



Citation: *AM v Minister of Employment and Social Development and DH*, 2025 SST 982

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

Decision

Appellant: A. M.

Respondent: Minister of Employment and Social Development

Added Party: D. H.

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated April 22, 2025 (issued by Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Teleconference

Hearing date: September 4, 2025

Hearing participants: Appellant
Added Party

Decision date: September 16, 2025

File number: GP-25-783

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. M., can't have more time to ask the Minister of Employment and Social Development (Minister) to reconsider its decision about her Canada Pension Plan (CPP) credit split.

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

Overview

[4] In October 2002, the Appellant applied for a CPP credit split following the dissolution of her marriage to the Added Party.¹

[5] In March 2003, the Minister granted the application and sent the Appellant a notice showing the years and amounts of the credit splitting she was entitled to receive.²

[6] The Appellant agrees she received the Minister's decision without any unusual delay in 2003.

[7] The Appellant asked the Minister to reconsider its decision on January 16, 2025. She says there are two years she was in a common law relationship with the Added Party in 1984 and 1985, and she wants to receive a credit split for those years. She says she didn't know she could make a claim for those years when she applied.

[8] The Minister refused to reconsider its decision.³ The Minister said the Appellant's reconsideration request was too late.

[9] The Appellant appealed the Minister's decision to the Social Security Tribunal.

[10] This appeal isn't about whether the Appellant should receive a credit split for the years she says she was in a common law relationship. It's about whether her request to

¹ See GD2-8.

² See GD2-25.

³ See GD2-38.

the Minister for reconsideration of the March 2003 decision was late, and if it was, whether the Minister should have given her more time to ask for reconsideration.

[11] The Tribunal can't hear an appeal about entitlement to benefits unless the Minister has issued a reconsideration decision.⁴

What I must decide

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

[13] If it was late, then I must also decide whether the Minister used its discretion judicially (made its decision properly) when it refused to give the Appellant more time to ask it to reconsider its decision.

[14] If the Minister didn't use its discretion judicially, I will make the decision it should have made.

Reasons for my decision

[15] The Appellant's request for reconsideration was late. The Minister didn't act judicially when it refused to reconsider its decision.

[16] The Appellant can't have more time to ask for reconsideration. I find the Appellant doesn't have a reasonable explanation for why she was late. I also find that giving her more time would be unfair to the Added Party.

The Appellant's request for reconsideration was late

[17] If a person disagrees with the Minister's decision about CPP credit splitting, they can ask the Minister to reconsider. They must do this within 90 days after they were notified of the decision in writing.

[18] If a person waits more than 90 days after they were notified before asking for reconsideration, their request is late.

⁴ See section 82 of the *Canada Pension Plan*.

[19] I find that the Appellant was notified of the Minister's decision in writing by at least March 30, 2003.

[20] The Minister mailed the Appellant's decision on March 20, 2003.

[21] Regular mail in Canada typically doesn't take more than 10 days to be delivered. The Appellant says she received the decision and has no reason to believe there was any delay.

[22] This means that the request for reconsideration dated January 16, 2025, was late.

– **What the Minister must consider when a reconsideration request is late**

[23] If a request for reconsideration is late, the Minister can give a person more time to ask. To do this, the Minister must be satisfied that:

- there is a reasonable explanation for why the request was late
- the person always meant to ask for reconsideration – this is called their “continuing intention”⁵

[24] If the person asks the Minister to reconsider a decision about a benefit, and more than 365 days has passed since the Minister's decision, the Minister must also be satisfied that:

- the request for reconsideration has a reasonable chance of success
- allowing the request would not prejudice (unfairly disadvantage) the Added Party or the Minister⁶

[25] I have found that the Appellant's request for reconsideration was over 365 days late. Therefore, the Minister had to consider all four of these factors.

⁵ See Section 74.1(3) of the *Canada Pension Plan Regulations*.

⁶ See Section 74.1(4) of the *Canada Pension Plan Regulations*.

[26] If the Appellant doesn't meet one of these four factors, then she isn't entitled to have the Minister reconsider its decision.

– **The Minister must act judicially when it considers these factors**

[27] The Minister's decision about whether to consider a late request for reconsideration is discretionary. Discretion is the power to decide whether to do something or not.

[28] When deciding whether to accept a late request for reconsideration, the Minister must act judicially. This means the Minister must not:

- act in bad faith
- act for an improper purpose or motive
- consider an irrelevant factor
- ignore a relevant factor
- discriminate against the Appellant⁷

– **The Minister didn't use its discretion judicially**

[29] The Minister refused the Appellant's reconsideration request. The Minister's decision letter said the Appellant didn't have a reasonable explanation for why she was late.

[30] There is no evidence the Minister acted in bad faith, for an improper purpose or motive, or that it was discriminating against the Appellant.

[31] But I find there is evidence the Minister ignored relevant factors. This means the Minister didn't act judicially when it refused to accept the late request for reconsideration.

⁷ See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

– **The Minister ignored relevant factors**

[32] The Minister ignored relevant factors when it decided to refuse to accept the late request for reconsideration.

[33] There is no evidence in the Minister's file that it considered all the information provided by the Appellant.

[34] Typically, the Minister provides a decision summary to show it has considered the relevant factors required in the law. In this case, there is no decision summary or notes to show that the Minister considered the information provided by the Appellant. The Minister hasn't said why it believes the Appellant's explanation wasn't reasonable.

[35] The Minister also failed to make any written submissions for this appeal, or to attend the hearing.

[36] The lack of any explanation to support the Minister's decision, or to show that it considered all the information provided by the Appellant suggests that it ignored relevant information that formed part of the Appellant's explanation. This means it didn't act judicially when it made a decision.

– **What happens when the Minister doesn't exercise its discretion judicially?**

[37] I have found that the Minister didn't exercise its discretion judicially. So, I now must assess for myself whether the Appellant should get more time to ask for reconsideration.

[38] If I find that the Appellant should get more time, then I must send the matter back to the Minister and tell it to reconsider the March 20, 2003, decision.

[39] If I don't find that the Appellant should get more time, then I must dismiss the appeal.

The Appellant doesn't meet all four factors

[40] The Appellant doesn't meet all four factors outlined above. She isn't entitled to ask the Minister for more time to reconsider its decision.

– **The Appellant doesn't have a reasonable explanation for why she was late**

[41] I find that the Appellant doesn't have a reasonable explanation for why she was late.

[42] The Appellant says she didn't know that she could apply for a credit split for the years she lived common law with the Added Party. She says that's why she didn't ask for reconsideration sooner.

[43] The application for the credit split completed by the Appellant specifically asked her if there were any periods of time before her marriage when she lived common law with the Added Party. She answered the question "no".⁸

[44] I find that the Appellant's explanation isn't reasonable because the application she completed asked her about this exact issue and she answered the question.

[45] Furthermore, the Appellant wrote to the Minister in May 2011 inquiring about this issue.⁹

[46] This tells me that the Appellant knew that the issue of her common law relationship may have been relevant and that she may qualify for credit-splitting for that period, at least by 2011. This was nearly 14 years before her late request for reconsideration.

[47] Therefore, I don't find that the Appellant's explanation was reasonable.

– **Giving the Appellant more time would be unfair to the Added Party**

[48] The other parties in this appeal are the Added Party, and the Minister.

[49] The Added Party is the Appellant's former spouse. If the Appellant can ask for reconsideration and is successful, the outcome could potentially affect the amount of the Added Party's CPP retirement pension.

⁸ See GD2-10.

⁹ See GD2-26.

[50] If I give the Appellant more time to ask the Minister to reconsider its decision, this would be unfair to the Added Party.

[51] The Added Party would be prejudiced by the length of time that has passed since the Minister's decision in 2003. He would be required to come up with evidence to dispute the Appellant's claims, with a gap of 22 years since the initial decision, if he wants to dispute her appeal. Any evidence he may have had in his possession related to his living arrangements 40 years ago could now be missing or destroyed.

[52] The Added Party says allowing the Appellant more time to ask for reconsideration is unfair to him. He says he is nearly 76 years old, and any potential adjustments to his monthly retirement income would be harmful to him. He was unprepared for this issue to arise.

[53] I agree with the submissions made by the Added Party. I find that giving the Appellant more time to ask for reconsideration would be unfair to him.

Conclusion

[54] I find that the Appellant can't have more time to ask the Minister to reconsider its decision regarding her credit split application.

[55] The Appellant doesn't meet all four factors required to justify having the decision reconsidered. She didn't have a reasonable explanation for being late, and it would be unfair to the Added Party to allow her to ask for reconsideration at this time.

[56] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section