



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. S. v Minister of Employment and Social Development*, 2020 SST 808

Tribunal File Number: GP-19-1937

BETWEEN:

**L. S.**

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: February 29, 2020

## REASONS AND DECISION

### OVERVIEW

[1] The Claimant applied for Canada Pension Plan (CPP) disability benefits in June 2018. The Respondent approved her application and awarded her benefits retroactive to July 2017. The Claimant asked the Respondent to reconsider its decision because she believed that she was entitled to more retroactive payments than what the Respondent had paid her. The Respondent reconsidered the Claimant's application and decided to maintain the decision to award benefits retroactive to July 2017. The Claimant appealed the reconsideration decision to the Social Security Tribunal (SST or 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>. When deciding whether an appeal has a reasonable chance of success, I must ask myself whether it is plain and obvious on the record that the appeal is bound to fail, regardless of the evidence and/or arguments that the Claimant might bring at a hearing<sup>2</sup>.

[3] I have decided that the appeal does not have a reasonable chance of success (or in other words is bound to fail). This is because the Claimant has been awarded the most retroactivity that can be granted on her application of June 2018 and I do not have jurisdiction to consider the Claimant's earlier applications for disability benefits.

### **The Claimant received full retroactive payments on her application of June 2018**

[4] The CPP legislation states that, for payment purposes, the earliest that a person can be deemed to be disabled is 15 months before the date of application<sup>3</sup>. The CPP legislation also states that payments start four months after the deemed date of disability<sup>4</sup>.

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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> *A.Z. v. Minister of Employment and Social Development*, 2018 SST 298

<sup>3</sup> Paragraph 42(2)(b) of the *Canada Pension Plan*

<sup>4</sup> Section 69 of the *Canada Pension Plan*

[5] The Claimant's most recent application for disability benefits was made in June 2018. Her application was approved and her retroactive payments were calculated in accordance with the legislation. She was deemed to be disabled in March 2017 (15 months before her application) and she was paid benefits retroactive to July 2017 (4 months after March 2017).

**No jurisdiction to consider the Claimant's previous applications**

[6] The Claimant wants more retroactive payments than what she has received. She has pointed out that she previously applied for disability benefits in 2004, 2014 and 2016. I acknowledge the Claimant's previous applications, but I do not have the jurisdiction to make findings on any of those previous applications.

[7] In order for me to have jurisdiction to allow or dismiss a particular application, the Respondent must have adjudicated that application at both the initial and reconsideration levels of adjudication and the claimant must have appealed the reconsideration decision to the Tribunal<sup>5</sup>.

[8] I have jurisdiction to consider the Claimant's application of June 2018 because the Respondent adjudicated that application at both the initial and reconsideration levels of adjudication and because the Claimant appealed the reconsideration decision to the Tribunal.

[9] I do not have jurisdiction to consider the Claimant's previous applications because the Claimant did not appeal any of those applications to the Tribunal.

[10] For example, the Claimant's application of June 2004 was denied by the Respondent in September 2004<sup>6</sup> and again on reconsideration in March 2005<sup>7</sup>. There is no evidence the Claimant appealed the reconsideration decision to the Tribunal<sup>8</sup>. Similarly, the Claimant's application of May 2014 was denied by the Respondent in September 2014<sup>9</sup> and again on

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<sup>5</sup> The appeal procedure is set out in sections 81 and 82 of the *Canada Pension Plan*. The limits on jurisdiction is explained in the following cases: *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

<sup>6</sup> Page GD2-109

<sup>7</sup> Page GD2-96

<sup>8</sup> In 2005, the Claimant's appeal rights were to the Office of the Commissioner of Review Tribunals (OCRT). The SST replaced the OCRT in 2013.

<sup>9</sup> Page GD2-73

reconsideration in March 2015<sup>10</sup>. There is no evidence the Claimant appealed the reconsideration decision of March 2015 to the Tribunal. Finally, the Claimant's application of August 2016 was denied by the Respondent in April 2017<sup>11</sup> and there is no evidence that the Claimant asked the Respondent to reconsider that decision.

[11] On February 20, 2020, the Claimant wrote to the Tribunal and explained (among other things) that she was not aware that an absence of an appeal on earlier applications would affect her retroactive payments<sup>12</sup>. I accept that the Claimant likely did not understand how a Tribunal derives its jurisdiction to decide on an application. However, this is not something that I can consider to allow the Claimant's appeal. In other words, I cannot ignore the law simply because the Claimant did not know what it says.

**No Jurisdiction to consider allegations of erroneous advice / administrative error**

[12] In November 2019, the Claimant wrote that she was told by "S. T." that she should qualify for payments retroactive to 1999 or 2004<sup>13</sup>. The Claimant did not explain who "S. T." is, but it appears this person works for the Respondent because the Claimant's reconsideration decision of August 2019 was signed by "S. T."<sup>14</sup>.

[13] There is a provision in the legislation that allows a person to ask the Respondent to investigate claims of erroneous advice and/or administrative error<sup>15</sup>. However, the jurisprudence is clear that only the Respondent can assess allegations of erroneous advice and/or administrative error. I, as a Tribunal Member, have no jurisdiction to consider such claims<sup>16</sup>.

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<sup>10</sup> Page GD2-66

<sup>11</sup> Page GD2-26

<sup>12</sup> Page GD3-2

<sup>13</sup> Page GD1-3

<sup>14</sup> Page GD1-6

<sup>15</sup> The provision is found at subsection 66(4) of the *Canada Pension Plan*

<sup>16</sup> *Pincombe v. Canada (Attorney General)*, [1995] FCJ No. 1320 and *Canada (Attorney General) v. Dale*, 2006 FC 1364 and *R.Q. v. Minister of Employment and Social Development*, 2016 SSTADIS 109.

**No jurisdiction to render a decision on grounds of fairness, financial hardship or extenuating circumstances**

[14] I am sympathetic to the Claimant's circumstances. However, I do not have the ability to render decisions on grounds of fairness, financial hardship or extenuating circumstances<sup>17</sup>.

**CONCLUSION**

[15] The appeal is summarily dismissed.

Shannon Russell  
Member, General Division - Income Security

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<sup>17</sup> *Carter v. Canada (Attorney General)*, 2008 FC 1046 and *S.S. v. Minister of Employment and Social Development*, 2018 SST 705