



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. F. L.*, 2016 SSTADIS 510

Tribunal File Number: AD-16-720

BETWEEN:

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

Appellant

and

F. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: December 30, 2016

REASONS AND DECISION

DECISION

[1] The appeal is allowed.

INTRODUCTION

[2] This is an appeal of the decision of the General Division (GD) of the Social Security Tribunal (SST) issued on March 4, 2016, which determined that the Respondent was eligible for a disability pension under the *Canada Pension Plan* (CPP), as it found her disability was “severe and prolonged” as of the minimum qualifying period (MQP). Leave to appeal was granted on October 17, 2016, on the grounds that the GD may have erred in rendering its decision.

OVERVIEW

[3] The Respondent submitted an application for CPP disability benefits on October 27, 2011. She disclosed that she was 48 years old, had a one-year college diploma and was employed for 18 years as a municipal worker, a job that ended in 2002, when she decided to become a “stay-at-home mom.”

[4] The Appellant initially denied her application on the grounds that her disability was not severe and prolonged as of her MQP date, which at the time was December 31, 2007. On April 10, 2012, the Respondent applied for, and later received, a Division of Unadjusted Pensionable Earnings (DUPE), which extended her MQP to December 31, 2008. On November 13, 2012, the Appellant again denied the application on reconsideration.

[5] On October 10, 2014, the Respondent appealed these denials to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the SST in February 2013. In a decision dated June 11, 2015, the GD allowed the appeal and found the Respondent disabled as follows:

The Tribunal finds that the Appellant [the Respondent in this proceeding] had a severe and prolonged disability in February 2008 when her condition and symptoms were first documented in evidence. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) CPP). The application was received in October 2011; therefore the Appellant is deemed disabled in July 2010. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of November 2010.

[6] On May 20, 2016, the Appellant filed an application for leave to appeal with the Appeal Division (AD) of the SST alleging the GD erred in law in determining the first payment date of the Respondent's disability pension. In my decision dated October 17, 2016, I agreed with the Appellant that it had an arguable case and granted leave to appeal on the claimed grounds.

[7] I have decided that an oral hearing is unnecessary and the appeal can proceed on the basis of the documentary record for the following reasons:

- (a) There are no gaps in the file or need for clarification;
- (b) The form of hearing respected the requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[8] The Appellant's submissions were set out in its application for leave to appeal. On October 28, 2016, in response to the AD's request for submissions, the Respondent submitted a letter stating that she wanted her appeal expedited because she was in financial difficulty.

THE LAW

[9] Under section 55.1 of the CPP, a spouse may apply for a DUPE, which triggers an equitable sharing of CPP credits after a separation or divorce.

[10] Subsection 55.2(9) of the CPP relates to when a benefit becomes payable where there is a DUPE:

Where there is a division under section 55.1 and a benefit is or becomes payable under this Act to or in respect of either of the persons subject to the division for a month not later than the month following the month in which the division takes place, the basic amount of the benefit shall be calculated and adjusted in accordance with section 46 and adjusted in accordance with subsection 45(2) but subject to the division, and the adjusted benefit shall be paid effective the month following the month in which the division takes place but in no case shall a benefit that was not payable in the absence of the division be paid in respect of the month in which the division takes place or any prior month.

[11] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) the only grounds of appeal are that:

- (a) The GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The GD erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The GD 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.

[12] According to subsection 59(1) of the CPP, the AD may dismiss the appeal, give the decision that the GD should have given, refer the matter back to the GD for reconsideration in accordance with any directions that the AD considers appropriate or confirm, rescind or vary the decision of the GD in whole or in part.

ISSUES

[13] The issues before me are as follows:

- (a) Did the GD err in failing to consider and apply the provisions of subsection 55.2(9) of the CPP?

(b) If so, what remedy is appropriate?

SUBMISSIONS

[14] In its application requesting leave to appeal, amended June 2, 2016, the Appellant conceded that the Respondent was disabled under paragraph 42(2)(a) of the CPP but alleged that the GD erred in law by failing to consider subsection 55.2(9) of the CPP in determining the effective payment date. Applying paragraph 42(2)(b), the GD determined that the earliest the Respondent could be deemed disabled was fifteen months prior to the date the application was received. Since the Respondent's disability application was received by the Appellant in October 2011, the GD found that the Respondent was deemed disabled in July 2010 and, pursuant to section 69 of the CPP, determined that payment should begin four months later, in November 2010.

[15] However, the Appellant alleges that the GD failed to appreciate that it was a DUPE that provided the Respondent with her MQP of December 31, 2008. Although it was not explicitly addressed in the Appellant's submissions to the GD, the DUPE was reflected in the Respondent's Record of Earnings (GT1-24), which contained codes that were explained in an HRSDC submission dated February 23, 2013.

[16] The Appellant submits that the GD erred in law by failing to apply subsection 55.2(9), which mandates a first payment date effective the month following the month in which a DUPE takes place—which in this case was May 2012.

[17] As noted above, the Respondent took no position on the issue of the first payment date.

ANALYSIS

[18] Having reviewed the evidence and law, I must agree with the Appellant that the GD erred in law in rendering its decision. Although it is not immediately obvious on the record, it is nevertheless a fact that the Appellant's MQP was derived from credits allocated following a DUPE. It is clear that the effect of subsection 55.2(9) of the CPP is to prevent commencement of any benefit—including the disability pension—prior to the effective date of a DUPE. The record indicates that the Respondent did in fact apply for, and was later granted, a DUPE in

April 2012. As a result, notwithstanding the provisions of paragraph 42(2)(b) and section 69, the Respondent's CPP disability pension should have commenced as of May 2012, rather than November 2010.

CONCLUSION

[19] The Appellant's appeal was focused on the issue of first payment date, and I see no reason to disturb the GD's conclusion that the Respondent was disabled. For that reason, it is appropriate for me at this juncture to give the decision that the GD should have given without any further submissions or hearing. Accordingly, the appeal is allowed, and I find that the effective first payment date for the Respondent's CPP disability pension is May 2012.



Member, Appeal Division