

**Citation:** *H. L. v. Minister of Employment and Social Development*, 2015 SSTGDIS 62

**Date:** June 18, 2015

**File number:** GP-13-668

**GENERAL DIVISION - Income Security Section**

**Between:**

**H. L.**

**Appellant**

**and**

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

**Respondent**

**Decision by:** Raymond Raphael, Member, General Division - Income Security Section

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on November 26, 2012. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsiderations decision to the Social Security Tribunal on May 10, 2013.

### ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

### THE LAW

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

#### *Applicable CPP Provisions*

[5] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must not be in receipt of a CPP retirement pension.

[6] For the purposes of the CPP a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) CPP).

[7] The requirement that an applicant not be in receipt of the CPP retirement pension is also set out in subsection 70(3) of the CPP, which states that once a person starts to receive a CPP

retirement pension, that person cannot apply or re-apply, at any time, for a disability pension. There is an exception to this provision and it is found in section 66.1 of the CPP.

[8] Section 66.1 of the CPP and section 46.2 of the CPP Regulations allow a beneficiary to cancel a benefit after it has started if the request to cancel the benefit is made, in writing, within six months after payment of the benefit has started.

[9] If a person does not cancel a benefit within six months after payment of the benefit has started, the only way a retirement pension can be cancelled in favour of a disability benefit is if the person is deemed to be disabled before the month the retirement pension first became payable (subsection 66.1(1.1) of the CPP).

[10] Subsection 66.1(1.1) of the CPP must be read with paragraph 42(2)(b) of the CPP, which states that the earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Respondent.

[11] The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favor of the disability pension where the disability application is made fifteen months or more after the retirement pension started to be paid

### **Undisputed Facts**

[12] The Appellant began to receive a CPP retirement pension in April 2011, and did not apply within 6 months to have her pension cancelled

[13] The Appellant initially applied for CPP disability in May 2011. That application was denied and the Appellant did not request a reconsideration of the denial.

[14] This is the Appellant's second application for CPP disability and was made on November 26, 2012.

### **SUBMISSIONS**

[15] The Appellant submitted that:

- a) When she began to receive CPP retirement benefits in April 2011, she could no longer work because of degenerative disc disease;
- b) Her original CPP disability application was within the appropriate time and she did not appeal the denial on the advice of her counsel because of outstanding legal proceedings;
- c) She was advised by both her lawyer and her doctor that it was best to wait for the legal proceedings to end, and then reapply for CPP disability;
- d) The medical evidence substantiates that she has not been able to work since April 2010.

[16] The Respondent submitted that:

- a) The Appellant has been in receipt of a retirement benefit since April 2011 and the earliest date that she can be considered disabled is after this date.
- b) The Appellant's disability application was made in November 2012 and the earliest possible date of onset of her disability is August 2011 (15 months prior to the date of the application).
- c) Accordingly, the Appellant is not eligible for disability benefits.

## **ANALYSIS**

[17] In compliance with section 22 of the Social Security Tribunal Regulations, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions. The Appellant did not respond to the notice of intent.

[18] The Appellant is not eligible for CPP disability.

[19] She began to receive a CPP retirement pension in April 2011 and did not apply within six months to have this pension cancelled. Although she initially applied for CPP disability in

May 2011, that application was denied and the Appellant did not request a reconsideration of the denial.

[20] This is the Appellant's second application for CPP disability, and was made in November 2012 which was more than 15 months after she started to receive the retirement pension. Because this application was made in November 2012, the earliest date that she could be deemed disabled is August 2011, which is after her retirement pension started.

[21] The Tribunal has considered the Appellant's position as set out in her appeal and in her letter to the SST dated November 15, 2013. The Appellant's position is that she was severely disabled as of April 2010 when she last worked and that her first application for disability benefits was within the required timeline.

[22] This Tribunal, however, has no authority to breathe life into the first application. The Tribunal is a statutory body and must derive its power from the application that is before it. The only application before the Tribunal is the second application. The Tribunal is bound by the CPP provisions and is not empowered to exercise any form of equitable power in respect of the appeals coming before it. It is a statutory decision-maker and is required to interpret and apply the provisions as they are set out in the CPP: *MSD v Kendall* (June 7, 2004), CP 21690 (PAB).

[23] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[24] The appeal is summarily dismissed.

Raymond Raphael

Member, General Division - Income Security