



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. L. v Minister of Employment and Social Development*, 2019 SST 1624

Tribunal File Number: GP-18-2688

BETWEEN:

**M. L.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Shannon Russell

DATE OF DECISION: May 20, 2019

## REASONS AND DECISION

### OVERVIEW

[1] The Claimant is a 64-year-old woman who applied for Canada Pension Plan (CPP) disability benefits in April 2018. The Respondent denied the application because the Claimant is receiving the CPP retirement pension and she is not able to cancel that pension in favour of disability benefits. The Claimant appealed to the Social Security Tribunal.

### ANALYSIS

[2] I am required to summarily dismiss an appeal if I am satisfied that the appeal has no reasonable chance of success<sup>1</sup>.

[3] I have decided that this appeal does not have a reasonable chance of success and this is because (1) the Claimant is unable to cancel her CPP retirement pension in favour of the CPP disability benefit; and (2) the Claimant does not meet the eligibility requirements for the Post-Retirement Disability Benefit (PRDB).

#### ***I – The Claimant is Unable to Cancel the Retirement Pension in Favour of Disability Benefits***

[4] The Claimant is not able to cancel her retirement pension in favour of disability benefits and this is because the Claimant applied for the disability benefits more than 15 months after her retirement pension became payable. I will now explain how this 15-month rule works.

[5] The CPP legislation does not allow a person to receive the CPP retirement pension and the CPP disability benefit at the same time<sup>2</sup>. In order to cancel the retirement pension in favour of disability benefits, a person must be deemed to be disabled before the date the retirement pension commenced<sup>3</sup>. However, the legislation has limits as to when a person can be deemed to be disabled. In this regard, the legislation states that the earliest a person can be deemed to be

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<sup>1</sup> Subsection 53(1) of the *Department of Employment and Social Development Act*. See also the decision of *Miter v. Canada (A.G.)*, 2017 FC 262

<sup>2</sup> Paragraph 44(1)(b) and subsection 70(3) of the *Canada Pension Plan*

<sup>3</sup> Subsection 66.1(1.1) of the *Canada Pension Plan*

disabled is 15 months before the date of the application for disability benefits<sup>4</sup>. As a result, the legislation does not allow for the cancellation of a retirement pension in favour of disability benefits where the disability benefit application is made 15 months or more after the retirement pension became payable.

[6] The Claimant's retirement pension became payable in September 2014<sup>5</sup>, and she applied for disability benefits in April 2018. If her disability benefit application was approved, the earliest she could be deemed to be disabled is January 2017 (15 months before the date of application). It is therefore not possible for the Claimant to be deemed to be disabled before September 2014.

[7] In her Notice of Appeal, the Claimant described the legislation as being unconstitutional and she said the legislation violates her rights under the *Charter of Rights and Freedoms* (*Charter*). A Registry Officer with the Tribunal provided the Claimant with information on making a *Charter* argument before the Tribunal. The Claimant took some time to think about it, and in the end she advised the Registry Officer that she would not be pursuing a *Charter* argument.

[8] The Claimant has asked for an exception to be applied in her case and for her appeal to be granted on humanitarian and compassionate grounds. She explained that she had an accident in December 2015 and had every intention of returning to work but her surgeries failed and she was unable to do so. I do not doubt that what the Claimant says is true. However, I do not have the discretion to ignore or amend the provisions of the CPP regardless of how compelling the circumstances may be. I also do not have the authority to allow an appeal based on humanitarian and/or compassionate grounds.

## ***II – The Claimant Does Not Qualify for the Post-Retirement Disability Benefit (PRDB)***

[9] The PRDB was not covered in the Respondent's reconsideration decision which prompted this appeal. However, the Respondent addressed this benefit in its submissions of

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<sup>4</sup> Paragraph 42(2)(b) of the *Canada Pension Plan*

<sup>5</sup> Page GD2-27

January 11, 2019<sup>6</sup>. Given these submissions, and in the absence of an argument to the contrary, I assume that I have the authority to decide the Claimant's eligibility for the PRDB.

[10] The provision creating the PRDB came into force on January 1, 2019. To be eligible for the PRDB, an applicant must meet the Minimum Qualifying Period (MQP) and be disabled after December 2018 (i.e. in January 2019 or later)<sup>7</sup>. An MQP is a date that is calculated based on the contributions a contributor has made to the CPP.

[11] The Claimant has an MQP of December 31, 2017 and, therefore, because she does not have an MQP in January 2019 or later, she is not eligible for the PRDB.

## **CONCLUSION**

[12] The appeal is summarily dismissed.

Shannon Russell  
Member, General Division - Income Security

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<sup>6</sup> Pages GD4-5 to GD4-8

<sup>7</sup> Paragraph 44(1)(h) of the *Canada Pension Plan*