



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. D. S.*, 2016 SSTADIS 230

Tribunal File Number: AD-16-706

BETWEEN:

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

Appellant

and

D. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: June 23, 2016

REASONS AND DECISION

[1] This appeal is about whether the date of payment of a Canada Pension Plan disability pension should be based on the date of application or the date of effective disability.

[2] I granted leave to appeal on June 2, 2016, on the grounds that the General Division may have erred in law by failing to consider the deemed date of disability in determining the commencement date of payment of a Canada Pension Plan disability pension.

[3] Within 45 days after the day on which leave to appeal is granted, parties to an appeal may file submissions or file a notice stating that they have no submissions to file. On June 16, 2016, the Appellant advised that he was continuing to rely on submissions made in the application requesting leave to appeal. The Appellant requested that the Appeal Division determine that the Respondent be deemed disabled in July 2012 and that payment of a Canada Pension Plan disability pension start as of November 2012. On June 20, 2016, the Respondent indicated that did not have any further submissions beyond his original application for a Canada Pension Plan disability pension. Having determined that no further hearing is required, the appeal before me is proceeding pursuant to subsection 43(a) of the *Social Security Tribunal Regulations*.

[4] The General Division concluded that the Respondent had a severe and prolonged disability in October 2011 when he split with his business partner and stopped working due to his symptoms from fibromyalgia. The General Division wrote, “according to section 69 of the [*Canada Pension Plan*], payments start four months after the date of disability. Payments start as of February 2012”.

[5] The Appellant acknowledges that the General Division correctly applied section 69 of the *Canada Pension Plan* to indicate the applicable rule to determine the effective date of payment. However, the Appellant argues that the General Division erred in law

because it failed to consider paragraph 42(2)(b) of the *Canada Pension Plan* when determining the date of payment of a Canada Pension Plan disability pension, and consequently based the commencement of payment on the date of effective disability, rather than the date of application.

[6] I concur with the Appellant's submissions. Paragraph 42(2)(b) of the *Canada Pension Plan* provides that, "in no case shall a person ... be deemed to have become disabled earlier than fifteen months before the time of the making of any application". In other words, the maximum retroactivity permitted under the *Canada Pension Plan* is 15 months prior to the date of application.

[7] As the application for a disability pension was made on October 2, 2013, the earliest date that the Respondent could be deemed disabled was fifteen months prior to October 2013, which is July 2012. As the Respondent is deemed disabled in July 2012, under section 69 of the *Canada Pension Plan*, payment commences four months later, in November 2012.

CONCLUSION

[8] The appeal is allowed. Subsection 59(1) of the *Department of Employment and Social Development Act* permits the Appeal Division to give the decision that the General Decision should have given. That relief is appropriate in the circumstances of this case. In accordance with paragraph 42(2)(b) of the *Canada Pension Plan*, the claimant is deemed disabled in July 2012 and payments start as of November 2012.

Janet Lew

Member, Appeal Division