



Citation: *GP v Minister of Employment and Social Development*, 2023 SST 566

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

Decision

Appellant: G. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 19, 2022 (issued
by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: In writing

Decision date: May 17, 2023

File number: GP-23-429

Decision

[1] The Appellant is G. P. I am allowing his appeal.

[2] The Minister of Employment and Social Development (Minister) must reconsider its decision of February 6, 2021. This doesn't mean the Minister has to change the decision.

[3] This decision explains why I am allowing the appeal.

Overview

[4] The Appellant's ex-wife applied for a division of Canada Pension Plan (CPP) unadjusted pensionable earnings in November 2020.¹ (This is also known as a DUPE or a credit split.) On February 6, 2021, the Minister approved the credit split for the period from January 1981 to December 2010.²

[5] The Appellant asked the Minister to reconsider its decision. The Minister says it received the Appellant's request on March 31, 2022. The Minister refused to reconsider, because the Appellant had asked more than 90 days after he received the Minister's decision.³

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

[7] This appeal isn't about whether the Minister should have approved the credit split. It is about whether the Appellant's request for reconsideration was late and, if it was, whether the Minister should have given him more time to ask for reconsideration.

What I have to decide

[8] If a person disagrees with the Minister's decision about a CPP credit split, they can ask the Minister to reconsider. They have to do this within 90 days after they were

¹ See GD2-78.

² See GD1-41-42.

³ See GD2-9.

notified of the decision in writing. If they wait more than 90 days before asking for reconsideration, their request is late. The Minister can give a person more time to ask for reconsideration. Before doing this, the Minister has to be satisfied of certain things.⁴

[9] First, I have to decide if the Appellant's request for reconsideration was late.

[10] If the Appellant's request was late, then I have to decide whether the Minister acted judicially when it refused to give the Appellant more time to ask for reconsideration.

[11] If I decide that the Minister didn't act judicially, then I have to decide whether the Appellant should have more time to ask for reconsideration.

Reasons for my decision

[12] I have decided the Appellant's request for reconsideration wasn't late. This means I don't have to decide if the Minister acted judicially, or if the Appellant should have more time.

The Appellant's request for reconsideration wasn't late

[13] It's not clear when the Appellant received the Minister's February 6, 2021, decision about the credit split. However, he responded to it on March 17, 2021, which was 39 days after the date of the Minister's decision. I find that the Appellant's letter was a request for reconsideration and that he made it within the 90-day time limit.

[14] There are rules setting out what a person has to do to ask for reconsideration.⁵ The Appellant followed these rules. I explain why I came to this conclusion below.

– The March 17, 2021, letter contained the required personal information

[15] A request for reconsideration has to contain the name, address, and social insurance number of the contributor. If the person making the request isn't the

⁴ See section 81(1) of the *Canada Pension Plan* and section 74.2 of the *Canada Pension Plan Regulations*.

⁵ Section 81(1) of the *Canada Pension Plan* says a request must be "in the prescribed form and manner." Section 74.1 of the *Canada Pension Plan Regulations* sets out what these are.

contributor, they have to give their name, address, and their relationship to the contributor.⁶

[16] In this case, the Appellant and his ex-wife were the contributors. The Appellant's March 2021 letter contained all of the above information except their social insurance numbers and his ex-wife's address.

[17] However, the Minister gave different instructions for how to ask for reconsideration. The February 6, 2021, letter told the Appellant to give his name, address, telephone number, and Client Identification Number.⁷ The Appellant did this.⁸

[18] The February 6, 2021, letter didn't say the Minister needed the Appellant's social insurance number or any information about his ex-wife. This tells me that having the Client Identification Number allowed the Minister to locate the file and obtain anything else it needed. So, although the Appellant's letter didn't include all the required information, by giving the Client Identification Number the Appellant fulfilled the requirement to provide it.

– **The March 17, 2021, letter contained the reasons for the request**

[19] A request for reconsideration has to include "the grounds for the request ... and a statement of the facts that form the basis" of the request.⁹ In the February 6, 2021, letter, the Minister told the Appellant to include the reasons why he was asking for reconsideration.¹⁰

[20] I find that the Appellant fulfilled this requirement. He didn't specifically ask for reconsideration. But the rules don't say he has to. The *Canada Pension Plan* says a person who is dissatisfied with a decision may ask for reconsideration.¹¹ The Appellant indicated that he wasn't happy with the decision and explained why. That is sufficient.

⁶ See sections 74.1(1)(a) and (b) of the *Canada Pension Plan Regulations*.

⁷ See GD1-42.

⁸ See GD2-21-22.

⁹ See section 74.1(1)(c) of the *Canada Pension Plan Regulations*.

¹⁰ See GD1-42.

¹¹ See section 81(1) of the *Canada Pension Plan*.

[21] In the March 17, 2021, letter, the Appellant said he was responding to the letter of February 6, 2021. He went on to set out where he disagreed with the Minister's decision and why. He said that neither he nor his ex-wife had applied for the credit split. In addition, he didn't think the split should be mandatory because both parties agreed that they did not want it.

[22] The Appellant described this letter as "my initial response" during the 90-day period he had for responding to the decision. He then asked for more information. This shows he was asking for reconsideration and providing some of the reasons why he disagreed with the decision. He wanted to provide something within the time limit, and he did. He intended to provide more reasons after the Minister gave him the information he asked for. That doesn't change the fact that he had already asked for reconsideration.

– **The Minister received the March 17, 2021, letter in time**

[23] A request for reconsideration has to be made to the Minister in writing.¹² I take this to mean the Minister has to actually receive the request. I find that the Minister received the Appellant's request by March 31, 2021.

[24] The file doesn't clearly show when the Minister received the Appellant's March 17, 2021, letter. The Minister didn't contact the Appellant until he filed a complaint with Service Canada in November 2021, after several failed attempts to reach them by phone.¹³

[25] However, the Minister has not claimed that it didn't receive the letter before November 2021. It acknowledged its delay in responding to it.¹⁴ In order for there to have been a delay, the Minister must have had the letter but failed to act on it for a significant period. This tells me that the Minister received the letter long before November 2021.

¹² See section 74.1(1) of the *Canada Pension Plan Regulations*.

¹³ See GD2-38.

¹⁴ See GD2-44.

[26] It is common knowledge that mail delivery in Canada usually takes 10 to 14 days. So, it is reasonable to expect that the Minister received the Appellant's letter in the mail by March 31, 2021. This was 53 days after the decision letter, and well within the 90-day time limit.

– **The Appellant didn't have to ask for reconsideration again**

[27] The Minister's refusal to reconsider its decision was based on the Appellant having filed a second request for reconsideration on March 21, 2022.¹⁵ The Appellant did this because the Minister sent him a "Request for Reconsideration" form after a phone conversation on November 30, 2011.¹⁶

[28] This isn't an admission by the Appellant or evidence that he hadn't already asked for reconsideration. The letter of March 17, 2021, speaks for itself. It was a request for reconsideration which the Appellant made within the 90-day time limit.

Conclusion

[29] I find that the Appellant requested reconsideration within 90 days of receiving the Minister's decision.

[30] This means the appeal is allowed.

Virginia Saunders
Member, General Division – Income Security Section

¹⁵ See GD2-12-19. The Minister said it received this request on March 31, 2022 (see GD2-41).

¹⁶ See GD2-93.