



Citation: *AY v Minister of Employment and Social Development*, 2024 SST 231

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

# **Decision**

**Appellant:** A. Y.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 31, 2023 (issued by  
Service Canada)

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**Tribunal member:** Antoinette Cardillo

**Type of hearing:** On the record

**Decision date:** January 17, 2024

**File number:** GP-23-1566

## Decision

[1] The appeal is dismissed.

[2] The Appellant, A. Y., can't have more time to ask the Minister of Employment and Social Development (Minister) to reconsider its decision for retroactive payments of his Canada Pension Plan (CPP) retirement pension.

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

## Overview

[4] The Appellant applied for a CPP retirement pension online on December 20, 2021.<sup>1</sup>

[5] On January 8, 2022, the Minister sent a letter to the Appellant approving his application with an effective date of January 2022 (one month after the application was received).

[6] The Appellant requested a reconsideration on May 23, 2023, 545 days following the initial decision. He requested that his pension start in June 2019 when he turned 60 years old. He said that he was not informed he could apply for early retirement.

[7] On July 31, 2023, the Minister denied the Appellant's request for an extension of the 90-day time limit to apply for reconsideration.

[8] According to the Minister, the Appellant did not apply for reconsideration within 90 days of receiving the initial decision. The reconsideration request was received after one year of the time limit of 90 days and the Minister considered four (4) criteria to see whether the reconsideration should be accepted or denied.

[9] The Appellant appealed the Minister's decision to refuse his reconsideration request to the Social Security Tribunal's General Division.

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<sup>1</sup> See GD6-4.

## What I have to decide

[10] I must decide whether the Appellant's reconsideration request was late.

[11] If it was, then I must also decide whether the Minister exercised its discretion judicially (made its decision properly) when it refused to give the Appellant more time to ask it to reconsider its decision.<sup>2</sup>

[12] If the Minister didn't exercise its discretion judicially, I will make the decision it should have made. My decision will focus on whether the Appellant has a reasonable explanation for why he was late and whether he showed a continuing intention to ask the Minister to reconsider its decision. It will also focus on whether the Appellant's reconsideration request has a reasonable chance of success and whether giving him more time would be unfair to another party.

## Reasons for my decision

### - The Appellant's reconsideration request was late

[13] The Appellant's reconsideration request was late. He asked the Minister to reconsider its January 8, 2022, decision more than one year after the day the Minister told him about it. His reconsideration request was received on May 23, 2023.

[14] An appellant has 90 days to ask the Minister to reconsider a decision.<sup>3</sup> If the appellant waits more than 90 days, then their reconsideration request is considered late.

[15] The Appellant says he did not receive the Minister's decision dated January 8, 2022. However, the Minister said that they did not have a returned mail or undelivered mail notice on file and that they send all letters to the Appellant at the same address.

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<sup>2</sup> When the Minister gives more time (or "a longer period" as the law words it), that means it accepts to consider the late request.

<sup>3</sup> See section 81 of the *Canada Pension Plan*.

[16] I find that the Appellant asked the Minister to reconsider its January 8, 2022, decision more than one year after the Minister told him about it.

- **What to consider when a reconsideration request is late**

[17] The Minister can reconsider a decision even if the reconsideration request is late. For this to happen, the law says that an appellant has to convince the Minister of two things.

[18] The appellant has to show that:<sup>4</sup>

- they have a reasonable explanation for why they are late;
- they always meant to ask the Minister to reconsider its decision—this is called their “continuing intention”.

[19] If an appellant asked the Minister to reconsider its decision more than 365 days after the Minister told them about it in writing, then the law says that the appellant has to convince the Minister of two other things too.

[20] The appellant has to show that:<sup>5</sup>

- their reconsideration request has a reasonable chance of success;
- giving them more time would not be unfair to another party.

[21] The Appellant has to meet these four factors. If the Appellant doesn't meet one of these factors, then he isn't entitled to have the Minister's January 8, 2022 decision reconsidered.

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<sup>4</sup> See section 74.1(3) of the *Canada Pension Plan Regulations*.

<sup>5</sup> See section 74.1(4) of the *Canada Pension Plan Regulations*. There are two other reasons an appellant would have to meet all four factors. They are (1) if the appellant applied again for the same benefit, and (2) if the appellant asked the Minister to rescind or amend (cancel or change) a decision.

- **The Minister must exercise its discretion judicially**

[22] The Minister's decision whether to consider a late reconsideration request is discretionary. Discretion is the power to decide whether to do something. The Minister has to exercise its discretion judicially.<sup>6</sup>

[23] If the Minister has done one of the following, then it didn't exercise its discretion judicially:<sup>7</sup>

- acted in bad faith
- acted for an improper purpose or motive
- considered an irrelevant factor
- ignored a relevant factor
- acted discriminatorily (unfairly).

[24] My role is not to determine the outcome of the reconsideration or if the Minister made the correct decision but whether the discretion was exercised in a judicial manner. The Appellant has the burden of proof in establishing that the Minister failed to do so.

- **The Minister did exercise its discretion judicially**

[25] The Minister had to consider the following four (4) criteria:

**i. Reasonable explanation for the delay**

[26] The Minister considered the Appellant's explanation for this criterion.

[27] An automated letter (Notice of Entitlement) was sent on January 8, 2022, informing the Appellant of his retirement pension amount, the effective date, and of his reconsideration rights. The Appellant stated he did not receive that letter; however, the

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<sup>6</sup> See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

<sup>7</sup> See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

Minister does not have undeliverable/returned mail received on file. The Minister also said that all the letters sent to Appellant were sent to the same address.

[28] The Minister determined that the Appellant did not provide an explanation indicating exceptional or extenuating circumstances.

## **ii. Continuing intention to request a reconsideration**

[29] The Minister considered the second criterion, the Appellant's continuing intention to ask for a reconsideration.

[30] The Minister said that the first enquiry received from the Appellant about the retroactive entitlement was on December 5, 2022, which is 11 months after he started receiving his CPP retirement pension.

## **iii. Reasonable Chance of Success**

[32] The Minister had to consider if the request had a reasonable chance of success since the Appellant submitted his request more than one year after the initial decision.

[33] The Minister determined that the reconsideration had no reasonable chance of success because the CPP states that no retroactive payment may be made to individuals between the ages of 60 to 65. The Appellant was 62 years old when he applied for the CPP retirement pension.<sup>8</sup>

## **iv. Prejudice to the Minister**

[34] The Minister considered the fourth criterion and determined that an extension would not result in unfairness to the Minister as all pertinent information was available.

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<sup>8</sup> The Minister referred to section 67(3.1) of the *Canada Pension Plan*.

## Conclusion

[35] The Minister considered the Appellant's explanation for the delay, if it was reasonable and if the Appellant demonstrated a continuing intention to request the reconsideration. In addition, because the request for reconsideration was received more than one year after the initial decision was made, the Minister also considered if the request had a reasonable chance of success and if there would be prejudice to the Minister or another party if the late request for reconsideration was granted.

[36] In reviewing the file, I found no evidence that the Minister acted in bad faith, acted with an improper purpose or motive, acted in a discriminatory manner when it made its determination, took into account an irrelevant factor or ignored a relevant factor. The Minister advised the Appellant of his right to request a reconsideration within 90 days of his initial request being denied. The evidence confirmed that the Appellant made his request for reconsideration outside the 90-day time period and more than one year after the initial decision was made.

[37] The Minister considered the four criteria to determine whether to allow a longer period for the Appellant to make a reconsideration request as provided in the law.

[38] I conclude that the Minister's discretion was exercised judicially in refusing the Appellant's reconsideration request.

[39] This means the appeal is dismissed.

Antoinette Cardillo  
Member, General Division – Income Security Section