

Citation: *Minister of Employment and Social Development v. P. M.*, 2015 SSTAD 1125

Appeal No. AD-15-909

BETWEEN:

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

Applicant

and

**P. M.**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

---

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: September 22, 2015

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated June 9, 2015. The General Division found the Respondent to have a severe and prolonged disability, with an onset **in** November 2012. The General Division determined that payment of a disability pension should commence effective February 2013. Counsel for the Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on August 14, 2015, on the basis that the General Division erred in law. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

### SUBMISSIONS

[2] The Applicant does not contest the finding that the Respondent was disabled as of November 2012. However, counsel for the Applicant submits that the General Division erred in determining the effective date of payment of a disability pension under the *Canada Pension Plan*.

[3] Counsel for the Applicant submits that the General Division erred in law when it calculated the commencement of payment of a disability pension under section 69 of the *Canada Pension Plan*. Counsel submits that section 69 of the *Canada Pension Plan* stipulates that payment of a disability pension commences four months after the onset of the disability. Given that the onset of disability was determined to be November 2012, counsel submits that the payment ought to have commenced effective March 2013, rather than February 2013.

### ANALYSIS

[4] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[5] Subsection 58(1) of the Department of Employment and Social Development Act (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] The Appeal Division needs to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

[7] The General Division referred to section 69 of the *Canada Pension Plan*, which reads as follows:

*Payment of benefit*

**69.** Subject to section 62, where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled, except that where the applicant was, at any time during the five year period next before the month in which the applicant became disabled as a result of which the payment is approved, in receipt of a disability pension payable under this Act or under a provincial pension plan,

- (a) the pension is payable for each month commencing with the month next following the month in which the applicant became disabled as a result of which the payment is approved; and
- (b) the reference to “fifteen months” in paragraph 42(2)(b) shall be read as a reference to “twelve months”.

[8] The issue as to whether the General Division may have erred in law by failing to properly calculate the commencement of a disability benefit raises an arguable ground upon which the appeal has a reasonable chance of success.

## CONCLUSION

[9] The Application is granted.

[10] This decision granting leave in no way presumes the result of the appeal on the merits of the case. However, given the strength of the ground of appeal and the legal nature of the issue involved on appeal, I am inclined to proceed to hearing the matter on the record, short of any compelling submissions from the Respondent. The parties may make submissions within the time permitted under the DESDA, or may, by consent of the parties, seek to abridge the time to respond.

*Janet Lew*

Member, Appeal Division