



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. K. v. Minister of Employment and Social Development*, 2016 SSTGDIS 48

Tribunal File Number: GP-15-4035

BETWEEN:

K. K.

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: Virginia Saunders

DATE OF DECISION: June 29, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on February 16, 2015. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] The appeal was decided on the basis of the documents and submissions filed for the following reasons:

- a) The Tribunal decided that a further hearing is not required.
- b) 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.

[3] The parties were given notice to file additional documents and submissions by June 14, 2016. If any materials were received, the parties would have until July 14, 2016, to respond. They were advised that the Tribunal would issue a decision after that date, or sooner if no further documents or submissions were received by June 14, 2016. No documents were received by that date.

THE LAW

Contribution Requirements for a Disability Pension

[4] 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 be under 65 years of age; not be in receipt of the CPP retirement pension; be disabled; and have made valid contributions to the CPP for not less than the minimum qualifying period (MQP).

[5] The calculation of the MQP is set out in subsection 44(2) of the CPP. On the facts of this case, the applicable calculation provides that a person is considered to have made contributions

for not less than the MQP if she has made contributions to the CPP for four of the last six calendar years included either wholly or partly in her contributory period.

[6] Paragraph 44(2)(a) of the CPP provides that for disability purposes a person is considered to have made contributions for not less than the MQP only if the contributions are made on employment earnings that are above the basic exemption for disability, an amount that is set pursuant to the legislation.

[7] Paragraph 44(2)(b) of the CPP provides that a person's contributory period begins at her eighteenth birthday (or January 1, 1966, whichever is later) and ends when the person is deemed to have become disabled for CPP purposes.

[8] The "Late Applicant Provision" is set out in subparagraph 44(1)(b)(ii) of the CPP. It is meant for persons who might have been entitled to a disability pension but failed to apply for it when they last met the contributory requirements. Its effect is to back-date the application to a time when the contributor had sufficient contributions.

[9] Subparagraph 44(1)(b)(ii) states that the Late Applicant Provision applies to "a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension had been received before the contributor's application for a disability pension was actually received."

Child Rearing Provision (CRP)

[10] The Child Rearing Provision (CRP) can benefit a person who was the primary caregiver for a child under the age of 7 by allowing any of those years in which the person did not make valid contributions to the CPP to be removed from the contributory period. The CRP does not attribute contributions to a person; it simply removes years from a contributory period so that they are not included in the calculation of the six year period.

Deemed Date of Disability

[11] Paragraph 42(2)(b) of the CPP states that, regardless of when a person actually became disabled, he or she is deemed to have become so no more than fifteen months before his or her application for disability benefits is made.

Credit Split

[12] Section 55.1 of the CPP provides for a division of unadjusted pensionable earnings (DUPE or Credit Split) to take place upon the Minister being informed of a divorce and receiving the prescribed information. A Credit Split results in an equal division between the former spouses of unadjusted pensionable earnings and contributions made to the CPP by both of them during the period in which they lived together.

[13] Subsection 54.2(1) of the *Canada Pension Plan Regulations* (CPP Regulations) provides that the effective date of the taking place of a Credit Split is the last day of the month in which the prescribed information is received by the Minister.

[14] Subsection 54(2) of the CPP Regulations provides that the effective date of the attribution of pensionable earnings following the division is the first day of the month following the month in which the effective date of the taking place of the division falls.

ISSUE

[15] The Tribunal must decide if the Appellant made sufficient contributions to the CPP for the minimum qualifying period (MQP).

[16] If the Tribunal decides that the Appellant has made sufficient contributions for the MQP, it must also decide 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

[17] The Appellant was born in 1963. She was married for almost twenty-three years, and had children born in June 1987; June 1988; January 1993; and August 1997.

[18] In August 2012 the Appellant applied for a CPP Credit Split. In her application she stated that she and her former spouse were married on July 15, 1986; that they last resided together on August 5, 2008; and that they were divorced on March 31, 2009.

[19] The Credit Split was approved effective September 2012, for the years 1986 through 2007.

[20] The Record of Earnings indicates that the Appellant made contributions to the CPP in 1987, 1989, 1996 to 2003 inclusive, 2009 and 2010.

[21] A document called “Divided UPE” shows that all of the Appellant’s earnings and CPP contributions from 1987 to 2003 were attributed her as the result of the Credit Split, and that before the Credit Split took place she had no earnings and therefore made no contributions to the CPP in those years.

[22] The Appellant applied for a CPP disability pension on February 16, 2015.

SUBMISSIONS

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

- a) she has a severe and prolonged disability; and
- b) she was a stay-at-home mother for children under the age of seven, so the CRP should be applied to help her qualify.

[24] The Respondent submitted that the Appellant did not make sufficient contributions to the CPP to qualify for a disability pension.

ANALYSIS

[25] The Appellant’s contributory period began in 1981, the year she turned 18. Applying the CRP for the years in which the Appellant was the primary caregiver for children under the age of seven and did not make valid contributions to the CPP, the years 1988 and 1990 through 1995 are removed from her contributory period.

[26] The Appellant made valid contributions to the CPP in 1987, 1989, 1996 to 2003 inclusive, 2009 and 2010.

[27] The contribution requirements that are currently in place and that apply to the Appellant require contributions to have been made in four of the last six years in the contributory period. The only six year period in which the Appellant had four years of valid contributions is found by applying the Late Applicant Provision. That period began on January 1, 2000, and ended on December 31, 2005. In theory, if the Appellant is found to have become disabled by December 31, 2005, she has sufficient contributions to qualify for a CPP disability pension.

[28] However, the Late Applicant Provision may only be used by “a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension had been received before the contributor’s application for a disability pension was actually received.”

[29] Paragraph 42(2)(b) of the CPP states that, regardless of when a person actually became disabled, he or she is deemed to have become so no more than fifteen months before his or her application for disability benefits is made. In order to be deemed disabled by December 31, 2005, the Appellant would have had to have applied, at the latest, by March 2007.

[30] Had the Appellant applied for a disability pension on or before March 2007, she would not have met the contributory requirements, as her contributions before 2009 were all as a result of the Credit Split, which did not take effect until September 2012.

[31] In *Canada (MHRD) v. Woodcock*, [2002] FCA 296, the Federal Court of Appeal found that a late applicant could make use of contributions attributed by virtue of a Credit Split even if the Credit Split occurred after the person last qualified. However, the Court stated that a Credit Split would only be given retrospective effect if the facts of the case made it reasonable to presume that the application for the disability pension and the Credit Split application would have been submitted at or about the same time, and there was no reason to conclude that the Credit Split application would not have been accepted if it had been made at that time.

[32] That is not the case here. In *Woodcock* the applicant had already separated at her MQP, and the Court found that it was reasonable to presume that she would have submitted a successful Credit Split application along with a disability application had she applied for a disability pension at that time. The Appellant in the present case did not separate until

August 2008. It would have been impossible for her to submit a successful Credit Split application on or before March 2007. Had she applied for a disability pension on or before March 2007, she would not have had any contributions.

[33] The Tribunal cannot apply the Credit Split retroactively to allow the Appellant to make use of the Late Applicant Provision in her particular circumstances. She does not otherwise have four years of valid contributions within a six year period.

[34] The CRP does not assist the Appellant, as it applies to years that are not relevant to the calculation of her MQP.

[35] The Tribunal finds that the Appellant did not make sufficient contributions to the CPP to qualify for a disability pension. As a result, the Tribunal did not go on to consider if the Appellant's condition was severe and prolonged.

CONCLUSION

[36] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security