



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. G. v. Minister of Employment and Social Development*, 2017 SSTGDIS 48

Tribunal File Number: GP-16-3063

BETWEEN:

L. G.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Pierre Vanderhout

DATE OF DECISION: May 3, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a Canada Pension Plan (“CPP”) disability benefit on March 22, 2016. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (“Tribunal”) on September 29, 2016.

ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed. The key issue is whether the Appellant has made enough qualifying CPP contributions to trigger coverage. The Respondent’s denials have been based on the issue of insufficient contributions: the Appellant’s medical conditions do not appear to have been considered.

THE LAW

[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.

EVIDENCE

[5] The Appellant is 35 years old and lives in Nova Scotia. He completed Grade 12 as well as 2 years of college. His most recent employment was as an auto detailer and service technician at a X car rental agency. He worked there from mid-2007 until May of 2008, when he stopped working due to illness that ultimately resulted in surgery. He only had qualifying CPP contributions in 2002, 2005, 2007 and 2008. While he appears to have had some nominal employment income in other years, the income earned in those other years did not meet the required threshold to be considered qualifying earnings for CPP purposes. Any CPP

contributions made during those other years were refunded. He does not appear to have had any income at all after 2008.

[6] The Appellant's defining medical event was the onset of chronic abdominal pain and bleeding in 2008: he was diagnosed with colitis and Crohn's Disease. He subsequently had reconstructive bowel surgery that included a colostomy. In addition to regular blood tests and injections, he requires ongoing ostomy equipment and also suffers from other medical conditions, including asthma, vertigo, anxiety, panic attacks, and depression. He said his symptoms include digestive tract inflammation, persistent diarrhea, constipation, rectal bleeding, severe abdominal pain and cramping, bowel movement urgency, anal fissures, joint pain, ulcers, eye inflammation, rashes, vision problems, loss of appetite, fever, headaches, arthritis, weight loss, and fatigue. He reports daily and persistent feelings of apprehension, fear, tension and uneasiness. Although there has been no diagnosis of PTSD yet, he reports a number of similar symptoms. He says he has been advised that he will likely eventually develop liver disease.

[7] The Appellant reports that no medical professional has been optimistic about the possibility of a cure or even an effective treatment for his condition. He believes that his condition is becoming worse over time. He reports frequent visits to the Emergency department and states that he is incapacitated by his many medications: they cause him to be nauseated, dizzy, unable to concentrate, prone to vomiting, and subject to skin problems. On his worst days, he is unable to get out of bed. He began a new course of injection medication in July of 2016: the side effects of that medication can include respiratory tract infections, fatigue, body aches, hot and cold chills, and breathing problems. He also said that, due to his lack of financial resources, his condition is negatively affected by stress and a poor diet.

[8] The Appellant made a previous application for CPP disability benefits. That application was received on October 22, 2012 and was denied by the Respondent on November 22, 2012. It does not appear that the Appellant requested a reconsideration of that decision. The Respondent has not conducted a medical analysis of the Appellant in either of his two applications: both applications have been denied on the basis of insufficient qualifying contributions.

[9] A Notice of Intention to Summarily Dismiss this matter was sent to the Appellant on March 27, 2017. That Notice was received at the Appellant's home address on March 30, 2017,

according to the signed Canada Post “Xpresspost” receipt. In the Notice, the Appellant was given until May 1, 2017 to make submissions on why he felt that his appeal had a reasonable chance of success. As of the date of this decision, the Appellant had not made any such submissions.

SUBMISSIONS

[10] Although he did not respond to the March 27, 2017 Notice, the Appellant’s previous submissions included the following:

- a) His application for CPP disability benefits was late because of the effects of his condition and a genuine lack of information regarding such benefits;
- b) He was also unable to apply due to incapacity, as he was in no condition to form or express an intent to apply and was in such pain that he could not ask anyone to apply for him;
- c) He is unable to work due to his severe medical conditions and the impact of his various treatments: if he were forced to work because of poverty, he would be absent 80-90% of the time;
- d) His condition is becoming worse over time and both his quality of life and activities of daily living have been seriously compromised; and
- e) He meets the definition of “total disability” as set out by the Supreme Court of Canada.

[11] The Respondent was not asked to respond to the March 27, 2017 Notice. However, the Respondent previously submitted that:

- a) Even after considering the late applicant provisions of the Canada Pension Plan, he did not have enough earnings and contributions to qualify for a CPP disability benefit;
- b) As he had insufficient earnings and contributions to qualify for a CPP disability benefits, no medical review was completed; and

- c) Even if he were found incapable and deemed to have applied at an earlier date, he would still not qualify for CPP disability benefits as he simply does not have sufficient earnings and contributions to the plan.

ANALYSIS

[12] In compliance with section 22 of the SST Regulations, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions.

[13] 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.

[14] After reviewing the evidence, the Tribunal is struck by the seriousness of the medical conditions that the Appellant is suffering at a very young age. The Tribunal has considerable sympathy for the Appellant and accepts that his limitations are significant. However, as noted above, the Tribunal cannot waive or vary the eligibility requirements for benefits under the CPP. Those requirements must be met before the disability itself can be assessed.

[15] Subsection 44(1) of the *Canada Pension Plan* confirms that eligibility for CPP disability benefits is premised on making a certain number of qualifying CPP contributions within a defined period of time. In some ways, it is like an insurance policy: coverage only exists if premiums (contributions) are paid. Similarly, coverage eventually terminates if premiums (contributions) do not continue.

[16] In the Appellant's case, the issue is whether he ever made the required number of contributions within the required period of time. If he did, those contributions would establish a minimum qualifying period ("MQP") during which he would have to establish the onset of his disability.

[17] The Appellant made qualifying CPP contributions in 4 calendar years: 2002, 2005, 2007 and 2008. For persons such as the Appellant who have qualifying CPP contributions in fewer than 25 years, who have at least 6 years in their contributory period, and who were not

previously in receipt of CPP disability benefits, eligibility for CPP disability benefits is established by having 4 years of qualifying CPP contributions within the past 6 calendar years. This is set out in s. 44(2) of the *Canada Pension Plan*. Alternatively, a person can establish eligibility as a “late applicant” if they made 4 years of qualifying contributions in a previous 6 calendar year period. The corresponding MQP for such “late applicants” would be in the past.

[18] It is clear that the Appellant has not made qualifying CPP contributions in 4 of the past 6 calendar years. This means that he could only be eligible for CPP disability benefits, as a “late applicant”, if he made qualifying CPP contributions in at least 4 years of an earlier 6 calendar year period.

[19] As noted above, the Appellant did in fact make qualifying CPP contributions in a total of 4 calendar years. Unfortunately, these 4 qualifying contributions were over a period of 7 calendar years (2002, 2003, 2004, 2005, 2006, 2007, and 2008). This means that he has never established an MQP. With no MQP, his medical condition becomes irrelevant for CPP disability benefit purposes. To continue with the insurance analogy described above, the Appellant has simply not “paid” enough “premiums” within the required time period to establish coverage. The Tribunal is unable to waive or amend this requirement, even if the Appellant’s medical condition appears to be serious. In *Pleasant-Joseph v. Canada (Attorney General)*, 2009 FCA 173, the Federal Court of Appeal confirmed that the Pension Appeals Board (a predecessor of the Tribunal) and the Federal Court are bound to apply the provisions of the CPP and cannot disregard those provisions in order to remedy what might be considered or perceived as an unfair and/or unjust result.

[20] While the above analysis addresses most of the Appellant’s previous submissions, the Tribunal will also briefly comment on his submissions regarding the lateness of his application. The Appellant claimed that his application was delayed because of his medical condition and a lack of information. He went on to suggest that he was previously unable to form or express an intent to apply: this could bring him under ss. 60(8) and (9) of the *Canada Pension Plan* and assist him in establishing an earlier application date.

[21] However, even if the Appellant could successfully establish an earlier application date, this would not change the issue of insufficient contributions. The Appellant would still not be

able to establish a 6 calendar year period during which he had at least 4 years of qualifying CPP contributions. As such, the late application date issue does not assist the Appellant.

[22] As a result, the Tribunal finds that the Appellant does not have eligibility for CPP disability benefits because he never made qualifying CPP contributions in at least 4 of 6 consecutive calendar years. Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[23] The appeal is summarily dismissed.

Pierre Vanderhout
Member, General Division - Income Security