



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. R. M.*, 2017 SSTADIS 584

Tribunal File Number: AD-17-512

BETWEEN:

Minister of Employment and Social Development

Applicant

and

R. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: October 31, 2017

REASONS AND DECISION

INTRODUCTION

[1] On April 18, 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 July 14, 2017.

ANALYSIS

[2] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to whether, legally, an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[3] The *Department of Employment and Social Development Act* (Act) governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision). Therefore, I must decide whether the Applicant has presented a ground of appeal under section 58 of the Act that may have a reasonable chance of success on appeal.

[4] The Applicant first argues that the General Division decision was based on an erroneous finding of fact made in a perverse or capricious manner. The decision relied, at least in part, on findings of fact that Dr. Barnes had a concern about the Respondent taking antidepressant medication with anti-seizure medication, and that he supported the Respondent's refusal to take antidepressants. The Applicant argued that the notes and letters from Dr. Barnes do not say this.

[5] Dr. Barnes's June 2013 report was penned to facilitate a psychiatric referral, and it states that no medication was prescribed at that time because the referral was pending. The November 2013 handwritten note does not clearly state that the doctor agreed with the Respondent's

reluctance to take antidepressants, and it again refers to the pending psychiatric referral. I am satisfied that the decision was based on finding of fact that may be erroneous and made in a perverse or capricious manner, or without regard to all of the evidence that was before the General Division. This ground of appeal may therefore have a reasonable chance of success on appeal.

[6] The Applicant also contends that the General Division decision contains an error of law because it did not consider that the Respondent had not made any attempts to obtain or maintain work within her limitations. The law is clear that if a claimant has some capacity to work, she must make reasonable efforts to do so (see *Inclima v. Canada (Attorney General)*, 2003 FCA 117). However, in this case, the General Division concluded that the Respondent did not have any capacity to work at the relevant time. She was therefore not obliged to make such attempts. I am prepared to receive arguments on this ground of appeal as it is unclear whether it has a reasonable chance of success on appeal.

CONCLUSION

[7] The application for leave to appeal is granted because the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[8] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division 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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.