



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. V. M.*, 2017 SSTADIS 510

Tribunal File Number: AD-17-576

BETWEEN:

Minister of Employment and Social Development

Applicant

and

V. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: October 3, 2017

REASONS AND DECISION

INTRODUCTION

[1] On May 29, 2017, the General Division of the Social Security Tribunal of Canada determined that a disability pension under the *Canada Pension Plan* was payable. The Applicant filed an application for leave to appeal with the Appeal Division of the Tribunal on August 11, 2017.

ISSUE

[2] I must decide whether the appeal has a reasonable chance of success.

THE LAW

[3] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), an appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[4] Subsection 58(2) of the DESD Act provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

SUBMISSIONS

[5] The Applicant submitted that the General Division decision erred by concluding that the Respondent became disabled on a date after his Minimum Qualifying Period, and by including different dates that he was found to be disabled in different paragraphs in the decision.

ANALYSIS

[6] The Applicant is not contesting that the Respondent was disabled under the *Canada Pension Plan*. It disputes the date the disability began, and consequently the date that payment of the disability pension should begin.

[7] In order to receive a *Canada Pension Plan* disability pension a claimant must be disabled prior to his Minimum Qualifying Period (which is based on when he made

contributions to the Plan). In this case, it is not disputed that the Minimum Qualifying Period is December 31, 2012. The Applicant is correct that the Respondent would not be entitled to receive a *Canada Pension Plan* disability pension if he became disabled in 2013, as that is after the Minimum Qualifying Period.

[8] Unfortunately the General Division decision did not consistently set out what date the Respondent became disabled. In paragraph 40 of the decision, it states that the Respondent was disabled in December 2012. In paragraph 43, it states that he was disabled in June 2013. This is an error and gives rise to a ground of appeal that has a reasonable chance of success on appeal.

[9] The *Canada Pension Plan* also states when a disability pension is payable. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Applicant received the application for a disability pension (paragraph 42(2)(b) CPP). The application was received in March 2015; therefore for payment purposes the Respondent is deemed disabled in December 2013. According to section 69 of the CPP, payments start four months after the deemed date of disability. The correct date for payment to begin is April 2014.

CONCLUSION

[10] The Application is granted.

[11] Section 59 Of the *Department of Employment and Social Development Act* permits the Appeal Division to give the decision that the General Division should have given. In this case, the Appellant is not disputing that the Respondent was disabled, or that the disability arose on or before the Minimum Qualifying Period of December 31, 2012. It is therefore appropriate to give the decision that the General Division should have.

[12] The Respondent was disabled in December 2012. For the reasons set out above payment will start in April 2014.

Valerie Hazlett Parker
Member, Appeal Division