



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. D. v. Minister of Employment and Social Development*, 2017 SSTGDIS 189

Tribunal File Number: GP-17-1980

BETWEEN:

S. D.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Adam Picotte

DATE OF DECISION: December 7, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a disability benefit. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on September 5, 2017.

[2] This appeal involves a consideration of whether or not the Appellant is entitled to a disability benefit.

[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 (*Miter v. Canada (A.G.)*, 2017 FC 262).

[4] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[5] The Appellant's application for a disability benefit was date stamped by the Respondent on November 4, 2016. The Application was signed and dated on October 27, 2016. The Tribunal is satisfied that it was received by the Respondent in November 2016.

[6] In her application the Appellant detailed that she was born on X. This information is confirmed in the Respondent's Record of Contributions spreadsheet at page GD2-31 of the Reconsideration file.

SUBMISSIONS

[7] 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 as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations). Although provided with an opportunity to make submissions the Appellant has not done so. A Canada Post deliver containing the extension of time decision and the letter advising of the intent to summarily dismiss was

delivered to the Appellant on November 1, 2017. The Appellant is indicated as having signed for delivery of same.

[8] The Tribunal is satisfied that the Appellant has been provided with reasonable notice to provide a submission and has elected not to do so.

[9] The Respondent elected not to provide submissions in respect of the late appeal.

ANALYSIS

[10] 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.

[11] The Tribunal finds that it is appropriate to summarily dismiss this appeal.

[12] Section 44(1)(b) of the CPP limits payments of disability benefits to contributors who have not reached sixty-five years of age.

[13] Section 42(2)(b) sets out that in no case shall a person 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.

[14] These sections mean that a person over the age of 65 may be deemed disabled only if they have made an application for a disability benefit prior to turning 66 years and 3 months of age.

[15] In any event by application of section 44(1)(b) once the contributor turns 65 years of age any disability benefit would terminate.

[16] In this case the Appellant applied for a disability benefit in November 2016. At that time she was 66 years and 4 months of age. Even with the benefit of the deeming provision set out in Section 42(2)(b) she cannot be considered for a disability benefit.

[17] As a result even if the Tribunal were to have found her disabled within the meaning of the CPP she cannot qualify for a disability benefit by virtue of her age.

[18] The Tribunal has no equitable provision to overstep the legislation and must therefore apply the law strictly.

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

CONCLUSION

[20] The appeal is summarily dismissed.

Adam Picotte
Member, General Division - Income Security