



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v Minister of Employment and Social Development*, 2020 SST 320

Tribunal File Number: GP-19-1887

BETWEEN:

S. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Anne S. Clark

Date of decision: February 3, 2020

DECISION

[1] The Claimant is entitled to a longer period to request reconsideration of the decision dated November 21, 2018. My reasons are explained in this decision.

OVERVIEW

[2] The Claimant applied for a *Canada Pension Plan* (CPP) disability pension on June 4, 2018. He attributed his inability to work to back pain and significant restricted mobility. His application was denied on November 21, 2018. The Minister received Claimant's request for reconsideration on March 14, 2019.

[3] On March 19, 2019 the Minister wrote to the Claimant to ask him to explain why:

- he delayed in filing a request for reconsideration;
- how he kept the department (Minister) informed of his intention to request a reconsideration; and
- why he disagreed with the reason the Minister gave for denying the initial application¹.

[4] The Claimant responded to the Minister's questions on May 21, 2019². In a letter dated October 17, 2019 the Minister refused to allow the Claimant a longer period to request reconsideration of the November 21, 2018 decision.

[5] The Claimant appealed the October 17, 2019 decision to the Social Security Tribunal.

PRELIMINARY MATTERS

Why I decided this appeal on the record.

[6] I can decide an appeal on the basis of documents and submissions filed or I can hold a hearing. The Tribunal Regulations permit either and provide guidance on how to choose. I

¹ See letter at GD2-20

² See the letter at GD2-37

should choose a process that is just, quick, least expensive and informal³. A decision on the record can be appropriate when the issues under appeal are not complex; there are no gaps or unanswered questions on file; and, credibility is not a main issue.

[7] The issue on appeal is not complex and there is enough information on file for me to decide the issue. The Minister's position was set out in the notes on file and the Claimant made detailed written submissions on the issue. There is no indication that credibility is an issue on appeal. Proceeding on the record is fair and just. It is quick, least expensive and most informal way to proceed.

Why the appeal cannot address the Claimant's application for disability benefits.

[8] With his appeal to the Tribunal, the Claimant raised issues about his claim for disability benefits and the effect a disability has on his ability to work and on his life. I cannot address the Claimant's application for disability benefits or decide if he is entitled to benefits. An appeal to the Tribunal must be from a reconsideration decision⁴. The Claimant's appeal is from the decision dated October 17, 2019. That decision was not about the Claimant's disability benefits. It was limited to whether the Claimant would be allowed a longer period to request a reconsideration of the initial decision. Therefore, this appeal must also be limited to the question of whether the Minister should have allowed a longer period for the Claimant to request reconsideration of the initial decision.

ISSUE

[9] Did the Minister exercise the legislated discretion judicially when deciding the Claimant was not entitled to a longer period to request a reconsideration of the November 21, 2019 decision?

³ Sections 2 and 28 of the *Social Security Tribunal Regulations*

⁴ *section 81 Canada Pension Plan*

ANALYSIS

What is the Minister required to do when exercising discretion?

[10] The authority of the Minister to allow or refuse additional time to make a late request for reconsideration is discretionary. Specifically, the Minister **may** allow a longer period but is not **required** to do so as long as the Minister acts judicially⁵. The CPP Regulations set out the proper form including relevant circumstances the Minister must consider when deciding whether to allow a longer period for the person to make a request for reconsideration⁶.

[11] The Minister may allow additional time if satisfied the Claimant has a reasonable explanation for the delay and demonstrated a continuing intention to request the reconsideration⁷.

[12] The Minister's authority to grant or refuse the request must be exercised judicially⁸. A discretionary power is not exercised "judicially" if it can be established that the decision-maker:

- a) acted in bad faith,
- b) acted for an improper purpose or motive,
- c) took into account an irrelevant factor,
- d) ignored a relevant factor, or
- e) acted in a discriminatory manner⁹.

[13] The role of the Tribunal is not to determine the outcome of the reconsideration or if the Respondent made the correct decision but whether the discretion was exercised in a judicial manner. The Claimant has the burden of proof in establishing that the Respondent failed to do so.

⁵ Subsection 81(1) *Canada Pension Plan*

⁶ Section 74.1 *Canada Pension Plan Regulations*

⁷ Subsection 74.1(3) *Canada Pension Plan Regulations*

⁸ *Canada (A.G.) v. Uppal*, 2008 FCA 388

⁹ *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

The Claimant proved the Minister failed to do what was required.

[14] The file does not disclose any action that would show the Minister considered irrelevant factors; acted in bad faith, for an improper purpose or motive; or acted in a discriminatory manner. However, I find the Minister failed to consider relevant facts about when the Claimant received the initial decision or when he sent his request. Most relevant is the question of whether the Claimant's request for reconsideration was, in fact, filed late. This is a relevant factor the Minister should have considered. This fact is particularly relevant since the Minister's decision was based on a limitation period calculated using an estimated date when the Minister communicated the decision to the claimant.

[15] The Minister requested the Claimant make submissions about the reason for the delay, his intention to request a reconsideration and why he disagreed with the original decision¹⁰. The Claimant responded to those questions. The Minister did not ask the Claimant when he received the initial denial or when he sent his request for reconsideration. Both facts are clearly relevant facts in determining whether the request was outside the 90-day limitation period.

[16] The Minister's letter to the Claimant did not explain why the Minister refused to allow a longer period for the Claimant to file his request for reconsideration¹¹. However, the file discloses a number of facts that lead me to conclude the Minister should have considered other factors when deciding whether to allow a longer period.

[17] The Minister calculated the date the Claimant received the denial and the date he made the request for reconsideration using estimates and internal information. The Minister did not ask the Claimant to confirm when he received the denial or when he sent his request for reconsideration. The Claimant lives a considerable distance from the Service Canada Center for his region. He relies heavily on his spouse because his mobility is restricted. He relies on his member of Parliament to assist him with his file.

[18] The initial denial was dated November 21, 2018. There is no information to confirm when it was actually sent or received. Considering the Claimant's address and his restricted mobility I would have expected the Minister to question how long it actually took for the Claimant to receive the

¹⁰ See letter at GD2-20

¹¹ See denial at GD2-23

denial. The file notes show he could not be reached by telephone and the Minister relied on the mail to communicate the decision.

[19] The Minister assumed the Claimant received the initial decision on December 1, 2018 which was a Saturday. Using that date the Minister calculated the Claimant had until March 3, 2019 to request reconsideration. That was a Sunday. These two dates were the basis of the decision to consider the Claimant's request was filed late¹². If the Minister considered these dates it should have led to the logical question of when the Claimant actually received the decision since it was not likely he would have received it or been able to sent his appeal on the weekend.

[20] The Claimant's request for reconsideration is dated January 8, 2019 and the Minister's stamp shows it was received on March 14, 2019¹³. The Minister did not question the Claimant on when he forwarded his letter or why it appeared to have been delayed. The file refers to the Claimant's letter and the file notes acknowledge the letter was dated well within 90 days of the denial. The Minister did not question what impact this might have had on the question under review.

[21] The Minister calculated the limitation period and refused a longer period for the Claimant to request reconsideration without having regard to when the Claimant received the initial decision; whether the Claimant's location and personal circumstances impacted when he received the decision; and, when the Claimant sent his request for reconsideration. I find the Minister did not exercise the discretion judicially.

Why the Claimant should be given a longer period to request reconsideration of the decision dated November 21, 2018.

[22] The Claimant explained to the Minister that he was housebound and had to rely on others to gather information and submit his request for reconsideration. He was in contact with his MP and his letter dated January 8, 2019 shows he intended to pursue the request. There is no evidence to show when the letter was actually sent to the Minister but the Minister's records show it was stamped as received on March 14, 2019. Considering the Claimant's personal circumstances and his physical health I find his explanation for such a short delay is reasonable.

¹² See the Minister's decision document at GD2-36

¹³ See GD2-35

[23] The Claimant's intention to pursue the request was demonstrated in his letter dated January 8, 2019. If the Claimant's request for reconsideration was, in fact, late the time limit should be extended to March 14, 2019 which is the date the Minister's file shows the request was received.

CONCLUSION

[24] My role is limited to deciding whether the Minister's discretionary authority was exercised in a judicial manner. Having reviewed all of the evidence and submissions I find that the Minister's discretionary authority was not exercised judicially and the Claimant should have been allowed additional time to request reconsideration.

[25] The appeal is allowed.

Anne S. Clark
Member, General Division - Income Security