



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v Minister of Employment and Social Development*, 2020 SST 316

Tribunal File Number: AD-20-578

BETWEEN:

J. M.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: April 16, 2020

REASONS AND DECISION

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] In January 2016, the Claimant applied for a Canada Pension Plan (CPP) disability pension, claiming that he could no longer work because of major depression. On that occasion, the Minister refused his application, initially and on reconsideration.¹

[3] The Claimant then applied for an early CPP retirement pension. The Minister approved that application as of June 2016, just after the Claimant turned 60.

[4] In April 2018, the Claimant applied for a CPP disability pension for a second time. In May 2018, the Minister refused the application because the Claimant had 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] In January 2019, the Claimant applied for CPP Post-Retirement Disability Benefit (PRDB). The Minister refused this application, initially and on reconsideration, because the Claimant did not have a minimum qualifying period (MQP) ending in January 2019 or later.³

[6] On this last application, the Claimant appealed the Minister's reconsideration decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by videoconference and, in a decision dated February 28, 2020, dismissed the appeal. The General Division found that it lacked jurisdiction to consider the Claimant's entitlement to the CPP disability pension, because the Claimant had never asked the Minister to reconsider its May 2018 refusal. The General Division also found that the Claimant was not entitled to the PRDB because his MQP ended on December 31, 2015—more than three years before the first possible date of eligibility.

¹ See Minister's reconsideration refusal letter dated June 1, 2016, GD2-26.

² See Minister's initial refusal letter dated May 10, 2018, GD2-43.

³ See Minister's reconsideration refusal letter dated May 18, 2019, GD2-63.

[7] The Claimant is now requesting leave to appeal from the Appeal Division. He maintains that his disability applications—particularly the first—were rejected because the government does not provide clear guidance on how to fill out its paperwork correctly. He argues that disabled persons like himself need considerable support to help them navigate a complex system.

[8] I have reviewed the record and the Claimant’s written submissions. I have concluded that none of the Claimant’s reasons for appealing justify overturning the General Division’s decision.

ISSUES

[9] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.⁴

[10] An appeal can proceed only if the Appeal Division first grants leave to appeal.⁵ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁶ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁷

[11] I had to decide the following questions:

Issue 1: Is there an arguable case that the General Division committed an error when it determined that it lacked jurisdiction to consider the Claimant’s disability claims?

Issue 2: Is there an arguable case that the General Division committed an error when it determined that the Claimant was not entitled to the PRDB?

⁴ The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

⁵ DESDA, sections 56(1) and 58(3).

⁶ DESDA, section 58(2).

⁷ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

ANALYSIS

Issue 1: Is there an arguable case that the General Division committed an error when it determined that it lacked jurisdiction to consider the Claimant's disability claims?

[12] I understand that applying for CPP benefits can be daunting for someone who is not familiar with the claims process. Unfortunately, I do not see how the Claimant's difficulties in pursuing benefits fall under any of the three permissible grounds of appeal to the Appeal Division.

[13] The Claimant has applied for the disability pension twice, first in January 2016 and again in April 2018. The Minister refused the first application, initially and on reconsideration, and the Claimant then had 90 days to file an appeal with the General Division.⁸ The Claimant did not do so within the required deadline. The Minister also refused the second application, and this time the Claimant did not ask for reconsideration.

[14] The General Division found that it did not have jurisdiction to consider either of the Claimant's disability applications. I see no arguable case that the General Division erred, either in law or fact, in arriving at this conclusion. First, the Claimant was well past the deadline to appeal the Minister's reconsideration refusal of the January 2016 application. Second, the Claimant did not request reconsideration of the Minister's refusal of the April 2018 application, so there was no basis on which to make an appeal to the General Division. Under section 82 of the *Canada Pension Plan*, a claimant cannot appeal to the Social Security Tribunal unless the Minister has first issued a reconsideration decision.

[15] It is certainly possible that the complexity of the claims process had something to do with the Claimant's failure to request reconsideration in his second disability application. However, the *Canada Pension Plan* explicitly requires a Minister's reconsideration decision before a matter can be brought to the General Division. The General Division is not a court but an

⁸ See section 52(1)(b) of the DESDA.

administrative tribunal, and it had no choice but to follow the letter of the law.⁹ As a member of the Appeal Division, I am under the same constraint.

Issue 2: Is there an arguable case that the General Division committed an error when it determined that the Claimant was not entitled to the PRDB?

[16] The PRDB came into effect in January 2019. It provides coverage to CPP retirement pensioners who have not reached age 65 and who become disabled on or after the date their retirement pension became payable. Citing section 44(1)(h) of the *Canada Pension Plan*, the General Division determined that, in order to receive a PRDB, a Claimant must have an MQP in January 2019 or later. Since the Claimant had not made any contributions to the CPP since 2012,¹⁰ the General Division found that his MQP ended on December 31, 2015, and he therefore did not qualify for the PRDB.

[17] I do not see an arguable case that the General Division committed either a legal or factual error in arriving at this conclusion. According to section 70.01 of the *Canada Pension Plan*, the PRDB is payable no earlier than the fourth month following the month after December 2018 in which the claimant became disabled. This suggests that the earliest possible date of onset for post-retirement disability is January 2019. In this case, the General Division found that the Claimant's MQP ended on December 31, 2015—before the Claimant became eligible for the retirement pension and before the PRDB came into effect.

⁹ *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278, among other cases, has confirmed that an administrative tribunal is not a court but a statutory decision-maker and, therefore, not empowered to provide any form of equitable relief.

¹⁰ See Claimant's Record of Earnings, GD6-7.

CONCLUSION

[18] Since the Claimant has not put forward any arguments that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.



Member, Appeal Division

REPRESENTATIVE:	J. M., self-represented
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