



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. J. v Minister of Employment and Social Development*, 2018 SST 1236

Tribunal File Number: GP-18-1865

BETWEEN:

P. J.

Claimant (Appellant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Kelley Sherwood

DATE OF DECISION: November 13, 2018

DECISION

[1] The Claimant cannot cancel the Canada Pension Plan (CPP) retirement pension for a CPP disability pension.

OVERVIEW

[2] The Claimant started to receive a CPP retirement pension in January 2017. On April 6, 2018, the Minister received the Claimant's application for a CPP disability pension. The Claimant stated that she could no longer work because of her medical conditions. The Minister denied the application initially and on reconsideration.

[3] The Minister explained to the Claimant that she could not cancel her retirement pension in favour of a disability pension because more than 15 months had passed since she had started to receive her retirement pension. The Claimant appealed the reconsideration decision to the Social Security Tribunal (the Tribunal).

[4] The Minister has requested that this appeal be summarily dismissed because there is no reasonable chance of success. The statute does not permit the Claimant to cancel her retirement pension in favour of a disability pension.

ISSUE

[5] Does the Claimant's appeal have a reasonable chance of success?

ANALYSIS

I must summarily dismiss this appeal

[6] I find the Claimant's appeal does not have a reasonable chance of success and so the appeal must be summarily dismissed.¹ I have no discretion to grant the appeal where it is plain and obvious on the record that the appeal is clearly bound to fail.

¹ Subsection 53(1) *Department of Employment and Social Development Act*

The Claimant's disability pension application was received more than 15 months after her retirement pension started

[7] As a general rule, a Claimant cannot collect both a CPP retirement pension and a disability pension. A Claimant can only request the cancellation of a retirement pension in favour of a disability pension if the Claimant is “deemed” disabled the month before the retirement pension began.² The earliest a Claimant can be “deemed” to be disabled is fifteen months before the date the disability application is received by the Minister.³ The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favour of a disability pension where the disability application is made fifteen months or more after the retirement pension started to be paid.

[8] The only exception to the rule would be if the Claimant were not able to form or express an intention to apply for the benefit before the date the Claimant actually applied.⁴ The Claimant has not alleged that she was not able to form or express the intention to apply before April 6, 2018 and there is no evidence in the record that this is the case.

[9] The record shows that the Claimant began collecting her CPP retirement pension in January 2017. Her application for a CPP disability pension was received on April 6, 2018, which is more than 15 months after she started to receive the retirement pension.

[10] The Claimant was given notice in writing of the intent to summarily dismiss the appeal.⁵ In response, the Claimant argued that she did not know about the 15-month deadline.⁶ With her appeal notice, she asked the Tribunal to reassess her application given that she sent it in so close to the deadline.⁷ I am aware that a “fair and generous reading” must be given with respect to “making” a CPP disability application⁸; however, in this case, the issue of when the Claimant

² Subsection 66.1(1.1) *Canada Pension Plan*

³ Paragraph 42(2)(b) *Canada Pension Plan*

⁴ Subsections 60(8) and (9) *Canada Pension Plan*

⁵ Section 22 *Social Security Tribunal Regulations*

⁶ GD4 – 2

⁷ GD1 – 8

⁸ *Mason v. Canada (Employment and Social Development)*, 2017 FC 358

made the application is not in question. She acknowledges that she sent it in on April 6, 2018⁹, which is beyond the deadline.

[11] I am sympathetic to the Claimant's situation, but I am bound by the legislation. As a Tribunal Member, I am required to apply the provisions as they are set out in the CPP. The CPP does not allow me to make exceptions to the legislation.

[12] As I have determined that the Claimant's disability application was filed beyond the 15-month deadline, I must find that the appeal has no reasonable chance of success.

CONCLUSION

[13] The appeal is summarily dismissed.

Kelley Sherwood
Member, General Division - Income Security

⁹ GD1 – 3