



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. D. v. Minister of Employment and Social Development*, 2016 SSTGDIS 38

Tribunal File Number: GP-13-3260

BETWEEN:

D. D.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Liza Anne Robichaud

HEARD ON: March 7, 2016

DATE OF DECISION: May 25, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

Appellant: D. D.

INTRODUCTION

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

[2] The hearing of this appeal was in person for the following reasons:

- a) The Appellant will be the only party attending the hearing.
- b) Videoconferencing is not available within a reasonable distance of the area where the Appellant lives.
- c) The issues under appeal are complex.
- d) There are gaps in the information in the file and/or a need for clarification.
- e) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[3] 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:

- a) be under 65 years of age;
- b) not be in receipt of the CPP retirement pension;
- c) be disabled; and

- d) have made valid contributions to the CPP for not less than the minimum qualifying period (MQP).

[4] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[5] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

[6] Paragraph 55.1(1)(c) of the CPP states that in the case of common-law partners, a division of unadjusted pensionable earnings (DUPE) shall take place if the former common-law partners have been living separate and apart for a period of one year or more and the application is made within four years after the former common-law partners started living separate and apart.

ISSUE

[7] There was an issue regarding the MQP, because the Respondent claims the Appellant does not have a MQP because her earnings (from a DUPE) cannot be used in order to meet the MQP because the MQP would be December 2004 and the Appellant was still living with her ex-spouse at the time.

[8] In this case, the Tribunal must decide a) whether the Appellant has a MQP, and if so b) what it is and if it is more likely than not that the Appellant had a severe and prolonged disability on or before the date of the MQP.

EVIDENCE

[9] The Appellant has earnings due to a DUPE in 1987, 1989, 1999, 1990, 1991, 1993, 1995, 1996, 1998, 1999, 2002, 2003, and 2004 (GD3-48). She separated from her common-law spouse in October 2005 (GD3-119). The application for a DUPE was made in February 2007. She has no earnings after her separation.

[10] The Appellant claims she stopped working in 2008 (GD3-16 and GD3-103) but she clarified at the hearing that she was simply confused, and has not worked since February 2004. She claims she has been unable to work since February 2004 due to chronic fatigue, fibromyalgia, depression, rheumatoid arthritis, anxiety and chronic bowel syndrome (GD3-128).

SUBMISSIONS

[11] The Appellant submitted that she qualifies for a disability pension because:

- a) She spent her life raising her 2 sons and wasn't working outside the house.

[12] The Respondent submitted that the Appellant does not qualify for a disability pension because:

- a) She does not have a MQP.

ANALYSIS

[13] The Tribunal finds that the Appellant did not have a MQP. First, the appellant has only made contributions to the *Canada Pension Plan* for one year in. Since the appellant would need to have contributed for at least 4 years of out of 6 years to the CPP, she would not have enough contributions to be eligible for benefits.

[14] However, subsection 55.1(1)(c) of the CPP allows for a DUPE which as a result brings the appellant's MQP to be December 2004. Unfortunately, the appellant separated after 2004 in October 2005 and therefore is not eligible to use the DUPE in order to calculate the MQP.

[15] She only has one year of valid earnings on her own, and was still living with her common-law spouse at the time of her possible MQP of December 2004. Without valid earnings, a MQP cannot be established and therefore the Appellant is not eligible for a CPP disability benefit.

CONCLUSION

[16] The appeal is dismissed.

Liza Anne Robichaud
Member, General Division - Income Security