



Citation: *JC v Minister of Employment and Social Development*, 2024 SST 1535

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

# Decision

**Appellant:** J. C.  
**Representative:** M. C.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Janice Wong

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated May 14, 2024 (issued by Service Canada)

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**Tribunal member:** James Beaton

**Type of hearing:** Teleconference  
**Hearing date:** November 27, 2024  
**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative

**Decision date:** November 28, 2024  
**File number:** GP-24-1354

## Decision

[1] The appeal is dismissed.

[2] The Appellant, J. C., isn't eligible to have her Canada Pension Plan (CPP) disability pension reinstated, nor is she eligible for a higher CPP retirement pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant started getting a disability pension of \$458.56 per month in October 1991. The amount of a disability pension increases with inflation. In February 2024, she turned 65 years old. She received \$922.43 for that month. As of March 2024, the Minister of Employment and Social Development stopped paying her a disability pension and started paying her a retirement pension. Her retirement pension was only \$452.22 per month.<sup>1</sup>

[4] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division. She says she is still disabled, and the cost of living and her disability-related expenses have increased. The only thing that has changed is her age. She wants her disability pension reinstated, or for her retirement pension to match what she was getting as a disability pension. She questions the "policy objectives" behind the Minister's decision and asks that I apply an "equity and social justice perspective" when making my decision.<sup>2</sup>

## What I have to decide

[5] I have to decide if the Appellant is eligible to have her disability pension reinstated, or if she is eligible for a higher retirement pension.

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<sup>1</sup> See GD2-4 and 5.

<sup>2</sup> See GD1-5 and GD5.

## Reasons for my decision

[6] The Appellant isn't eligible to have her disability pension reinstated, nor is she eligible for a higher retirement pension.

### The Appellant isn't eligible to have her disability pension reinstated

[7] When a person who is receiving a disability pension turns 65, the Minister automatically stops paying them a disability pension and starts paying them a retirement pension. A person can't get a disability pension after they turn 65.<sup>3</sup> This isn't just the Minister's policy—it is the law.

[8] The Appellant questions the policy behind the law. But I am not in a position to defend or change the Government's policy choices as reflected in the law. I can only apply the law as it is written. I can't make an exception based on "equity" or "social justice."<sup>4</sup>

### The Appellant isn't eligible for a higher retirement pension

[9] A disability pension and a retirement pension are calculated according to different rules.<sup>5</sup>

[10] A disability pension consists of a flat-rate amount and an earnings-based amount. In October 1991, the flat-rate amount was \$289.99. The Appellant's earnings-based amount was calculated to be \$168.57 using her contributions to the CPP. The amounts were combined and increased each year according to inflation.

[11] A retirement pension is **entirely** earnings-based. There is no flat-rate portion. To calculate the Appellant's retirement pension, the Minister took the earnings-based amount in October 1991 (\$168.57). The Minister divided that by 0.75 to get \$224.76.

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<sup>3</sup> See sections 70(1)(c) and (2) of the *Canada Pension Plan*.

<sup>4</sup> See *Miter v Canada (Attorney General)*, 2017 FC 262.

<sup>5</sup> The rules for calculating a disability pension are in section 56 of the *Canada Pension Plan*. The rules for calculating a retirement pension are more complex. The basic rules are found in section 46.

The Minister then multiplied that amount by the index factor of 2.012 to get \$452.22. The index factor is how the Minister accounts for inflation.

[12] The Minister's calculation of the retirement pension followed the rules in the *Canada Pension Plan*. The Appellant doesn't take issue with the Minister's calculations.

### **Why was the Appellant told that she could appeal?**

[13] At the hearing, the Appellant's representative questioned why the Minister told the Appellant that she could appeal when there was no chance of her appeal succeeding. He thinks the Minister should have told them about previous Tribunal cases that decided the same issue (in the Minister's favour) instead of giving the Appellant a "false hope" that she could get a different outcome by going to the Tribunal.<sup>6</sup>

[14] When a person disagrees with the Minister's decision, they can ask the Minister to reconsider. If they disagree with the Minister's decision after reconsideration, they can appeal to the Tribunal. Section 82 of the *Canada Pension Plan* gives people the right to appeal.

[15] The Minister didn't tell the Appellant to appeal. The Minister told her that she **could** appeal. The Minister also explained to her the basis for its decision.<sup>7</sup> The Minister wasn't required to refer her to previous Tribunal decisions, or to advise her what it thought her chances of success were. The Appellant was given enough information so that she could decide for herself whether appealing was worthwhile. If she wished, she could have researched other Tribunal decisions, many of which are freely available on the Tribunal's website, including the decisions that the Minister's representative referenced at the hearing. Or she could have consulted a lawyer for advice.

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<sup>6</sup> The Minister's representative referred to two previous Tribunal decisions at the hearing, but didn't do so in its reconsideration decision letter. The Tribunal decisions are *LL v Minister (Employment and Social Development)*, 2020 SST 1141, which was heard by the General Division, and *LL v Minister (Employment and Social Development)*, 2021 SST 9, which was heard by the Appeal Division. The Minister's representative mistakenly referred to the Appeal Division as the "Review Tribunal." The Office of the Commissioner of Review Tribunals no longer exists.

<sup>7</sup> See GD2-12 and 13.

[16] The Appellant is essentially arguing that the Minister should assess which cases could potentially succeed before the Tribunal, and then only tell those individuals about their appeal rights. One problem with that approach is that the Minister could get the assessment wrong, leaving some people unaware of their appeal rights when an appeal might have resulted in a different outcome. In addition, the Minister makes the decisions that it believes are correct—so it would view **all** of its decisions as being (at least to some extent) unlikely to succeed on appeal. If the Minister thought an appeal were likely to succeed, it would make a different decision.

[17] In the end, the Appellant did appeal, and the Tribunal gave her a hearing. Before December 5, 2022, the Tribunal had to summarily dismiss appeals (that is, dismiss them without a hearing) if they had no reasonable chance of success.<sup>8</sup> From December 5 on, the law was changed so that the Tribunal no longer has that power. The Tribunal **must** now give appellants a hearing, even if they have no chance of succeeding.

## Conclusion

[18] I find that the Appellant isn't eligible to have her disability pension reinstated, nor is she eligible for a higher retirement pension.

[19] This means the appeal is dismissed.

James Beaton  
Member, General Division – Income Security Section

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<sup>8</sup> This requirement came from section 53(1) of the *Department of Employment and Social Development Act*. That section ceased to exist after December 4, 2022.