



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. P. v Minister of Employment and Social Development*, 2020 SST 510

Tribunal File Number: GP-19-1472

BETWEEN:

R. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: Anne S. Clark

Teleconference hearing on: February 19, 2020

Date of decision: March 3, 2020

DECISION

[1] The Claimant is not entitled to have her *Canada Pension Plan* (CPP) disability pension paid earlier than June 2016.

OVERVIEW

[2] The Minister received the Claimant's application for a disability pension on May 15, 2017. The Minister approved the application and determined the Claimant's benefits would begin in June 2016. The Claimant requested the Minister reconsider the effective date of her benefits. Her request was late and the Minister refused to reconsider the initial decision. The Claimant appealed to the Tribunal. The Tribunal allowed her appeal and ordered the Minister to reconsider the initial decision. During the reconsideration process, the Claimant raised an issue of incapacity under the CPP when she stated she was not capable of filing her application earlier than May 2017. The Minister denied the request on reconsideration because the Claimant received the maximum amount of retroactive benefits and was not entitled to additional benefits. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE

[3] Was the Claimant incapable of forming or expressing an intention to make an application before May 2017 making her entitled to additional retroactive disability benefits?

ANALYSIS

[4] The CPP states that a person cannot be deemed disabled more than 15 months before making an application for a disability pension.¹ The Claimant applied for the disability pension in May 2017. She was deemed disabled in February 2016, which is 15 months before the month she applied. The Minister used that date to calculate her retroactive benefits.

¹ *Canada Pension Plan* s. 42(2)(b)

[5] The CPP provides an exception to the 15-month retroactivity rule. The Claimant may be paid additional retroactivity if she was incapable of forming or expressing an intention to make an application before the day on which she made the application.²

Incapacity under the CPP

[6] To prove she meets the definition of incapacity the Claimant must show she was unable to form or express the intention to apply for benefits before the date she actually did. Medical evidence about her disability during the claimed period of incapacity is important. It is also important to consider the Claimant's other activities during the period because they may demonstrate her capacity to form or express an intention to apply.³

The Claimant's disability

[7] The evidence on file and the Claimant's testimony confirm she had a debilitating mental health condition beginning around 1985 when she was 21 years old. The test for incapacity is only satisfied if there is a period of time she could not form the intention or communicate the intention to apply for benefits. Evidence of her disability does not prove incapacity if there is no evidence she could not form or express the intention to apply. The evidence on file and the Claimant's testimony do not show a period when she met the definition of incapacity.

[8] The Claimant stated her period of incapacity began around 1985 when she was 21 years old. It continues today but is limited to periods of six to seven days – three to four times every year. She said her mental health caused the incapacity. She was depressed and not thinking clearly. She described herself as a prisoner in her own home. Her age also contributed to the incapacity. She did not have the knowledge to understand what she needed to do for herself. She believed she would eventually recover and did not know about the rules or processes related to disability benefits. She did not know disability benefits were available to people with mental disabilities. She now knows she would have qualified for a disability pension when she first

² *Canada Pension Plan* s. 60(9)

³ *Morrison v. Canada (Minister of Human Resources Development)*, 1997 CarswellNat 3378

developed disabling symptoms. Therefore, she believes she should be entitled to more retroactive benefits if not the full amount.

[9] The Claimant said she became very ill in 1985 when she first developed symptoms of depression and anxiety. She was unable to work and could not do much to take care of herself. She could not leave her home unaccompanied and relied on family members to help her with her day-to-day activities. After the first year or two, her medication began to help but she continued to struggle to maintain what she considered a normal life. She had a very difficult time understanding her illness but she continued to try to work for brief periods.

[10] The Claimant's disability is not in dispute. The Minister agreed she is entitled to disability benefits because she has a severe and prolonged disability within the meaning of the CPP. The Claimant's family physician has been treating her for depression and severe anxiety for over 17 years. Her symptoms include trouble concentrating; problems breathing; and pain. She must "put off" household activities when she has low energy⁴.

The Claimant's activities during the claimed period

[11] In addition to the medical evidence, it is important to consider the Claimant's activities during the time when she claims she was incapable of forming or expressing the intention to apply for benefits. Her activities can help determine whether she lacked the capacity as defined by the CPP.⁵ The capacity to form or express an intention to make an application is not different from the capacity to make other choices. The Claimant's activities before she applied for disability benefits do not demonstrate that she was unable to form or express the intention to apply for benefits.

[12] The fact that a particular choice may not present itself to a person because of the person's world view does not indicate the lack of capacity⁶. The Claimant attributes some of her incapacity to the fact that she was only 21 or 22 years old when she became severely ill and she did not understand the rules about disability benefits. The rule about incapacity as it relates to retroactive benefits focus on whether the Claimant could form or express an intention to make an

⁴ See GD2-167 for the complete report.

⁵ *Slater v. Canada (Attorney General)*, 2008 FCA 375

⁶ *Sedrak v. Canada (Social Development)*, 2008 FCA 86

application. They do not require her to have the knowledge or capacity to complete or file the documents.⁷

[13] The Claimant described her usual activity during the years after she became sick and before May 2017. She was married in 1992 and had two children – one born in 1994 and one in 1998. She was the primary caregiver for her sons and they remain the center of her life. She and her spouse separated around 2010 and later divorced. She continued to have primary care and custody of her sons. The Claimant made day-to-day decisions for herself and the children. She made her own legal and medical decisions. The only exception is that her ex-spouse always paid the household bills and continues to do so.

[14] The Claimant talked about how her mental health affected her and her children particularly when she could not leave the house or take the children to school. Even with the symptoms of her illness and side effects from medication, she was able to continue to provide for her sons and did not have to ask others to take over their care. The Claimant still lives alone and manages her personal and household decisions with the exception of paying household bills. At times, she gets help from others to shop for groceries. During the claimed period of incapacity, the Claimant made all other decisions such as hiring and instructing a lawyer; meeting with health care professionals and making decisions about ongoing care; setting rules and making decisions for her children.

[15] The Claimant described devastating struggles she experienced when she first became ill and from time to time since. She continues to experience periods of increased symptoms several times a year. She showed great strength and perseverance to take care of herself and her sons while living with a severe disability. Unfortunately, the severity of her condition does not make her entitled to additional benefits.

[16] The Tribunal is created by legislation and, as such, only has the powers granted to it by the governing statutes. This means I am required to interpret and apply the provisions as they are set out in the CPP. I understand the Claimant has been disabled and struggled with her health for

⁷ *Canada (Attorney General) v. Danielson*, 2008 FCA 78

many years but I cannot consider extenuating circumstances to disregard mandatory provisions under the CPP.

CONCLUSION

[17] The Claimant's description of her condition and her activities and the evidence on file do not prove on a balance of probabilities that she was, for any period, incapable of forming or expressing an intention to make an application before May 2017. Therefore, she is not entitled to additional retroactive disability benefits.

[18] The appeal is dismissed.

Anne S. Clark
Member, General Division - Income Security