot succeed. The Appellant is suggesting that the law should not apply to him if the Minister does not fully inform him of the law. However,

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<sup>6</sup> See s 67(3.1) of the *Canada Pension Plan*.

there is no legal obligation on the Minister to inform anyone of their entitlement to a benefit. The CPP puts the onus on a potential recipient to apply for benefits. There is no positive obligation on the Minister to regularly remind potential recipients to apply.<sup>7</sup>

[25] Again, while it is not necessary for this decision, the Minister did try to inform the Appellant and others about the law. The Appellant said the Minister sent him a document about the CPP retirement pension right before he reached age 65. However, as he was not ready to retire, he said he put the document aside and did not read it.<sup>8</sup>

[26] The Appellant argues that the Minister should not require an application for the CPP retirement pension, as it is more like a savings program than a benefit. Similarly, he says the Minister should have corrected the problem in 2019 when it made other changes to the CPP retirement pension program.

[27] Both these arguments amount to the same thing: the Appellant believes that the law should be different. But the Tribunal cannot change the law. The *Canada Pension Plan* explicitly says that an application is required.<sup>9</sup> The Tribunal is created by statute and can only apply the law as it is written.<sup>10</sup> To address these issues, the Appellant's recourse is through Parliament. If the law is changed, then the Tribunal will ensure that the changed law is applied correctly to Canadians.

[28] The Appellant's other main arguments are closely related. He says the Minister has a fiduciary duty to act in the interests of CPP plan members. He also suggests that the CPP fund was unjustly enriched at the expense of those same members.

[29] These arguments lie outside the Tribunal's jurisdiction. The Tribunal is not a court of equity. The Tribunal's jurisdiction is limited to specific matters arising out of the Minister's reconsideration decisions.<sup>11</sup>

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<sup>7</sup> See *Lee. v. Canada (Attorney General)*, 2011 FC 689, at paras. 72-73 and 97.

<sup>8</sup> This is from the Appellant's oral evidence at the hearing.

<sup>9</sup> See s. 60(1) of the *Canada Pension Plan*.

<sup>10</sup> See *R. v. Conway*, 2010 SCC 22, at para. 82, and *Miter v. Canada (Attorney General)*, 2017 FC 262.

<sup>11</sup> See ss. 81 and 82 of the *Canada Pension Plan*.

[30] Similarly, the Tribunal cannot help the Appellant if he suggests that the Minister made an administrative error or gave him erroneous advice. He must present such allegations to the Minister. If he is not satisfied with the Minister's response, his recourse would be an application to the Federal Court of Canada for judicial review.<sup>12</sup>

[31] The issues raised by the Appellant in this appeal cannot override the decision that the law compels me to make. I am bound by the Start Date Provision.

– **The Appellant's losses**

[32] The Appellant has amassed considerable evidence about the loss he has incurred by not applying sooner for the CPP retirement pension. His loss appears to exceed \$22,000.00. This is a significant sum.

[33] I have considerable sympathy for the Appellant. He admits that he misunderstood when payment of the CPP retirement pension could start. He took the name of the retirement pension literally: he thought he could only receive it if he were retired.<sup>13</sup> Nothing in this decision should be interpreted as a denial of his loss or the impact it might have on him. However, my sympathy for the Appellant does not allow me to ignore the law or the Tribunal's limited jurisdiction.

## **Conclusion**

[34] I find that the Appellant is not eligible for additional retroactive payments of his CPP retirement pension.

[35] This means the appeal is dismissed.

Pierre Vanderhout  
Member, General Division – Income Security Section

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<sup>12</sup> See, for example, *Canada (MHRD) v. Tucker*, 2003 FCA 278.

<sup>13</sup> See GD2-12.