



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v Minister of Employment and Social Development*, 2020 SST 319

Tribunal File Number: GP-19-1060

BETWEEN:

J. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: George Tsakalis

Claimant represented by: Ruth McDonald

Videoconference hearing on: February 24, 2020

Date of decision: February 28, 2020

DECISION

[1] I am dismissing this appeal.

[2] I do not have jurisdiction to decide whether the Claimant can receive a Canada Pension Plan (CPP) disability pension.

[3] The Claimant is also not entitled to receive a Post-Retirement Disability Benefit (PRDB).

OVERVIEW

[4] J. M. is the Claimant in this case. He began receiving a CPP retirement pension in June 2016. He applied for a CPP disability pension on April 24, 2018.¹ The Minister denied his application on May 10, 2018. The Minister told the Claimant that he could not receive a disability pension because he applied for the disability pension more than 15 months after he began receiving a CPP retirement pension.² The Claimant did not ask the Minister to reconsider this decision.

[5] The Claimant applied for the PRDB on January 10, 2019.³ The Minister wrote to the Claimant on February 21, 2019. The Minister told the Claimant that he could not receive a PRDB because he did not have a minimum qualifying period (MQP) in January 2019 or later.⁴ The Claimant asked the Minister to reconsider this decision.⁵ The Minister sent the Claimant its reconsideration decision on May 15, 2019. The Minister maintained its position that the Claimant could not receive a PRDB.⁶ The Claimant appealed the Minister's reconsideration decision to the Social Security Tribunal.⁷

¹ See GD2-33

² See GD2-43

³ See GD2-48

⁴ See GD2-51

⁵ See GD2-57

⁶ See GD2-63

⁷ See GD1-2

PRELIMINARY MATTERS

[6] The Minister did not provide submissions on whether the Claimant was entitled to a CPP disability benefit. The Minister's submissions were limited to whether the Claimant was entitled to receive a PRDB.

[7] I asked the Claimant what benefit he was disputing because he stated in his Notice of Appeal that he should receive a CPP disability pension.⁸ The Claimant and his spouse advised me that he was disputing the Minister's decision denying him a CPP disability pension.

[8] I told the Claimant that I was not sure whether I had jurisdiction to decide whether he could receive a CPP disability pension. The Claimant did not ask the Minister to reconsider its initial decision denying his application for that benefit. I also advised the Claimant that the general rule is that he could not receive a CPP disability pension because he applied for the benefit more than 15 months after he began receiving a CPP retirement pension.⁹ The only exception to the general rule would be if the Claimant had incapacity under the CPP.¹⁰

[9] The Claimant said that he had incapacity because of depression.

[10] I advised the Claimant that I would agree to hear his evidence and submissions. But I did not believe that I had jurisdiction to deal with his entitlement to a CPP disability pension and whether he had incapacity under the CPP.

[11] After hearing the Claimant's evidence and submissions made on his behalf, I find that I do not have jurisdiction to deal with the issue of his entitlement to a CPP disability pension and whether he had incapacity under the CPP. I also agree with the Minister that the Claimant is not entitled to a PRDB.

ISSUES

⁸ See GD1-2

⁹ See paragraph 44(2)(b) and subsection 66.1(1.1) *Canada Pension Plan*

¹⁰ See subsections 60(8) and (9) *Canada Pension Plan*

[12] Do I have jurisdiction to deal with the issue of whether the Claimant is entitled to receive a CPP disability pension and whether had incapacity under the CPP?

[13] Is the Claimant entitled to receive a PRDB?

ANALYSIS

I do not have jurisdiction to deal with the issue of whether the Claimant is entitled to receive a CPP disability pension.

[14] Claimants can request the Minister to reconsider a decision denying an application for disability benefits within 90 days of being notified of that decision.¹¹ If the Minister refuses to reconsider its initial decision, claimants have to appeal the reconsideration decision to the Tribunal.¹² The general rule is that claimants have to appeal the reconsideration decision to the Tribunal within 90 days of that decision being communication to them.¹³

[15] I do not have the jurisdiction to deal with the issue of whether the Claimant is entitled to receive a CPP disability pension. In order for me to have jurisdiction on this issue, the Claimant must have requested that the Minister reconsider its initial decision on May 10, 2018 denying his application for the CPP disability pension. If the Minister in a reconsideration decision again denied his application, he could then appeal that decision to the Tribunal. The problem for the Claimant is that did not even take the step of requesting that the Claimant reconsider its May 10, 2018.

[16] I feel sorry for the Claimant. His file shows that he suffered from depression for many years. His psychiatrist wrote to the Minister on April 13, 2019. She said that had the Claimant been under her care sooner, she would have advised him to pursue a CPP disability pension.¹⁴ The Claimant's file shows that he has struggled with the application and appeal process over the

¹¹ See section 81 *Canada Pension Plan*. Claimant's can request a reconsideration decision after 90 days have expired. But in this case, the Claimant did not asked the Claimant to reconsider its initial decision denying his CPP disability application.

¹² See section 82 *Canada Pension Plan*

¹³ See paragraph 52(1)(b) *Department of Employment and Social Development Act* (DESD Act). The General Division of the Tribunal can hear appeals if a claimant fails to appeal a reconsideration decision to it within 90 days (see subsection 52(2)). However, I cannot entertain the Claimant's CPP disability appeal. There is no reconsideration decision before me to consider because the Claimant did not ask the Minister to reconsider its initial decision May 10, 2018 denying his CPP disability application.

¹⁴ See GD2-98

years. He had applied for a CPP disability pension in 2016. The Minister provided him with a reconsideration decision in relation to that application on June 1, 2016.¹⁵ The Claimant did not appeal that decision to the Tribunal. The Claimant testified that he decided to reapply for a disability pension rather than appeal that decision to the Tribunal.

[17] The Claimant argued that his depression affected his decision-making. He found the process confusing. But I cannot help the Claimant in this case. I cannot consider his appeal regarding his CPP disability benefits. I would only have been able to consider his appeal if he had appealed a reconsideration decision from the Minister relating to his CPP disability benefits. The Claimant did not do this.

[18] The Tribunal's jurisdiction is limited to the powers granted to it by statute. I can only grant remedies under the Tribunal's enabling legislation.¹⁶ I have no equitable jurisdiction. I must follow the letter of the law I cannot make decisions on compassionate grounds.¹⁷

[19] The Claimant, his spouse, and his representative are pleasant people. They behaves in a professional manner at the hearing, and I am sympathetic to the Claimant. But I cannot consider an issue that is not properly before me.

[20] In addition, the Claimant did formally advise the Minister of an incapacity argument in relation to his CPP disability application. I do not have jurisdiction to deal with any alleged incapacity on his part that might make him eligible to receive a disability pension.

The Claimant is not entitled to a PRDB

[21] The PRDB was created in January 2019. It provides disability protection for CPP retirement pensioners who are disabled on or after their retirement pension date and who have not reached age 65. In order to receive a PRDB, the Claimant must have a MQP in January 2019 or later.¹⁸ The calculation of the MQP is based on the Claimant's contributions to the CPP. The

¹⁵ See GD2-27

¹⁶ See *R. v. Conway*, 2010 SCC 22

¹⁷ See *Canada (Minister of Social Development) v. Kendall* (June 7, 2004), CP 21960 (PAB) and *S.S. v. Minister of Employment and Social Development*, 2018 SST 705

¹⁸ See paragraph 44(1)(h) *Canada Pension Plan*

Claimant has not made contributions to the CPP since 2012.¹⁹ I find that his MQP date for the purposes of the PRDB is December 31, 2015. He therefore does not qualify for the PRDB.

CONCLUSION

[22] The appeal is dismissed.

George Tsakalis
Member, General Division - Income Security

¹⁹ See GD6-7