



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. R. S.*, 2016 SSTADIS 241

Tribunal File Number: AD-16-539

BETWEEN:

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

Appellant

and

R. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: June 27, 2016

REASONS AND DECISION

[1] I granted leave to appeal on May 4, 2016, on the grounds that the General Division erred in determining the deemed date of disability and the commencement date of payment of a Canada Pension Plan disability pension.

[2] 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. Neither party filed submissions. On that basis, I determined that no further hearing is required, pursuant to subsection 43(a) of the *Social Security Tribunal Regulations*.

[3] The General Division found that the Appellant had received the Respondent's application for a disability pension in April 2011. The General Division found that the Respondent had a severe and prolonged disability in September 2010, when he was involved in a motor vehicle accident. The General Division also determined that, according to section 69 of the *Canada Pension Plan*, payments start four months after the date of disability, which it calculated to be January 2011.

[4] The Appellant submits that, in fact, it had received the Respondent's application for a Canada Pension Plan disability pension in April 2013, and that therefore, the earliest the Respondent could be found disabled was January 2012, fifteen months prior to the date the application was received.

[5] A review of the hearing file indicates that the Respondent's application for a Canada Pension Plan disability pension was date-stamped received on April 11, 2013. Clearly, the General Division erred when it found that the Appellant had received the application in April 2011.

[6] Pursuant to paragraph 42(2)(b) of the *Canada Pension Plan*, a person cannot be deemed disabled more than fifteen months before the Appellant received an application for a disability pension.

[7] Thus, the earliest the Respondent therefore could be deemed disabled was January 2012, and according to section 69 of the *Canada Pension Plan*, payment of a disability pension commences four months later, in May 2012.

CONCLUSION

[8] 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. The appeal is allowed as follows. In accordance with paragraph 42(2)(b) of the *Canada Pension Plan*, the Respondent is deemed disabled in January 2012 with an effective payment date of May 2012.

Janet Lew

Member, Appeal Division