



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. B. v Minister of Employment and Social Development*, 2020 SST 24

Tribunal File Number: AD-19-767

BETWEEN:

M. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 6, 2020

DECISION AND REASONS

DECISION

[1] The appeal is allowed. It is referred back to the General Division for reconsideration.

OVERVIEW

[2] M. B. (Claimant) obtained a Personal Support Worker diploma. She worked as a Unit Aide from 2003 until June 2015. She claims that she could not work after this because of her medical conditions. The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by low back and leg pain. She has also been diagnosed with bursitis, and varicose veins.

[3] The Minister of Employment and Social Development refused the Claimant's application because it decided that the Claimant did not have a severe disability before the end of her minimum qualifying period (MQP) of December 31, 2017. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason.

[4] The Tribunal's Appeal Division granted leave (permission) to appeal because the appeal has a reasonable chance of success on the basis that the General Division based its decision on an important factual error regarding its consideration of the medical evidence. After leave to appeal was granted, the Minister stated that the appeal should be allowed because the General Division made an error in law regarding the Claimant's MQP. It requested that the matter be referred back to the General Division.

[5] The appeal is allowed because the General Division made the error in law.

GROUND OF APPEAL

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;

- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.¹

[7] However, before I can decide an appeal, I must decide whether to grant leave (permission) to appeal. The DESD Act says that leave to appeal must be refused if the appeal does not have a reasonable chance of success.² Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that falls under the DESD Act and on which the appeal has a reasonable chance of success.

ISSUES

[8] Did the General Division make an error in law by considering the wrong MQP?

[9] Did the General Division make an error in law when it failed to consider all of the Claimant's personal characteristics?

[10] Did the General Division make an important factual error as follows?

- a) When it decided that the Claimant has capacity to work without having regard for all of the medical evidence; or
- b) When it placed too much weight on Dr. Malik's reports.

ANALYSIS

The MQP

[11] For a Claimant to be disabled under the *Canada Pension Plan* they must meet certain criteria, including:

¹ This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

² DESD Act s. 58(2)

- a) They must have made valid contributions to the Plan for a minimum period of time (MQP); and
- b) They must have a severe and prolonged disability.³

[12] A person's MQP is calculated based on when they made contributions to the Plan. Any month that a person receives a family allowance and their income is less than the yearly basic exemption is excluded from the calculation of this date.⁴ This exclusion applies if the person has a child under 7 years old.

[13] In this case, the Claimant had children in 2012 and 2016.⁵ Therefore, the years 2013 to 2018 and 2017 to 2022 should be excluded from the calculation of her MQP. This results in the MQP being in the future, not December 31, 2017. Accordingly, the General Division made an error in law when it considered whether the Claimant was disabled on or before December 31, 2017. The appeal must be allowed on this basis.

Remedy

[14] The DESD Act sets out what remedy the Appeal Division can give when an appeal is allowed, including referring the matter back to the General Division for reconsideration.⁶ The General Division erred by considering the Claimant's condition at the wrong MQP. The materials filed with the General Division by both parties focussed on her condition at this date. Similarly, the oral evidence given at the General Division hearing focussed on this date. The parties did not have the opportunity to present written or oral evidence about the Claimant's capacity regularly to pursue any substantially gainful occupation after December 31, 2017. The record before the Tribunal is therefore incomplete.

[15] It is appropriate to refer the matter back to the General Division for reconsideration.

³ *Canada Pension Plan* s. 44(1)

⁴ *Canada Pension Plan* s. 44(2)(b)(iv) and *Canada Pension Plan Regulations* s. 77

⁵ GD2-33 to 34

⁶ DESD Act s. 59(1)

Other Issues

[16] Leave to appeal was granted on the basis that the General Division based its decision on an important factual error. The Minister agrees that the General Division based its decision on an important factual error, but did not specify what that error is.⁷ However, because the appeal must be allowed and the matter referred back to the General Division for the reasons set out above I need not consider the other grounds of appeal.

CONCLUSION

[17] The appeal is allowed.

[18] It is referred back to the General Division for reconsideration.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	M. B., Appellant Susan Johnstone, Representative for the Respondent

⁷ AD6