



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. T. v. Minister of Employment and Social Development*, 2016 SSTADIS 289

Tribunal File Number: AD-16-651

BETWEEN:

**M. T.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: July 29, 2016

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] I granted leave to appeal on May 31, 2016, on the ground that the General Division may have failed to observe a principle of natural justice in ensuring that the Appellant had a fair opportunity to present her case.

### **BACKGROUND**

[2] On December 30, 2015, the Social Security Tribunal invited both parties to file a hearing information form within 10 days, so that the General Division Member could consider the information before deciding how to proceed. The Appellant's counsel missed the deadline for filing a hearing information form.

[3] The Social Security Tribunal subsequently notified the parties that the General Division Member intended to make a decision on the basis of the documents and submissions filed. The letter also indicated that the parties could file any additional documents or submissions by no later than February 10, 2016, and any responses by no later than March 11, 2016. Although the General Division member by then had decided on the form of hearing, the Appellant's counsel nonetheless took this as an opportunity to file a hearing information form and request an in-person hearing. He did not otherwise file any submissions, indicating that he would provide additional written submissions after a hearing date was scheduled.

[4] On February 9, 2016, the Appellant's counsel requested an in-person hearing, explaining that the Appellant would be "severely prejudiced" otherwise, and that although the application and supporting documentation might be helpful, "in no way does it detail the extent of [the Appellant's] severe and prolonged disability". The Appellant's counsel also argued that a full oral hearing with an in-person appearance was required to hear *viva voce* evidence from witnesses, including from the Appellant's family physician. The Appellant's counsel proposed to call five witnesses, including the Appellant.

[5] The General Division rendered its decision on February 9, 2016. There is no indication in the decision that the Member had received and reviewed the letter of February 9, 2016 from the Appellant's counsel or was aware that the Appellant had requested an in-person hearing.

### **LEAVE DECISION**

[6] I granted leave to appeal on the basis that there may have been a breach of the principles of natural justice if the Appellant did not have a fair opportunity to present her case, arising out of the likelihood that the General Division member was unaware of the Appellant's position on the form of hearing. I also indicated that the General Division member should have waited until after February 10, 2016 to render a decision, as the Social Security Tribunal had advised both parties that they had until this date to file any submissions. Had the General Division member waited to render a decision after February 10, 2016, possibly he might have become aware of the Appellant's late request for an in-person hearing and may have reconsidered the appropriateness of the form of hearing.

### **SUBMISSIONS ON APPEAL**

[7] The Respondent's counsel acknowledges that the General Division has discretion, pursuant to section 21 of the *Social Security Tribunal Regulations*, as to the form of any hearing, including proceeding on the basis of the written record. The Respondent's counsel acknowledges however that the General Division member did not address the Appellant's specific request for an oral hearing, nor her counsel's letter of February 9, 2016. Although the member may have been unaware of the request, significantly, he rendered a decision before the deadline for the filing of submissions had even passed.

[8] The Respondent consents to the matter being referred back to the General Division for a hearing *de novo*, under subsection 59(1) of the *Department of Employment and Social Development Act*. The Respondent's counsel submits that this is the appropriate remedy, in light of the uncertainty as to whether the Appellant received procedural fairness in the hearing of her appeal to the General Division.

## CONCLUSION

[9] I concur with the submissions of the Respondent's counsel. The Appellant may have been deprived of a fair hearing, given the circumstances. The General Division member proceeded and came to a final determination before the deadline for submissions had passed, and in so doing, may not have given appropriate consideration to the Appellant's late request for the form of hearing. Subsection 59(1) of the *Department of Employment and Social Development Act* permits the Appeal Division to refer the matter back to the General Division for reconsideration. Accordingly, the matter is referred to a different member of the General Division for a hearing *de novo*.

Janet Lew  
Member, Appeal Division