



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. M. L.*, 2016 SSTADIS 34

Date: January 19, 2016

File number: AD-15-1465

APPEAL DIVISION

Between:

Minister of Employment and Social Development

Applicant

and

M. L.

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), is granted.

INTRODUCTION

[2] The Respondent applied for a *Canada Pension Plan*, (CPP), disability pension on June 19, 2012. The Applicant denied the application initially and upon reconsideration. The Respondent appealed the reconsideration decision and on September 22, 2015 the General Division of the Tribunal heard the appeal. On September 28, 2015 the General Division issued its decision in the appeal. The General Division found that the Respondent' had become disabled within the meaning of the CPP as of November 2013; with payments to commence as of March 2013.

GROUND OF THE APPLICATION

[3] The Applicant seeks leave to appeal from the decision of the General Division. The Applicant states that the General Division erred in law with respect to its application of section 69 of the CPP, which provides that payment of the disability pension commences four months after the date of deemed disability. Thus, the correct payment date is March 2014.

ISSUE

[4] The Appeal Division must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] The *Department of Employment and Social Development, (DESD), Act* provides that leave to appeal a decision of the General Division of the Tribunal is a preliminary step

to an appeal before the Appeal Division¹. To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success². In *Canada (Minister of Human Resources Development) v. Hogervorst, 2007 FCA 41* as well as in *Fancy v. Canada (Attorney General), 2010 FCA 63*, the Federal Court of Appeal equated a reasonable chance of success to an arguable case.

[6] Section 58 of the DESD Act sets out the three grounds on which an appellant may bring an appeal to the Appeal Division. The grounds are that the General Division either committed a breach of natural justice or refused to or improperly exercised its jurisdiction; or erred in law; or based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it.³

ANALYSIS

[7] In order to grant leave to appeal the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal must find that, were the matter to proceed to a hearing at least one of the grounds of the Application relates to a ground of appeal. The Appeal Division must then determine whether there is a reasonable chance that the appeal would succeed on this ground. For the reasons set out below the Appeal Division is satisfied that this appeal would have a reasonable chance of success.

The Alleged Error

[8] The General Division Member found that the Respondent had a severe and prolonged disability as of November 2013 when her family doctor referred her to a psychiatrist to address her ongoing severe chronic pain and major depression. The General Division

¹ DESD Act, sections 56 to 59. Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

² The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

³ **58(1) Grounds of Appeal –**

- a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

Member went on to find that payment of the disability pension would commence as of March 2013. (GD decision para. 42). As stated earlier, the Applicant submitted that the General Division decision is wrong in law with regard to the date that payment of the pension commences.

The Legislative Provisions that govern payment of a Disability Pension

[9] Section 42(2)(b) of the CPP provides for when an applicant can be deemed disabled:

(2) When a person deemed disabled - a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person - including a contributor referred to in subparagraph 44(1)(b)(ii) - be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

[10] Commencement of payment of the disability pension is governed by section 69 of the CPP, which provides:

69. *Commencement of pension* - 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".

[11] The Appeal Division finds that the General Division has erred in law as submitted by the Applicant. According to CPP 42(2)(b) a person is deemed to have become disabled at the time that is determined, in the prescribed manner, to be the time when the person became disabled. Here, the General Division determined that the Applicant became disabled in November 2013. Having found that the Respondent had become disabled in November 2013, the General Division was bound by section 69 of the CPP regarding the date that payment of the pension would commence. Section 69 stipulates that payment is to commence four months after the date of disability. It is not possible for payment of the disability pension to pre-date

the deemed date of disability. Thus, the General Division erred in law when it decreed a payment date of March 2013 as this date occurs before the date of deemed disability.

CONCLUSION

[12] The Applicant submitted that the General Division erred in law with respect to the deemed date of disability and the effective payment date. On the basis of the foregoing, Applicant has satisfied the Appeal Division that the appeal has a reasonable chance of success.

[13] Accordingly, the Application is granted.

Hazelyn Ross
Member, Appeal Division