



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. L. v Minister of Employment and Social Development*, 2020 SST 281

Tribunal File Number: AD-20-35

BETWEEN:

**M. L.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Shirley Netten

DATE OF DECISION: April 2, 2020

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed. The General Division did not have jurisdiction over the issue of eligibility for the post-retirement disability benefit (PRDB). I am changing the General Division decision to reflect this.

### OVERVIEW

[2] M. L. (Claimant) began receiving her Canada Pension Plan (CPP) retirement pension in September 2014. In early 2018, she applied for a CPP disability pension. Service Canada<sup>1</sup> denied the application because the Claimant was too late to cancel her retirement pension in favour of a disability pension. Service Canada denied the Claimant's request for reconsideration for the same reason, in September 2018.

[3] The Claimant appealed this reconsideration decision to the Social Security Tribunal's General Division, in November 2018. The Minister argued that the Claimant's appeal should be dismissed on the issues of entitlement to the disability pension as well as eligibility for the PRDB. The General Division agreed. The General Division decided that the Claimant could not cancel her retirement pension in favour of a disability pension and that she was not eligible for the PRDB.

[4] The Claimant then appealed to the Appeal Division, pointing out that she had not received a decision from Service Canada about her application for the PRDB. She asked why she hadn't been given the opportunity to appeal such a decision, and how it was that the General Division "arbitrarily assume[d] that they have the authority to decide my eligibility."<sup>2</sup> In this way, the Claimant raised the question of whether the General Division acted beyond its jurisdiction. I have concluded that the General Division did exceed its jurisdiction by deciding the Claimant's eligibility for the PRDB.

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<sup>1</sup> On behalf of the Minister of Employment and Social Development (Minister).

<sup>2</sup> AD1-12

## ISSUE

[5] The Claimant accepts the General Division's decision that she was too late to cancel her retirement pension in favour of a disability pension. The issue in this appeal is whether the General Division exceeded its jurisdiction when it decided the Claimant's eligibility for the PRDB.

## ANALYSIS

[6] One of the grounds of appeal to the Appeal Division is that the General Division "acted beyond or refused to exercise its jurisdiction."<sup>3</sup>

[7] The General Division assumed that it had jurisdiction over the PRDB. Paragraph 9 of the General Division decision states:

The PRDB was not covered in the Respondent's reconsideration decision which prompted this appeal. However, the Respondent addressed this benefit in its submissions of January 11, 2019. Given these submissions, and in the absence of an argument to the contrary, I assume that I have the authority to decide the Claimant's eligibility for the PRDB.

### **The General Division's jurisdiction is limited to appeals of reconsideration decisions.**

[8] The Tribunal's jurisdiction (its power or authority to decide certain matters) comes from the legislation. The *Canada Pension Plan* gives the Tribunal jurisdiction over parties' appeals of certain decisions made by the Minister:<sup>4</sup>

**82 A party who is dissatisfied with a decision of the Minister made under section 81**, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, **may appeal the decision to the Social Security Tribunal** established under section 44 of the *Department of Employment and Social Development Act*. [emphasis added]

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<sup>3</sup> *Department of Employment and Social Development Act*, s 58(1)(a).

<sup>4</sup> *Canada Pension Plan*, s 82.

[9] The Minister's decision "under section 81" is its reconsideration decision. This section gives claimants the right to request and receive a reconsideration decision from the Minister<sup>5</sup> if they are dissatisfied with an initial decision about an application for benefits.<sup>6</sup>

[10] The *Department of Employment and Social Development Act* (DESDA) gives the Tribunal's General Division the authority to decide the appeals of the Minister's reconsideration decisions.<sup>7</sup>

**There was no reconsideration decision specifically about the PRDB.**

[11] The PRDB is a new benefit that became available January 1, 2019. The Claimant did not and could not have applied for the PRDB when she applied for the disability pension in early 2018, because the PRDB didn't exist at that time. The September 2018 reconsideration decision says that the Claimant's application for CPP disability benefits was denied because she applied more than 15 months after starting her CPP retirement pension. It does not mention the PRDB.

[12] The Claimant requested the PRDB in January 2019. She did not receive a decision from Service Canada in response to this request. Without an initial decision, she could not request or receive a reconsideration decision under section 81. Consequently, there was no reconsideration decision specifically about the PRDB for the Claimant to appeal to the General Division.

**The Minister did not deem<sup>8</sup> its submissions to be its reconsideration decision.**

[13] If the Claimant had asked the General Division to add the PRDB issue to her existing appeal, the Minister could have deemed its submissions to be its initial and reconsideration decisions about the PRDB, with the Claimant's agreement. However, the Claimant did not express any interest in having the General Division address the PRDB issue and, in any case, the General Division did not propose this option to the parties. As a result, there was no deemed reconsideration decision about the PRDB under appeal at the General Division.

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<sup>5</sup> Service Canada usually makes the initial and reconsideration decisions on behalf of the Minister.

<sup>6</sup> *Canada Pension Plan*, ss 60, 81(1)(b), 81(2).

<sup>7</sup> DESDA, ss 52–54.

<sup>8</sup> To "deem" in law means to treat something as if it were something else.

**The 2018 reconsideration decision did not encompass or implicitly address the PRDB.**

[14] The Minister’s representative says that the General Division acted within its jurisdiction in deciding on the Claimant’s eligibility for the PRDB. To support this, she explains why the September 2018 reconsideration decision under appeal did not address the PRDB:

- The reconsideration decision pre-dated the coming into force of the PRDB;
- The reconsideration decision pre-dated the Claimant’s application for the PRDB; and
- The denial of the CPP disability application in 2018 made the Claimant ineligible for the PRDB because eligibility for the PRDB is dependent on eligibility for a CPP disability pension.

[15] The reasons why the reconsideration decision did not address the PRDB are irrelevant to the question of whether there was a PRDB decision that “the Minister made under section 81” and that the Claimant had appealed to the Tribunal.

[16] The Minister’s representative appears to be suggesting that a separate reconsideration decision is not required for the PRDB, because of its close relationship to the disability pension. She describes the PRDB as “not a separate benefit from the CPP disability pension” and “a subset type of CPP disability.” She emphasizes that “an applicant who is ineligible for CPP disability is not eligible for the PRDB.”<sup>9</sup> I believe that the Minister’s representative is arguing that a decision about the disability pension automatically or implicitly covers the issue of eligibility for the PRDB.

[17] The Tribunal should take a broad approach to its jurisdiction, within the limits of the law,<sup>10</sup> to manage appeals fairly and efficiently. Reconsideration decisions are not always detailed, and it is sometimes necessary to consider the underlying requests and decisions to determine the scope of the reconsideration.<sup>11</sup> However, I cannot agree that the reconsideration decision in this appeal encompasses or implicitly addresses the issue of eligibility for the PRDB.

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<sup>9</sup> AD8-2,3

<sup>10</sup> *Canada Pension Plan*, s 82; DESDA, s 54.

<sup>11</sup> See, for example, *Fu v Canada (Attorney General)*, 2019 FC 527.

[18] I recognize that Service Canada now asks people to use the same application form for the disability pension and the PRDB.<sup>12</sup> This does not mean that the PRDB is the same benefit or that an entitlement decision specific to the PRDB is not required. Section 44 outlines the various benefits payable under the *Canada Pension Plan*. Within that section, the PRDB is distinct from the disability pension and the other available benefits.<sup>13</sup> Not all of the eligibility criteria are the same.<sup>14</sup> And, the amount of the PRDB is calculated differently from the amount of the disability pension.<sup>15</sup>

[19] Eligibility and ineligibility for the disability pension and the PRDB don't go hand in hand. A person can't receive both benefits at the same time. A person who is ineligible for the disability pension may or may not be eligible for the PRDB. It's true that a person who isn't disabled can't receive either benefit.<sup>16</sup> But, if a person isn't entitled to the disability pension for other reasons, they may nevertheless be entitled to the PRDB, if they meet all of the requirements.

[20] The Minister's representative is mistaken when she says that the denial of the Claimant's disability application made her ineligible for the PRDB. Service Canada denied the 2018 application for disability benefits because the Claimant was receiving a retirement pension and could not cancel it. This did not make her ineligible for the PRDB. Receiving a retirement pension is actually one of the requirements to get the PRDB.<sup>17</sup> Indeed, the Minister's submission to the General Division was that the Claimant was ineligible for the PRDB for a completely different reason.<sup>18</sup>

[21] To summarize, the PRDB is a distinct benefit, and a decision on the disability benefit is not necessarily determinative of eligibility for the PRDB. It can't be assumed that a reconsideration decision about the disability pension also covers the PRDB. Moreover, the

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<sup>12</sup> The same form is also used to for the disabled contributor's child's benefit.

<sup>13</sup> The retirement pension, death benefit, survivor's pension, disabled contributor's child's benefit, orphan's benefit, and post-retirement benefit.

<sup>14</sup> *Canada Pension Plan*, ss 44(1)(b), 44(1)(h).

<sup>15</sup> *Canada Pension Plan*, ss 56, 59.2. The disability pension consists of a flat rate plus 75% of a retirement pension. The PRDB consists of a flat rate only; it is paid on top of the retirement pension.

<sup>16</sup> Being disabled is a requirement for both benefits: *Canada Pension Plan*, ss 44(1)(b), 44(1)(h).

<sup>17</sup> *Canada Pension Plan*, s 44(1)(h).

<sup>18</sup> That she did not meet the contributory requirement at the relevant time.

reconsideration decision in this particular appeal could not have included an implicit decision about the PRDB: the reason for the denial of the disability pension did not preclude eligibility for the PRDB, and the PRDB did not exist when the decision was made.

**The General Division exceeded its jurisdiction.**

[22] The September 2018 reconsideration decision that the Claimant appealed to the General Division was about the denial of a disability pension. As set out above, that reconsideration decision neither explicitly nor implicitly addressed the Claimant's eligibility for the PRDB. There is no deemed or other reconsideration decision that addressed the Claimant's eligibility for the PRDB. Since the General Division's jurisdiction over CPP matters is limited to appeals of reconsideration decisions made by the Minister, I conclude that the General Division acted beyond its jurisdiction when it decided the Claimant's eligibility for the PRDB.

**Remedy**

[23] When the General Division makes an error of jurisdiction, the Appeal Division can (among other things) change the General Division decision. This is the most effective remedy in this appeal.

[24] I am changing the General Division decision to remove all references to the issue of the Claimant's eligibility for the PRDB. Specifically, I am removing the phrase "and (2) the Claimant does not meet the eligibility requirements for the Post-Retirement Disability Benefit (PRDB)" in paragraph 3, and all of paragraphs 9, 10, and 11, from the decision.<sup>19</sup>

[25] What are the practical consequences of my decision? The Claimant applied for the PRDB in January 2019. The only thing she has received from Service Canada in response to that application is a copy of the General Division decision, in November 2019. She is entitled to an initial decision on her application for the PRDB from the Minister,<sup>20</sup> which does not consider or rely on the original General Division decision. The usual recourse will be available to the

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<sup>19</sup> When the Appeal Division changes a General Division decision on appeal, the original General Division decision is not actually corrected, reprinted or republished. The General Division and Appeal Division decisions must be read together to understand the final result.

<sup>20</sup> Or from Service Canada, on the Minister's behalf.

Claimant (Minister`s reconsideration followed by an appeal to this Tribunal) if she is dissatisfied with the decision and wishes to pursue the matter further.

[26] The Minister`s representative suggested a case conference to further review the PRDB eligibility requirements with the Claimant. This matter is now between the Claimant and the Minister. I encourage the Minister`s representative to discuss the PRDB requirements with the Claimant in the course of responding to her outstanding application.

**CONCLUSION**

[27] The appeal is allowed. I am changing the General Division decision to reflect the lack of jurisdiction on the issue of eligibility for the PRDB.

[28] The phrase “and (2) the Claimant does not meet the eligibility requirements for the Post-Retirement Disability Benefit (PRDB)” in paragraph 3, and all of paragraphs 9, 10, and 11, are removed from the decision.

Shirley Netten  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	M. L., Appellant  Sarah Rooney, Representative for the Respondent