



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. N. v. Minister of Employment and Social Development*, 2017 SSTGDIS 107

Tribunal File Number: GP-16-3080

BETWEEN:

R. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Raymond Raphael

DATE OF DECISION: July 29, 2017

REASONS AND DECISION

OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) disability pension on September 2, 2015. The Appellant claimed that he was disabled because of a traumatic brain injury resulting in cognitive deficits. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] To be eligible for a CPP disability pension, the Appellant must meet the requirements that are set out in the CPP. More specifically, the Appellant must be found disabled as defined in the CPP on or before the end of the minimum qualifying period (MQP).

[3] This appeal was decided on the basis of the documents and submissions filed for the following reasons:

- a) The member has decided that a further hearing is not required.
- b) There are no gaps in the information in the file or need for clarification.
- c) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[4] The Tribunal has decided that the Appellant is not eligible for a CPP disability pension for the reasons set out below.

DISABILITY QUESTIONNAIRE

[5] In his disability questionnaire, signed on August 27, 2015, the Appellant indicated that he worked as a log home builder from March 30, 1985 until July 9, 2003 and that he stopped working because he suffered massive head injuries when he fell from a roof. He claimed to be disabled as of July 9, 2003. He stated that his medical problems started in 2003 and progressed to surgery 3-4 years ago for bowel obstruction as well as heart and lung disease. [Disability Questionnaire: GD2-22 to 28]

INITIAL APPLICATION

[6] This is the Appellant's second application for CPP disability. The Respondent received his initial application on January 4, 2006. The application was denied on September 5, 2006 and the Appellant did not request reconsideration.

[7] In his disability questionnaire, signed on January 5, 2006, the Appellant stated that he last worked on July 9, 2002 [sic] and that he stopped working because of brain trauma suffered in a fall from a roof onto concrete. He claimed to be disabled as of July 9, 2003. [Disability Questionnaire: [GD2-327 to 333]

CHRONOLOGY OF SIGNICANT EVENTS

[8] A chronology of significant events is set out below.

[9] The Appellant worked as a self-employed log home builder until July 2003.

[10] On July 9, 2013 he fell off a roof and suffered a severe traumatic brain injury. He was admitted to the Rutland Regional Medical Centre (Rutland) in Rutland Vermont.

[11] On August 25, 2003 he was discharged from an acute inpatient rehabilitation program at Rutland. His discharge diagnoses included severe traumatic brain injury with bilateral hemorrhagic temporal contusions and initial Glasgow Coma Scale 1V: right T6-7 facet fracture; left temporal and zygomatic fractures; anemia with pulmonary contusions and left rib fracture; elevated liver enzymes; hypertension; anxiety; history of testicular cancer; decreased cognition; decreased mobility; and decreased activities of daily living. [GD2-133]

[12] The Appellant attended outpatient rehabilitation at Rutland from August 29, 2003 to December 5, 2005.

[13] On January 4, 2016 the Respondent received the Appellant's initial CPP disability application (see paragraphs 6 and 7, above).

[14] On September 5, 2006 the Respondent denied the application. The medical adjudicator stated:

I recognize that you have identified limitations resulting from a brain injury and I realize that you may not be able to work now. However, I concluded that your condition did not stop you from working in December 1997. I considered the following factors in making the decision.

- According to your family doctors' reports, you had a brain injury in July 2003. Although there is some indication on file that the injury actually occurred in July 2002 and you were in a coma until July 2003, *both of these dates are after the date when you last qualified in December 1997.* [Emphasis added]
- You have indicated that you also had testicular cancer that was treated with surgery in approximately 1998. However, you worked after this until 2002.

I recognize that you may be disabled now, but there is not enough information to show that you had a medical condition that would have prevented you from doing some type of work in December 1997. [GD2-433]

[15] In April 2014 the Appellant started to receive early CPP retirement. [GD2-4]

[16] On September 2, 2015 the Respondent received the current disability application (see paragraphs 1 and 5, above).

[17] On September 30, 2015 the Respondent denied the application because the Appellant had applied more than 15 months after he had started to receive a CPP retirement pension.

[18] On October 6, 2015 the Appellant requested reconsideration. In a hand-written letter the Appellant's wife stated that as a result of his severe traumatic brain injury the Appellant "is not able to look after his own affairs, that he has memory issues, that he gets confused and upset, and that he is unable to make decisions. [GD2-266]

[19] On February 24, 2016 Dr. Kaminska completed a declaration of incapacity: she stated that the Appellant suffered a severe brain injury in 2003; that he was in a coma for several months; and that he suffers from severe post-traumatic stress disorder. She noted that the Appellant's incapacity to form or express an intention to apply began on July 9, 2003. [GD2-53]

[20] On April 13, 2016 the Respondent completed an incapacity adjudication. After a review of the extensive medical documentation going back to July 2003 it determined that the Appellant's incapacity began on July 9, 2003 and that it ceased on August 25, 2003. The Respondent concluded that the Appellant's medical condition does not support a continuous incapacity and that he did not meet the legislative time frame requirements in which to apply after the incapacity ceased. [GD2-208]

[21] On April 30, 2016 the Respondent denied the reconsideration request. [GD2R-33]

[22] On September 13, 2016 the Appellant appealed the reconsideration decision to the Tribunal. [GD1]

SUBMISSIONS

[23] Ms. N. submitted [GD1A-2] that the Appellant qualifies for a disability pension because:

- a) There is no place in the CPP booklet which indicates that an individual must apply for CPP disability benefits within 15 months of receiving early retirement benefits;
- b) He fell 40 feet from a roof in 2003: he suffered major traumatic brain disease as well as internal injuries; he is unable to function i.e. he cannot shop, bank, mingle in public, go to any outside activity, work, or pay bills; and he is in constant pain and anxiety.

[24] The Respondent submitted that the Appellant does not qualify for a disability pension because:

- a) He is not eligible for CPP disability because his application was made more than 15 months after he started to receive a retirement pension and the medical evidence does not meet the CPP incapacity criteria in order for this application to be deemed received at an earlier date;
- b) Since the Respondent determined that the Appellant was not eligible for CPP it did not do a medical adjudication on the merits; however, the Respondent had done a medical adjudication with respect to his initial disability application (see paragraph 14, above)

and determined that the Appellant was not severely disabled as of the December 31, 1997 MQP.

ISSUES

[25] The first issue is whether the Appellant can establish on the balance of probabilities a severe and prolonged disability on or before the December 31, 1997 MQP.

[26] The second issue is whether the Appellant can be considered to be eligible for CPP disability even though he did not apply until September 2015 which was more than 15 months after he started to receive his retirement pension in April 2014.

ANALYSIS

[27] The Appellant must prove that it is more likely than not that he was disabled as defined in the CPP on or before the end of the MQP.

[28] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death

MQP

[29] The Appellant's Record of Contributions [GD2-220] indicates continuous sufficient CPP contributions from 1972 through to 1992. Based on the five out of the last 10 years principle applicable from January 1987 to December 1997 this gives rise to a MQP of December 31, 1997.

[30] The only subsequent year in which the Appellant had CPP contributions is 2008 which does not improve the MQP.

[31] The Tribunal finds that the MQP is December 31, 1997.

Issue #1: Disability as of the December 31, 1997 MQP

[32] Although the Appellant is likely now severely disabled there is no suggestion that he was in any way disabled prior to his falling from a roof in July 2003. All of the written submissions and medical documentation indicate that his medical problems started at that time. He worked as a self-employed log home builder up until the accident and there is no evidence to support that he was disabled prior to then.

[33] The Appellant has not established, on the balance of probabilities, a severe disability as of the December 31, 1997 MQP.

Issue #2: Incapacity

[34] Even if the Appellant's application is deemed to be received at an earlier date because of incapacity, he still would not succeed on this application because he was not disabled on or before the MQP.

[35] Accordingly, it is not necessary for the Tribunal to make a determination on the incapacity issue.

CONCLUSION

[36] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security