



Citation: *KL v Minister of Employment and Social Development*, 2023 SST 1808

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

Decision

Appellant: K. L.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 29, 2022 (issued by
Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: Teleconference

Hearing date: October 4, 2023

Hearing participant: Appellant

Decision date: December 15, 2023

File number: GP-22-1171

Decision

[1] The appeal is dismissed.

[2] The Appellant, K. L., isn't eligible for more benefits under the *Canada Pension Plan* (CPP). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was paid a disability pension under the CPP. She turned 65 years old in October 2021. Her disability pension was then converted to a retirement pension as of November 1, 2021. Her monthly retirement pension was less than her monthly disability pension.

[4] The Appellant says she is still disabled. Therefore, her pension should remain the same. Even if the pension has to be converted to a retirement pension, the Minister should have calculated the pension differently. She says that would result in a higher retirement pension.

[5] The Minister says the Appellant's retirement pension was calculated in accordance with the CPP. The Minister has no authority to override the rules in the CPP to allow a higher pension.

What the Appellant must prove

[6] The Appellant turned 65 in October 2021. A disability pension may only be paid to a person who is not yet 65 years old.¹ That means a person who reaches the age of 65 is no longer eligible for a disability pension. The person may be entitled to a retirement pension to be calculated under the rules of the CPP and its regulations.

[7] The Appellant does not dispute that she is more than 65 years old. That means it is not possible for her to prove she is still entitled to a disability pension. For the

¹ See section 44(1)(b) of the *Canada Pension Plan*.

Appellant to succeed, she must prove she is entitled to a higher retirement pension. She has to prove this under the rules that are set out in the CPP and its Regulations.

Matters I had to consider first

1. The Appellant's appeal did not proceed as a constitutional challenge

[8] The Appellant appealed to the Tribunal to challenge the validity of the law that said her disability pension had to stop when she turned 65 years old. To challenge the constitutional validity, applicability, or operability of any provision of the CPP, an appellant must file a notice that essentially explains the challenge. In order to proceed as a constitutional challenge, the notice has to satisfy the rules.² The Appellant's notice did not satisfy the rules. Therefore, her appeal could only continue as a regular appeal. I explained this in an Interlocutory Decision.³

[9] When dates for the regular appeal hearing were scheduled, the Appellant said she needed more time to prepare to respond to the Interlocutory Decision. She wanted to make arguments and explain why she felt the decision was wrong. I did not allow the parties to raise any constitutional issues at the hearing. Those issues were addressed in the July 17, 2023, decision and are not a part of the regular appeal.

I accepted the documents sent in after the hearing

[10] To ensure fairness in the hearing process, I allowed the parties to file submissions after the hearing. At the hearing, the Appellant raised or restated several questions about how the Minister calculated her pension. It was important to allow the Minister an opportunity to address the Appellant's specific questions. I sent the parties a list of the Appellant's questions and allowed time for each of them to make submissions.

² The Regulations have recently undergone a major overhaul. Before, section 20 set out the criteria for a notice of constitutional question to be valid. Now, those criteria are found in section 1. Since these criteria are purely procedural in nature, the new section must be applied. See *R v. Dineley*, 2012 SCC 58 at para 10 and *R. v. Chouhan*, 2021 SCC 26 at paras 91-92.

³ See the Interlocutory Decision dated July 17, 2023.

The Minister responded to each question and the Appellant filed a reply to the Minister's response.⁴

Reasons for my decision

[11] The Appellant wrote about many different methods and factors she felt could be used to calculate her retirement pension. She argued the Minister used incorrect methods for the calculation. She also submitted very detailed calculations to show how her calculations would result in a higher monthly payment. Unfortunately, the Appellant did not support her submissions with any legal authority. In other words she did not show how the law would require or allow the Minister to calculate her retirement pension differently.

The Appellant had four main objections to the Minister's calculations⁵

[12] The Appellant said there were several errors in calculating her retirement pension. She believes her monthly pension will be higher if the errors are corrected. The Appellant referred to various sections of the law the Minister used to explain the calculations. She did not refer to any rule or law that supports her position is correct. She did not show any errors in the Minister's calculation.

1. Contributory Period (months dropped out)

[13] The Appellant said the Minister removed (dropped out) 196 months from her contributory period, but should have removed 212 months.⁶ That would make her contributory period 252 months and not 305.

⁴ My letter setting out the questions and deadlines is at GD32. The Minister's response is at GD35. The Appellant's reply is at GD36.

⁵ The Appellant made detailed submissions to support her points. For more detail see GD1-124 and GD19-8.

⁶ The contributory period is the time the contributor makes contributors to the CPP. The CPP defines the Contributory period for a contributor.

2. Contributory Period (months after 18th birthday)

[14] The Appellant did not live in Canada until four months after she turned 18 years of age. She says those four months should also be removed from her contributory period.

3. Pensionable earnings

[15] The Minister used pensionable earnings from 2014. That was the last year she had pensionable earnings. The Appellant says the Minister should have used 2021 instead. If the Minister had, the Appellant's monthly pension would be higher. The Appellant did not show any authority for the Minister to use any year other than 2014.

4. Adjustment factor

[16] If the Minister had used pensionable earnings from 2021, the Appellant says her maximum pensionable earnings would have been much higher, and the adjustment factor would have been 29.165% instead of 25%.⁷ Again, there is no authority for the Minister to use any year other than the last year the Appellant had pensionable earnings.

The Minister's response

1. Contributory Period (months dropped out)

[17] The Minister showed the detailed calculation for the contributory period and the months that were removed. The Minister applied the rules to the information from the Appellant's records. There is nothing in the file or the Appellant's submissions to show that the Minister should have calculated the pension differently.

2. Contributory Period (months after 18th birthday)

[18] The Minister showed that the contributory period began in November 1974. That was the month after she turned 18. There is no requirement that an appellant has to live in Canada before a contributory period begins. The Minister used the correct date.

⁷ The rules set actuarial adjustment factors that apply to the years when an appellant had pensionable earnings.

3. Pensionable earnings

[19] The Minister explained that the Appellant did not have pensionable earnings after 2014. Therefore, even though her contributory period ended in October 2021, she did not have pensionable earnings then. The Minister used 2014 because it was the last year the Appellant had pensionable earnings. There is no authority that would allow the Minister to choose a later year.

4. Adjustment factor

[20] As explained above, the Appellant had no pensionable earnings after 2014. Therefore, it was correct to base the calculations on her 2014 pensionable earnings.

The Appellant did not prove the Minister should have calculated her pension differently

[21] The Appellant argued the Minister should have calculated her pension differently. In her calculations she used factors and dates that don't comply with the law. The Minister correctly stated that it can't disregard the requirements in the CPP even if doing so would result in higher benefits.

[22] The fact that the Appellant could recalculate the pension using different numbers doesn't mean she is entitled to a higher pension. She had to show the rules (CPP and Regulations) entitled her to a higher pension. Unfortunately, she did not.

[23] I am an independent decision maker in an administrative tribunal. That means my authority is limited. I am able to make decisions about the CPP and its regulations. This means I have to interpret and apply the rules. I cannot change them, even if they seem less favourable or unfair in a situation.⁸

⁸ For a general discussion on this point see the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22.

Conclusion

[24] I find that the Appellant isn't eligible for a higher pension.

[25] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section