



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v. Minister of Employment and Social Development*, 2017 SSTGDIS 103

Tribunal File Number: GP-17-1212

BETWEEN:

R. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: George Tsakalis

DATE OF DECISION: August 2, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a Canada Pension Plan (CPP) disability benefit. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Tribunal on May 2, 2017.

ISSUE

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

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.

FACTS AND SUBMISSIONS

[5] The Appellant was born in 1953. He began collecting a CPP retirement pension in November 2014. He subsequently sought to convert his retirement pension into a disability benefit. The Appellant applied for a CPP disability benefit on June 8, 2016.

[6] The Respondent denied the application initially and upon reconsideration because the Appellant applied for a disability benefit 15 months or more after he received a retirement pension, and as such, the Respondent could not cancel the retirement pension for a disability pension. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[7] The Respondent requested that this appeal be summarily dismissed under subsection 53(1) of the DESD Act on the basis that it has no reasonable chance of success.

[8] The Respondent submitted that the Appellant was in receipt of a retirement pension under the CPP when he applied for a disability benefit. Subsection 70(3) of the CPP sets out the effect of receiving a retirement pension and reads as follows:

70(3) A person who commences to receive a retirement pension under this Act or under a provincial pension plan is thereafter ineligible to apply or re-apply, at any time, for a disability pension under this Act, except as provided in section 66.1 or in a substantially similar provision of a provincial pension plan, as the case may be.

[9] The Appellant further submitted that subsection 66(1) and (1.1) of the CPP sets out when a retirement benefit can be cancelled for a disability benefit:

66.1(1) A beneficiary may, in prescribed manner and within the prescribed time interval after payment of a benefit has commenced, request cancellation of that benefit.

(1.1) Subsection (1) does not apply to the cancellation of a retirement pension into a disability benefit where an applicant for a disability benefit under this Act or under a provincial pension plan is in receipt of a retirement pension and the applicant is deemed to have become disabled for the purposes of entitlement to the disability benefit in or after the month for which the retirement pension first became payable.

[10] Paragraph 42(2)(b) of the CPP sets out a maximum time period for when somebody can be deemed disabled, which is 15 months:

42(2)(b) a person is deemed to have become or to have ceased to be disabled at the time that 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 a person – including a contributor referred to in subparagraph 44(1)(b)(ii) – 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.

[11] The Respondent submitted that the Appellant's application for disability benefits was received on June 8, 2016, which is more than 15 months after his retirement pension commenced in November 2014. Therefore, disability benefits cannot be paid to the Appellant under the CPP.

[12] The Respondent also argues that the Appellant's application to cancel his retirement pension in favour of a disability benefit was properly denied in accordance with the CPP. The Tribunal is bound by the language of the CPP and does not have the authority to vary legal requirements set out in the CPP.

[13] The Appellant submitted that he his medical condition and health was worsening, and he was unable to find suitable employment to maintain his daily expenses. The Appellant suffers from Parkinson's disease, ischemic cardiomyopathy, and sciatica.

[14] 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. The Appellant in his responding submissions reiterated that his appeal should not be summarily dismissed because his medical condition is getting worse and he needed support to maintain his children and his daily life.

ANALYSIS

[15] 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.

[16] The Tribunal agrees with the Respondent that the Appellant's application to cancel his retirement pension in favour of a disability benefit was properly denied in accordance with the CPP.

[17] Section 46.2 of the CPP Regulations allows a beneficiary to cancel a benefit after it has started if the request to cancel the benefit is made, in writing, within six months after payment of the benefit has started. The Appellant did not make such a request in this case.

[18] The combined impact of ss. 70(3), 66(1.1), and 42(2)(b) of the CPP is that the CPP does not allow for the cancellation of a retirement pension in favour of a disability benefit where the

disability application is made 15 months or more after the retirement pension started to be paid. The Appellant applied for disability benefits more than 15 months after his retirement pension started to be paid, and therefore, his appeal must be dismissed.

[19] The proper legal test for granting a summary dismissal of an appeal under subsection 53(1) of the DESD Act is whether the appeal has no reasonable chance of success based on the evidence that is before the Tribunal (*Miter v. Canada (Attorney General)*, 2017 FC 262).

[20] The Tribunal finds that this appeal has no reasonable chance of success based on the evidence before it. In order to cancel a retirement pension in favour of a disability benefit, the recipient must request the cancellation in writing and the deemed date of disability must be before the month the retirement pension started. In this case, since the Appellant applied for a CPP disability benefit in June 2016, the earliest deemed disability date would be March 2015, which falls after the date the Appellant began receiving his retirement pension in November 2014.

[21] The Tribunal informed the Appellant, in the notice in writing of the intent to summarily dismiss the appeal, that the only exception to that rule would be if the Appellant was not able to form or express an intention to apply before the date he actually applied for CPP disability benefits by reason of incapacity (subsection 60(8) and (9) of the CPP). The Appellant did not make submissions on the issue of incapacity or provide any evidence on that issue. Consequently, on the face of the record, there is no allegation or evidence of incapacity as defined in subsections 60(8) and 60(9) of the CPP.

[22] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

[23] It is unfortunate that the Appellant has health problems, and the Tribunal is sympathetic to his circumstances. However, the Tribunal must interpret and apply the provisions as set out in the CPP.

CONCLUSION

[24] The appeal is summarily dismissed.

George Tsakalis
Member, General Division - Income Security