



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. L. v Minister of Employment and Social Development*, 2020 SST 94

Tribunal File Number: AD-20-81

BETWEEN:

**S. L.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: February 10, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal is refused.

### **OVERVIEW**

[2] S. L. (Claimant) completed high school and obtained a university degree. She has worked in different administrative jobs, and ran her own business for a period of time. The Claimant last worked for an employment agency from December 2013 to April 2014.

[3] In May 2018, the Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by schizophrenia and other mental health illnesses. The Minister granted the application and decided that the Claimant became disabled in December 2016.

[4] The Claimant appealed the Minister's decision regarding when she became disabled to the Tribunal. She says that she became disabled in 2004, and was incapable of forming or expressing an intention to make an application before she did so in 2018, so she should be deemed to have been disabled in 2004.

[5] The Tribunal's General Division dismissed the Claimant's appeal because it decided that the Claimant was not incapable of forming or expressing an intention to make an application continuously from 2004 to 2018. Leave to appeal to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success on the basis that the General Division based its decision on an important factual error.

### **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.<sup>1</sup>

[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.<sup>2</sup> 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.

## **ISSUE**

[8] Does the appeal have a reasonable chance of success because the General Division based its decision on an important factual error that the Claimant's incapacity was not continuous from 2004 to 2018?

## **ANALYSIS**

[9] One ground of appeal that the Appeal Division can consider is whether the General Division based its decision on an important factual error. To succeed on appeal on this basis, the Claimant must prove three things:

- a) that a finding of fact was erroneous (in error);
- b) that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) that the decision was based on this finding of fact.<sup>3</sup>

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

<sup>2</sup> DESD Act s. 58(2)

<sup>3</sup> *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

[10] The *Canada Pension Plan* states that a person cannot be found to be disabled more than fifteen months before they apply for the disability pension.<sup>4</sup> There is a very narrow exception to this: if a claimant had been incapable of forming or expressing an intention to make an application.<sup>5</sup> Any such period of incapacity must be continuous.<sup>6</sup>

[11] The General Division found as fact that the Claimant was not continuously incapable of forming or expressing an intention to make an application.<sup>7</sup> The Claimant says that this was an important factual error. However, the appeal does not have a reasonable chance of success on this basis. The General Division considered all of the evidence before it, including the following:

- the Claimant was hospitalized for mental illness in 2004, 2012 and 2014.<sup>8</sup>
- The Claimant's doctor reported that she has had psychosis for two decades.<sup>9</sup>
- At some of her jobs, the Claimant became fearful that her co-workers were connected with the mafia. This led to poor job performance and resulted in her quitting or her contract not being renewed.<sup>10</sup>
- Dr. Patel signed a declaration of incapacity in 2018 and says that the Claimant's impairments began in 2004, but does not set out a start or end date of incapacity.<sup>11</sup>
- In February 2019, Dr. Jain completed a declaration of incapacity that says the Claimant's condition did not make her incapable of forming or expressing an intention to make an application.<sup>12</sup>
- In 2012, Dr. Burra reported that the Claimant shortened a session with him to attend a job interview. In 2013 he stated that she had been doing very well with her medication and

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<sup>4</sup> *Canada Pension Plan* s. 42(2)(b)

<sup>5</sup> *Canada Pension Plan* s. 60(8)

<sup>6</sup> *Canada Pension Plan* s. 60(10)

<sup>7</sup> General Division decision at para. 19

<sup>8</sup> *Ibid.* at para. 9

<sup>9</sup> *Ibid.* at para. 10

<sup>10</sup> *Ibid.* at para. 10

<sup>11</sup> *Ibid.* at para. 11

<sup>12</sup> *Ibid.* at para. 12

had been promised a job starting in 2014. In February 2014 Dr. Burra reported that the Claimant had been working since October 2013 at an insurance company.<sup>13</sup>

- The Claimant has been her children's primary caregiver, although there have been difficulties with that.<sup>14</sup>
- The Claimant worked and had gainful earnings in 2005, 2008, 2010 and 2014.<sup>15</sup>

[12] Based on its consideration of all of the evidence, the General Division found as fact that the Claimant's incapacity was not continuous from 2004 to 2018. There is an evidentiary basis for this finding of fact, so it was not made in error.

[13] While the Claimant disagrees with this finding of fact, her disagreement is not a ground of appeal upon which leave to appeal can be granted.

[14] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

[15] There is no suggestion that the General Division made an error in law or failed to provide a fair process.

## CONCLUSION

[16] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	S. L., Self-represented
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<sup>13</sup> General Division decision at para. 14

<sup>14</sup> *Ibid.* at para. 16

<sup>15</sup> *Ibid.* at para. 17