



Citation: *RM v Minister of Employment and Social Development*, 2024 SST 1004

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: R. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 14, 2023
(issued by Service Canada)

Tribunal member: Carol Wilton

Type of hearing: Teleconference

Hearing date: May 15, 2024

Hearing participant: Appellant

Decision date: May 16, 2024

File number: GP-23-2103

Decision

[1] The appeal is dismissed.

[2] The Appellant, R. M., isn't eligible for the *Canada Pension Plan* (CPP) disability benefit or the CPP post-retirement disability benefit (PRDB). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was born in April 1958. In May 2018, the month after he turned 60 years old, he began collecting the CPP early retirement pension after contributing to the CPP for more than 25 years.

[4] The Appellant was 63 years old in April 2022 when he applied for a CPP disability pension. He stated that he became disabled in April 2022. Among other health concerns, he has ulcerative colitis and heart problems.¹ The Minister initially denied the application.

[5] In July 2023, the Appellant asked Service Canada to review its decision on the PRDB. In a separate document, he asked the Minister to reconsider its decision on the CPP disability benefit.²

[6] The Minister's September 2023 reconsideration decision concerned only the Appellant's entitlement to the PRDB. It stated that the Appellant was not entitled to this benefit because he didn't have enough earnings and contributions in the relevant period.³

[7] The Appellant stated that he hadn't qualified because an agent of Service Canada had given him incorrect information. The agent advised him to change his tax returns to meet "basic CPP exemption requirements." The purpose was to allow the

¹ GD02-I-75

² GD02-I-41, 67

³ GD02-I-13

Appellant to meet the contribution requirements for CPP benefits.⁴ However, even with the changes he made, the Appellant didn't have enough valid contributions to the CPP to qualify for the PRDB.

What the Appellant must prove

[8] For the Appellant to succeed, he must prove he is entitled to CPP disability or the PRDB.

Matters I have to consider first

What did the Appellant want the Minister to consider?

[9] In February 2024, the Minister reported having discussed with the Appellant whether he wanted the Tribunal to consider its CPP disability decision as well as the PRDB decision. The Appellant wasn't sure.

[10] On March 20, 2024, I held a case conference. The Appellant stated he didn't want to be considered for the CPP disability pension.

What the Appellant can do going forward

[11] The Appellant and a representative of the Minister (Kimberly Williams) attended the case conference. The Appellant wanted 48 hours to let me know how he wanted to proceed.

[12] On March 25, 2024, the Appellant wrote for advice. He stated that he understood that there was a discretionary fund through the Minister's office that might be able to address his situation. He did not say whether he wanted to proceed to a hearing.

[13] I decided to hold a hearing to explain what the claim of erroneous advice/administrative error involved.

⁴ GD02-I-51

Reasons for my decision

[14] The Appellant isn't eligible for either of the CPP benefits he was seeking.

The Appellant isn't entitled to CPP disability

[15] The Appellant isn't entitled to a CPP disability pension because he applied almost four years after he started collecting his CPP retirement pension. However, applicants collecting a CPP retirement pension must apply for CPP disability within 15 months of the date their retirement pension starts.

[16] One of the requirements for a CPP disability pension is that the applicant must not be receiving a CPP retirement pension⁵. A person may apply to cancel a retirement pension so that he can receive a disability pension if he does so within six months of payment beginning.⁶ However, that cannot be done if he is deemed to have become disabled "in or after" the month the retirement pension became payable.⁷

[17] Another way of saying this is that the applicant must be deemed to have become disabled *before* the month when payment of the retirement pension began. The earliest a person can be deemed to be disabled is 15 months before the date the disability application is made; that is, when it is received by Service Canada.⁸

[18] The effect of these provisions is that the CPP does not allow a retirement pension to be cancelled in favor of a disability pension if the disability application is made 15 months or more after the retirement pension started to be paid.

[19] The Appellant agreed at the case conference that he isn't entitled to CPP disability.

⁵ CPP paragraph 44(1)(b) subsection 70(3)

⁶ CPP section 66.1; CPP *Regulations* section 46.2

⁷ CPP subsection 66.1(1.1)

⁸ CPP paragraph 42(2)(b); subsection 60(6); CPP *Regulations* subsection 43(1)

The Appellant isn't entitled to the PRDB

[20] The Minister submitted that under a decision of the appeal division, the Appellant wasn't entitled to the PRDB.⁹ This required three years of contributions out of six in the years from 2016 to 2021. However, the Appellant has only one year of valid contributions in that period.¹⁰

[21] The Minister also submitted that under the late applicant provision,¹¹ the Appellant doesn't have enough contributions to qualify for the PRDB.

[22] The Appellant stated at the hearing that he accepts that he doesn't qualify for the PRDB.

The Appellant says he received bad advice from an agent of Service Canada

[23] The Appellant stated that he would have been able to collect the PRDB for the year or part of a year before he turned 65¹² if he had not been badly advised by an agent of Service Canada.

[24] The Appellant stated that in 2022, the agent advised him that he could change his tax returns to meet basic CPP requirements. Based on this advice, the Appellant made changes to his 2017 and 2018 tax returns. However, because of the erroneous advice, he didn't realize that he needed more than the basic level of contributions before he could qualify for the PRDB. So, he went to a great deal of trouble and expense to change his tax returns to no purpose.

⁹ *N.L. v. Minister of Employment and Social Development*, 2020 SST 741. The Minister applies this decision to appeals where the date of application is before May 4, 2023.

¹⁰ In 2019, he had valid earnings of \$19,760.

¹¹ See subparagraph 44(1)(h)(ii)

¹² Section 69 of the CPP states that payment of the PRDB begins four months after an appellant becomes disabled.

[25] I make no finding about the Appellant's claim. If true though, his allegation might establish that the Minister made an "administrative error" (AE) or gave "erroneous advice" (EA).

[26] The CPP explains what can happen in the event of AE or EA. If the Minister is satisfied that AE or EA occurred, and benefit or part of a benefit was denied as a result, the Minister "shall take such remedial action as the Minister considers appropriate" to put the person back in the position they should have been in.¹³

[27] The Tribunal has no authority to intervene in a matter of AE or EA. Only the Minister has the authority to deal with this matter.

Conclusion

[28] I find that the Appellant isn't eligible for either CPP disability or the PRDB.

[29] This means the appeal is dismissed.

Carol Wilton
Member, General Division – Income Security Section

¹³ See subsection 66(4) of the CPP.