



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. S. L.*, 2016 SSTADIS 332

Tribunal File Number: AD-16-645

BETWEEN:

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

Appellant

and

S. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Hazelyn Ross

DATE OF DECISION: August 24, 2016

DECISION AND REASONS

[1] The Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), allows the appeal.

INTRODUCTION

[2] On February 8, 2016 the General Division of the Tribunal issued its decision holding that the Respondent was eligible for a disability pension under the *Canada Pension Plan*, (CPP). The General Division deemed the Respondent to have become disabled in December 2011. The Appellant did not dispute this finding. However, the General Division went on to deem the Respondent to have become disabled as of April 2011. The Member indicated that this was for the purposes of payment of the disability pension, which pursuant to CPP, section 69, would begin as of August 2011. The Appellant sought and was allowed leave to appeal from the General Division decision in respect of these latter findings.

ISSUE

[3] The issue before the Appeal Division is:-

Did the General Division err in law when it decreed that for the purposes of payment, the Respondent had become disabled in April 2011?

THE GOVERNING STATUTORY PROVISIONS

[4] Subsection 58(1) of the *Department of Employment and Social Development, (DESD), Act*, sets out three grounds of appeal. These are the only grounds of appeal, namely:-

- a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b. The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c. The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[5] The CPP provides for when and how payment of a disability pension is made. Under section 69 payment of the pension commences four months after the month that a person is deemed disabled.

69. Commencement of pension - subject to section 62, where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled, except that where the applicant was, at any time during the five year period next before the month in which the applicant became disabled as a result of which the payment is approved, in receipt of a disability pension payable under this Act or under a provincial pension plan,

(a) the pension is payable for each month commencing with the month next following the month in which the applicant became disabled as a result of which the payment is approved; and

(b) the reference to "fifteen months" in paragraph 42(2)(b) shall be read as a reference to "twelve months".

[6] Under subsection. 42(2)(b) of the CPP the earliest an applicant can be deemed disabled is fifteen-months prior to the date that their application for a disability pension is received:-

(2) *When a person deemed disabled* - a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person - including a contributor referred to in subparagraph 44(1)(b)(ii) - be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

SUBMISSIONS

[7] The Appellant did not make any further submissions in this matter. Its Counsel indicated she intended to rely on the submissions made with her Application for leave to appeal. (AD2).

[8] The Respondent made no submissions.

ANALYSIS

[9] This appeal turns on the General Division's interpretation and application of paragraph 42(2)(b) of the CPP. Counsel for the Appellant submits that while the statute provides for what is known as "maximum retroactivity", this provision applies only to circumstances where a

person has applied for disability benefits more than fifteen months after they were determined to have become disabled. Counsel argued that the general rule is that a person is deemed to have become disabled at the time when the person became disabled and the “maximum retroactivity provision” operates as an exception to the general rule.

[10] The Appeal Division agrees. In the view of the Appeal Division, with regard to the first part of the statutory provision, the language of the statute is clear: “a person is deemed to have become or to have ceased to be disabled at the time that it is determined, in the prescribed manner, that the person either became or ceased to be disabled”.

[11] In the view of the Appeal Division the second part of paragraph 42(2)(b) operates as and addresses an exception to the first part. The Appeal Division reaches this conclusion because the clause is prefaced by the conjunction “but”. This indicates that what follows the conjunction not only refers to what preceded it; it also contrasts with what was stated before.

[12] The full text of the statement is: “but in no case shall a person - including a contributor referred to in subparagraph 44(1)(b)(ii) - be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.” In the view of the Appeal Division, this statement can refer only to a case where the deemed date of disability was more than fifteen (15) months before the application for a disability benefit was made.

[13] In the instant case, the Appellant received the application for disability benefits on July 25, 2012. (GD2-21). At paragraph 30 of the decision, the General Division found that the Appellant had become disabled in December 2011; “when she last stopped working”. Thus, per CPP subsection 42(2)(b), the General Division ought to have ended its determination regarding the deemed date of disability at this point.

[14] The Appeal Division finds that when it went on to apply the retroactivity provision and to find an earlier date of disability for payment purposes, the General Division erred, breaching paragraph 58(1)(b) of the DESD Act. Per subsection 42(2)(b) one is either disabled as of the date one is found to be disabled, or one is deemed disabled no more than 15 months prior to the date of the application for a disability pension.

[15] The Appeal Division also finds that applying section 69 of the CPP, the correct date of payment is April 2012.¹

CONCLUSION

[16] Counsel for the Appellant submitted that the General Division erred in law in its application of paragraph 42(2)(b) of the Canada Pension Plan. For the reasons set out above the Appeal Division concurs. The appeal is allowed.

DECISION

[17] Counsel for Appellant asked the Appeal Division to allow the appeal and to exercise its power under s. 59 of the DESD Act to give the decision that the General Division should have given. That decision being that the Respondent is deemed to have become disabled as of December 2011, with payment commencing four months later, in April 2012.

[18] Given the circumstances of the case and Tribunal's mandate to conduct proceedings as informally and quickly as possible as the circumstances and the considerations of fairness and natural justice permit, the Appeal Division is of the view that this is an appropriate case in which to exercise the jurisdiction granted in s. 59 of the DESD Act and to give the decision the General Division should have given. Accordingly, in keeping with the finding of the General Division, the Respondent is deemed to have become disabled as of December 2011. Therefore, pursuant to CPP s. 69 payment of the disability pension commences effective April 2012, which is four months after the date the Respondent is deemed to be disabled.

Hazelyn Ross
Member, Appeal Division

¹ According to section 69, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled,