



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. R. v. Minister of Employment and Social Development*, 2016 SSTGDIS 86

Tribunal File Number: GP-16-235

BETWEEN:

**L. R.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Shane Parker

DATE OF DECISION: October 20, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant applied for a Canada Pension Plan (CPP) disability benefit on August 7, 2015. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Tribunal on January 18, 2016. On June 27, 2016 the Tribunal sent a letter to the Appellant expressing its intention to summarily dismiss the appeal, and requesting confirmation of a *Charter* challenge. The Tribunal received the Appellant's response on August 9, 2016 (GD6), which contained additional submissions and confirmed she did not intend to bring a *Charter* challenge. This appeal therefore proceeds as a regular appeal.

### ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

### LAW AND ANALYSIS

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* (SST Regulations) states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[5] The Tribunal's June 27, 2016 letter expressed other relevant legal provisions, which are copied here:

Paragraph 42(2)(b) of the CPP states "For the purposes of this Act, a person shall be deemed to have become or to have ceased to be disabled at such time as 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 the person 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."

Paragraph 44(1)(b) states .. Subject to this Part, a disability pension shall be paid to a contributor who has **not reached sixty-five years of age**, to whom no retirement pension is payable, who is disabled."

Paragraph 70(1)(c) states "**A disability pension ceases to be payable** with the payment for **the month in which the beneficiary reaches sixty-five years of age.**"

[emphasis added here]

[6] Another relevant provision of the CPP is section 69, which provides that "[...] 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 [...]"

[7] In this case, the Appellant turned 65 on June 30, 2012. The earliest she can be deemed disabled under the CPP is May 2014, which is 15 months before her application was received in August 2015. As mentioned, she was already 65 in May 2014. As such, she did not meet the legislative requirement to be under age 65.

[8] For the sake of discussion, if the Appellant was legally able to be found disabled at the earliest possible time, being May 2014, the earliest payment could have begun was September 2014, so the law could not allow payment of CPP disability benefits retroactive to when the Appellant turned 60, as requested.

[9] Furthermore, the law does not permit an "adjustment" of the amount of her CPP benefits at age 65, to the amount equal to the CPP disability benefit had she been found disabled between age 60 and 65. Again, it was technically impossible under the current application for her to qualify for CPP disability benefits. The Appellant's submission that evidence supports she was disabled before age 65 is irrelevant for the same reason, she cannot qualify because she applied too late. Ignorance of her legal right to apply sooner does not justify changing the law to grant her requests.

[10] The Tribunal understands that this process has been stressful for the Appellant, and that she feels penalized. However, the Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP. It does not have equitable powers to provide exceptions to the law, as requested by the Appellant in her submissions.

[11] For the above reasons, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[12] The appeal is summarily dismissed.

Shane Parker  
Member, General Division - Income Security