



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. R. v. Minister of Employment and Social Development*, 2017 SSTADIS 8

Tribunal File Number: AD-16-255

BETWEEN:

M. R.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: January 12, 2017

REASONS AND DECISION

BACKGROUND

[1] The Appellant is seeking a Canada Pension Plan disability pension. The Respondent denied her application. On an appeal from this decision, the General Division determined that the Appellant was not eligible for a disability pension as it found that her disability was not “severe” on or before the end of her minimum qualifying period on December 31, 2014.

[2] On November 25, 2016, I granted leave to appeal on two grounds: one, that the General Division may have deprived the Appellant of a reasonable and fair opportunity to present her case; and two, that the General Division may have erred in failing to determine whether the child-rearing provisions were available to the Appellant in respect of her third child, as this might have extended the minimum qualifying period.

[3] In respect of the first ground, the General Division proceeded without awaiting the release and production of the medical records of the family physician to the Appellant. The Respondent had obtained some of the Appellant’s medical records, but did not provide her with a copy, despite her requests. The Respondent may have filed a copy of these records with the Social Security Tribunal, but the Tribunal was unable to locate a copy. The General Division declined the Appellant’s request for an order for production of these records and instead offered the possibility of an extension of time, to enable the Appellant to obtain a copy, either directly from her family physician or through an access to information request of the Respondent. As it did not receive a timely request for an extension of time, the General Division proceeded, although it should have been apparent that the Appellant continued to seek disclosure of the documents. I granted leave to appeal as it is in the interests of justice that there be full and timely disclosure of relevant documents, subject to any claims of privilege, as without it, a party could be deprived of the opportunity to fairly present his or her case.

[4] As for the second ground, although the Appellant did not file an application for the child-rearing provision in respect of her youngest child, the General Division could have ascertained whether the provision was available to her, by requesting the Respondent to firstly consider the issue.

APPEAL

[5] The time for providing submissions to the appeal has passed and no additional submissions have been received from the Appellant.

[6] On January 9, 2017, the Respondent agreed that the Appellant may have been deprived of an opportunity to fairly present her case before the General Division. The Respondent is of the position that the Appeal Division should refer the matter back to the General Division for a new hearing, pursuant to subsection 59(1) of the *Department of Employment and Social Development Act*, as this would allow all of the parties and the General Division to consider the medical opinion of the family physician, and its impact on the totality of the evidence.

CONCLUSION

[7] Given the Respondent's position in this matter, the appeal is allowed and the matter is referred to the General Division for a redetermination on the merits.

Janet Lew
Member, Appeal Division