



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. P. v. Minister of Employment and Social Development*, 2016 SSTADIS 136

Tribunal File Number: AD-15-1213

BETWEEN:

D. P.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: April 11, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated August 31, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan* because her disability was not “severe”. The Applicant filed an application requesting leave to appeal on November 6, 2015. For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] 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.

[4] Before leave can be granted, I need 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. The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Applicant's initial submissions did not address any of the grounds of appeal under subsection 58(1) of the DESDA. Instead, the Applicant provided information regarding her disabilities. She also filed medical records, including a report dated July 22, 2015, from her family physician.

[6] The Applicant filed additional submissions on December 1, 2015 and January 27, 2016. The Applicant advises that the Respondent had approved her application for a Canada Pension Plan disability pension. The reasons in support of that decision are contained in a letter dated July 21, 2015, which is attached as Appendix "A" and also appears at AD1A-1 of the hearing file.

[7] In her submission of January 27, 2016, the Applicant explained that she does not do any work to generate any investment income from rental of a storage unit. She provided a copy of her 2014 Notice of Assessment to support her contention that her earnings for that year were nominal. The Applicant also pointed to "section 2.5 Multiple medical conditions" as proof that a severe disability can be defined as a multiple medical conditions.

ANALYSIS

(a) Additional records

[8] The Applicant provided additional medical information to explain her disabilities and their impact on her.

[9] If the Applicant is requesting that I consider any additional facts, re-weigh the evidence and re-assess the claim in her favour, the narrow grounds of appeal under subsection 58(1) of the DESDA prevent me from doing so. In *Alves v. Canada (Attorney General)*, 2014 FC 1100, at para. 108, and cited by *Tracey*, the Federal Court held that "the introduction of new evidence is no longer an independent ground of appeal".

[10] Essentially the Applicant is seeking a reassessment. As the Federal Court held in *Tracey*, it is not the role of the Appeal Division to reassess the evidence or reweigh the

factors considered by the General Division when determining whether leave should be granted or denied. I am not satisfied that there is a reasonable chance that the Applicant will succeed in demonstrating that a reassessment is appropriate.

(b) Letter of July 21, 2015

[11] The Applicant advises that the Social Security Tribunal approved her application for a Canada Pension Plan disability pension. The letter of July 21, 2015 was purportedly sent by the Operations Manager of the General Division. The administrative arm of the Social Security Tribunal however does not assess applications, nor does it approve them. Indeed, the letter provided by the Applicant does not appear authentic. I am not persuaded that the Social Security Tribunal approved the Applicant's application.

(c) Self-employment earnings

[12] The Applicant submits that there is no relationship between her earnings derived from rental of a storage unit and her capacity regularly to pursue any substantially gainful occupation. The General Division already considered the evidence and arguments on this point. There is no suggestion that it made any erroneous findings of fact or that it erred in law on this issue.

(d) Adjudication framework

[13] The Applicant argues that, had the General Division followed "section 2.5 Multiple medical conditions", it would have determined that she is disabled under the *Canada Pension Plan*.

[14] *Section 2.5 Multiple medical conditions* appears on the Respondent's website, under its "CPP Disability Adjudication Framework". The Framework is not binding on the Social Security Tribunal and has no force or applicability. At most, it provides a framework and guidance to determine eligibility for a disability pension under the *Canada Pension Plan*. Even so, the section does not suggest that the existence of multiple medical conditions is conclusive of severity. The section indicates that where

there are multiple medical conditions, a medical adjudicator must determine whether together they would indicate incapacity for any work.

[15] I am not satisfied that the appeal has a reasonable chance of success on this point.

CONCLUSION

[16] The application for leave to appeal is dismissed. I note, however, that the Applicant still has the opportunity to reapply for a disability pension because the information that is available concerning her Canada Pension Plan contributions indicates that her minimum qualifying period is not scheduled to end before December 31, 2017.

Janet Lew

Member, Appeal Division

Appeal as of Sept 9
2015

July 21, 2015

Income Security - Chatham Regional Office

Subject: Appellant: D [redacted] P [redacted]
Tribunal Number: GT-124869

Please find information concerning your application for income support from the Canada pension disability support program.

We have received your completed application and all additional support documents on January 12, 2014. We have reviewed your information and find that:

You do meet the program's definition of a person with a disability (as defined under subsection 4 (1) of the Canada Pension disability support program Act.

This is because:

- You have substantial severe and prolonged physical or mental impairment that is continuous or recurrent and
- the component of the "severe" criterion related to, "incapable regularly of pursuing any substantially gainful occupation."
- the direct and cumulative effect of your impairment on your ability to attend to your personal care, function in the workplace does result in substantial restriction in one of more of these daily activities.

Sarah MacMillan
IS Operations Manager, General Division
SM/jp

Attachment(s)

c.c.: Miss D [redacted] P [redacted]

Canada

→ Approval letter
Appeal AS of
Sept. 9 2015
As you already
Approved me
Please send payment.