



Citation: *MC v Minister of Employment and Social Development*, 2023 SST 2017

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

## **Decision**

**Appellant:** M. C.  
**Representative:** L. C.

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

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**Decision under appeal:** Minister of Employment and Social Development decision dated March 21, 2023 (issued by Service Canada)

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**Tribunal member:** Shannon Russell

**Decision date:** November 23, 2023

**File number:** GP-23-1078

## Decision

[1] The appeal is allowed.

[2] The Appellant, M. C., filed her request for reconsideration within the 90-day appeal period. This means her request for reconsideration was not late.

## Overview

[3] The Appellant is an 80-year-old woman whose spouse passed away in November 2020.<sup>1</sup> The Appellant applied for a survivor's pension in December 2020.<sup>2</sup> The Minister of Employment and Social Development (Minister) approved her application. In other words, the Minister granted the Appellant a survivor's pension.

[4] The Appellant applied again for the survivor's pension in October 2022.<sup>3</sup> The Minister denied the application on November 21, 2022. The Minister explained that it was denying the application because the Appellant was already receiving the survivor's pension, based on her application of December 2020.<sup>4</sup>

[5] The Appellant asked the Minister to reconsider its decision. The Minister told the Appellant that it would not reconsider its decision because the Appellant filed her request for reconsideration late (past the 90-day time limit).<sup>5</sup>

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

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<sup>1</sup> The Death Certificate is at page GD2-22.

<sup>2</sup> The application of December 2020 is at page GD2-23.

<sup>3</sup> The application of October 2022 is at page GD2-15.

<sup>4</sup> The Minister's denial letter of November 21, 2022 is at pages GD2-13 to GD2-14.

<sup>5</sup> The Minister's decision of March 21, 2023 is at pages GD2-5 to GD2-6.

## The appeals process

### **An appellant has 90 days to ask the Minister to reconsider a decision**

[7] If a person disagrees with a decision of the Minister, then that person has 90 days to ask the Minister to reconsider the decision.<sup>6</sup>

[8] If a person waits more than 90 days before asking the Minister to reconsider its decision, then the request for reconsideration is considered late.

### **What the Minister needs to consider when a request for reconsideration is late**

[9] The Minister can reconsider a decision even if the request for reconsideration is late. However, the Minister can only do so if it is satisfied that:<sup>7</sup>

- there is a reasonable explanation for requesting a longer period; and
- the person has shown a continuing intention to request a reconsideration.

[10] If an appellant asks for a reconsideration more than one year after receiving the initial decision (which is not the case here) or if an appellant asks for a reconsideration of a decision about a benefit that had previously been applied for (which is the case here), then the Minister must also be satisfied that:<sup>8</sup>

- the request for reconsideration has a reasonable chance of success; and
- a longer period to request a reconsideration would not cause prejudice to the Minister or a party.

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<sup>6</sup> Subsection 81(1) of the *Canada Pension Plan*.

<sup>7</sup> Subsection 74.1(3) of the *Canada Pension Plan Regulations*.

<sup>8</sup> Subsection 74.1(4) of the *Canada Pension Plan Regulations*.

## **The Minister's discretion must be exercised judicially**

[11] The Minister's decision to grant or refuse a late reconsideration request is considered a discretionary decision. The Minister's discretion must be exercised judicially.<sup>9</sup>

[12] This means that the decision maker must **not** have:<sup>10</sup>

- acted in bad faith;
- acted for an improper purpose or motive;
- taken into account an irrelevant factor;
- ignored a relevant factor; or
- acted in a discriminatory manner.

## **What I must decide**

[13] I must decide if the Appellant's request for reconsideration was late. If the request for reconsideration was not late, then the Minister will be required to reconsider its decision.

[14] If the request was late, then I must decide if the Minister exercised its discretion in a judicial manner when it decided not to give the Appellant more time to appeal.

[15] If the Minister did not exercise its discretion in a judicial manner, then I must decide if the Appellant should have more time to ask for a reconsideration.

## **My findings**

### **– The Appellant's request for a reconsideration was not late**

[16] I don't know the exact date the Appellant received the Minister's decision of November 21, 2022. However, it's reasonable to find she likely received it by December 1, 2022. This is 10 days after the letter was sent to the Appellant.

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<sup>9</sup> See *Canada (Attorney General) v. Uppal*, 2008 FCA 388.

<sup>10</sup> See *Canada (Attorney General) v. Purcell*, [1996] 1 FC 644.

[17] This means the Appellant had to file her request for reconsideration by February 28, 2023 (90 days after receiving the decision of November 21, 2022).

[18] The Appellant signed her request for reconsideration on February 16, 2023.<sup>11</sup> A date stamp shows that her request was received by Service Canada on February 22, 2023.<sup>12</sup> Another date stamp shows that it was received by another Service Canada office on March 7, 2023.<sup>13</sup>

[19] I suspect that when the Minister determined that the Appellant's request for reconsideration was late, the Minister used the date stamp of March 7, 2023, rather than the earlier date stamp of February 22, 2023.<sup>14</sup> Admittedly, I too didn't notice the date stamp of February 22, 2023 until I reviewed the file a second time.

[20] In any event, the Appellant's request for reconsideration was made within 90 days of receiving the Minister's decision of November 21, 2022. This means her request for reconsideration was not late.

[21] Because the Appellant's request for reconsideration was not late, there is no need for me to assess whether the Minister exercised its discretion judicially.

## Conclusion

[22] The Appellant's request for reconsideration was not late. The Minister is therefore required to reconsider its decision.

[23] The appeal is allowed.

Shannon Russell

Member, General Division – Income Security Section

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<sup>11</sup> Page GD2-11

<sup>12</sup> The date stamp is at page GD2-8.

<sup>13</sup> The date stamp is at page GD2-7.

<sup>14</sup> The Minister's decision of March 21, 2023 refers to the Appellant's letter of "March 7, 2023". This tells me the Minister likely only looked at the date stamp of March 7, 2023.