



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. C. v Minister of Employment and Social Development*, 2020 SST 798

Tribunal File Number: GP-20-245

BETWEEN:

M. C.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Anne S. Clark

Date of decision: April 14, 2020

DECISION

[1] The Claimant applied to rescind or amend a Social Security Tribunal (Tribunal) decision dated August 27, 2019. I am dismissing her application. These are my reasons.

INTRODUCTION

[2] The Claimant applied for a *Canada Pension Plan* (CPP) disability pension on November 21, 2016. The Minister denied the application and the Claimant appealed to the Tribunal. The Tribunal held an in person hearing on August 19, 2019. On August 27, 2019, the Tribunal decided the Claimant was not entitled to a CPP disability pension. More specifically, the Tribunal decided the Claimant did not prove she was incapable regularly of pursuing any substantially gainful occupation on or before December 2003, the end of her minimum qualifying period (MQP).

[3] The Claimant filed an application on February 4, 2020 to rescind or amend the August 27, 2019 decision (Application).

PRELIMINARY MATTERS

Why I decided this appeal on the record.

[4] I may decide an appeal on the basis of documents and submissions filed or I may hold a hearing. The *Social Security Tribunal Regulations* (Regulations) permit either and provide guidance on how to choose. I should choose a process that is just, quick, least expensive and informal¹. A decision on the record is appropriate when the issues under appeal are not complex; there are no gaps or unanswered questions on file; and, credibility is not a main issue.

[5] The issue on appeal is not complex and there is enough information on file for me to decide the issue. The Minister's position was set out in the notes on file and in submissions. The Claimant filed written submissions with the Application. There is no indication that credibility is an issue on appeal. Proceeding on the record is fair and just. It is quick, least expensive and the most informal way to proceed.

¹ Sections 2, 28, and 48 of the *Social Security Tribunal Regulations*

ISSUE

[6] I may rescind or amend the August 27, 2019 decision if the Claimant presents a new material fact that could not have been discovered for the original hearing with the exercise of reasonable diligence².

[7] I have to decide if the Claimant has satisfied this test.

ANALYSIS

[8] The Claimant must prove on a balance of probabilities that the evidence she filed in support of the Application establishes a new material fact. A new material fact is one that existed at the time of the hearing and could not be discovered with the exercise of due diligence (discoverable). The new fact must also reasonably be expected to affect the result of the prior decision (material).³

DOCUMENTS SUBMITTED WITH THE APPLICATION

[9] The Claimant submitted the following documents in support of her application to rescind or amend:

- a) May 24, 2017 – Confirmation of referral to Pain Clinic
- b) August 20, 2014 – Notes regarding an assessment at a Dermatology Centre
- c) September 15, 2016 – Physician referral form for severe chronic back pain
- d) Documents from the Ministry file including initial adjudication summary and denial decision call record
- e) Various Clinic notes (SOAP) about the Claimant's ongoing medical appointments (June 11, 2014; July 22, 2014; November 11, 2014; April 1, 2015; October 19, 2015; February 18, 2016; April 5, 2016; April 14, 2016; July 25, 2016; August 2, 2016; September 14, 2016; May 9, 2017; August 3, 2017

² Paragraph 66(1)(b) and subsection 66(4) of the DESD Act

³ Paragraph 66(1)(b) of the DESD Act

- f) The Claimant's written explanation about the medical notes and her personal circumstances.

Application to Rescind or Amend – Discoverability and Materiality

The Law

[10] The Federal Court of Appeal (FCA) set out a test for evidence to be admissible as a “new fact” in relation to the CPP⁴.

- a) It must establish a fact (usually a medical condition in the context of the CPP) that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of due diligence (the “discoverability test”), and
- b) The evidence must reasonably be expected to affect the results of the prior hearing (the “materiality” test).

[11] In 2006, the Federal Court explained an applicant must provide evidence of what steps were taken to find the new evidence, and why it could not have been produced at the time of the hearing⁵.

[12] The FCA also confirmed in 2012 that the requirement that the fact be material means that it must be relevant to an applicant's ability to work on or before the end of the MQP⁶.

Information the Claimant submitted did not include a new material fact

[13] The information the Claimant submitted either was already on file or was information she could have obtained and submitted in the appeal with reasonable diligence. The adjudication summaries and record of the decision call were on file for the appeal. The notes appear to be records from the Claimant's medical appointments and other specialist referrals and appointments. The Claimant would have been aware of that information and there is no

⁴ *Canada (Attorney General) v. Macrae*, 2008 FCA 82. This decision was made under subsection 84(2) of the CPP, which has since been repealed and replaced with paragraph 66(1)(b) of the *Department of Employment and Social Development Act*. The new provision contains part of the test set out in *Macrae*. Since it did not change the law in any significant way, the rest of the test still applies.

⁵ *Carepa v. Canada (Minister of Social Development)*, 2006 FC 1319

⁶ *Taker v. Canada (Attorney General)*, 2012 FCA 39

explanation to show why she could not with the exercise of reasonable diligence obtain them for her appeal. The Claimant's notes explain why she believes the previous decision was incorrect and why she needs financial assistance. The Claimant did not provide evidence about her efforts to obtain her medical records or say why the records were not available for the appeal.

[14] The medical letters and clinic notes the Claimant filed with her application describe treatment and care for appointments well after the end of the MQP. They do not address the Claimant's health condition on or before December 31, 2003 and would therefore not be material to the question on appeal. Specifically, evidence of the Claimant's health and medical care in 2014 to 2016 could not reasonably affect the result of the appeal specifically whether she was disabled as defined by the CPP on or before December 31, 2003.

CONCLUSION

[15] The Claimant did not submit any new facts that could have reasonably affected the outcome of the August 27, 2019 decision.

[16] The Application is dismissed.

Anne S. Clark
Member, General Division - Income Security