



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. F. v Minister of Employment and Social Development*, 2020 SST 509

Tribunal File Number: GP-19-263

BETWEEN:

R. F.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Claimant represented by: K. L.

Teleconference hearing on: April 16, 2020

Date of decision: April 24, 2020

DECISION

[1] The Claimant has received the maximum retroactive benefit allowed. The earliest month he can be considered disabled is July 2017.

OVERVIEW

[2] The Claimant said that he was diagnosed with a movement/conversion disorder in February 2008. He continued to work until November 2010 when he was no longer able to work because of his medical condition. He was hopeful that his condition was not permanent and he would have improvement that would allow him to return to work. However, this did not happen. The Claimant therefore applied for a CPP disability pension in October 2018.

[3] The Claimant was approved for a CPP disability pension based on his application of October 2018. He was considered to be disabled the maximum of 15 months from when the application was received. The 15 months maximum is July 2017. The Claimant appealed this arguing that he was disabled in November 2010 when he was no longer able to work. He asked that his disability status be dated back to November 2010.

[4] The Claimant and his representative confirmed that they were ready to proceed with the hearing. They also said they had no further documentation to submit and no documents had been sent to the Tribunal after March 1, 2020.

ISSUE IN THIS APPEAL

[5] A person who applies for a disability pension has to meet the requirements. These are set out in the law that deals with CPP disability benefits. First, you have to meet the contribution requirements. The legal term for this is the “minimum qualifying

period”¹. That is not a problem in this appeal. The Claimant’s minimum qualifying period is December 31, 2014.

[6] Second, you have to have a disability that is “severe and prolonged”². You have to have that disability on or before the date of the minimum qualifying period. The Minister agrees that the Claimant had a disability that was ‘severe and prolonged’ before December 31, 2014 and his application was approved.

[7] The issue that I have to decide is whether the Claimant is entitled to more retroactivity.

The Claimant has received the maximum retroactive payment that is allowed

[8] The Claimant has argued that he became disabled prior to July 2017. His representative submitted that the Claimant was disabled since December 2010.

[9] I find that although the Claimant may have been disabled before July 2017, his claim cannot be “backdated” as he has requested. The reason has to do with maximum retroactivity. What this means is that the earliest date for the start of a CPP disability pension is 15 months before the time of the making of any application.³ The Claimant’s CPP disability application was received in October 2018. Therefore, the earliest that the Claimant can be deemed to be disabled is July 2017, as this is the maximum 15 months that is allowed.

¹ It is found at Section 44(1)(b) of the *Canada Pension Plan* (CPP).

² This requirement is found at Section 42(2)(a) of the CPP.

³ This is explained in Section 42(2)(b) of the CPP.

[10] Payments begin 4 months after the deemed disability date. In this case, 4 months after July 2017 would be November 2017, which was in fact, when the Claimant began to receive his CPP disability payments.

[11] The Claimant's representative submitted that the Claimant "falls under the Section 69 provision of the CPP". He argued that this is because the Claimant was found to be disabled. Section 69 says nothing about "deemed" to be disabled. Therefore Section 42(2)(b) is not applicable to the Claimant. Unfortunately, this is not the case. Section 69 of the CPP sets out the general rule that a disability pension is payable from the fourth month after the Applicant became disabled. This is true. However, Section 42(2)(b) says that a "in no case shall a person – including a contributor referred to in subparagraph 44(1)(b)(ii) – be deemed to have become disabled earlier than fifteen months before the time of the making of any application..."

[12] The law is clear about when payments of a disability benefit start. If a person is disabled before the Minister receives the application, the rules are clear as to when payments begin. If the date of receipt of the application is within 15 months of the date of disability, payments start 4 months after the date when he became disabled. If the date of onset is before a date 15 months before the application is received, a deemed date of onset is determined by the legislation. This is the case in this appeal.

Definition – deemed date of disability

[13] The deemed date of disability is established by Parliament in the CPP legislation to limit the retroactive payments an eligible individual can receive. The date is calculated based on the date of application. The general rule is the earliest a person can be deemed disabled is 15 months before the Minister (or the "Department" or "Service

Canada”) received the disability application. This is in the federal legislation and I cannot change that date.⁴

[14] A deemed date of disability is not always required. It is only required if a Claimant applied for a disability pension more than 15 months after the date of onset of disability. That is the case here.

The date of payment

[15] The date of payment is the date from which a Claimant is entitled to start receiving the monthly disability pension. The general rule is that payments start 4 months after the deemed date of disability (if one was required), otherwise, the date of onset.⁵ The combination of the deemed date of disability and the date of payment limitations results in 11 months of retroactivity.

[16] In this case, the deemed date of disability, based on the legislation, is July 2017. The date of payment is November 2017, four months after the deemed date of disability.

There is no evidence to support any period of incapacity

[17] The Claimant has not claimed that he was incapable of forming or expressing an intention to apply for the CPP disability benefit before October 2018. There is also no evidence to suggest that incapacity may be an issue in this case.

[18] However, if the Tribunal finds that the Claimant was incapable of forming or expressing an intention to apply for CPP disability for a period before he actually made the application in October 2018, it can deem that the application was made in the month that his period of incapacity began. The relevant period of potential incapacity is

⁴ 42(2)(b) CPP – Deemed date of disability

⁵ 69 CPP – Date of Payment

from December 2010 (when the Claimant claims to have been disabled) to October 2018 (when he applied for CPP disability). I do not find evidence to support that the Claimant lacked the capacity to form or express the intention to apply for the CPP disability benefit prior to October 2018.

[19] The word capacity should be given its ordinary meaning.⁶ The meaning is precise and focused. It does not mean the Tribunal should consider the capacity to make, prepare, process, or complete an application for disability benefits. The Tribunal must consider only the capacity, quite simply, of forming or expressing an intention to make an application.⁷

[20] There is no medical evidence to support incapacity. The Claimant's family doctor described the Claimant's medical condition and his functional limitations. These included "unable to sit or stand more than a few moments. Tremor goes away when lying down."⁸ There is no suggestion that the Claimant had any cognitive limitations.

[21] Further, on his disability application, he said the reason he was unable to work was because of his "movement disorder, severe tremor sitting or standing".⁹ He made the decision in November 2010 to stop working because he felt he posed a danger when driving a vehicle.

[22] The Claimant told me that he had saved money for his retirement. His parents were both elderly and ill and he anticipated a small estate. For these reasons, at this time, he was not worried about an income. He was also hopeful that he would return to work.

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

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

⁸ The family doctor's report is at GD 2-7

⁹ The application is at GD 2-27

[23] He discussed his financial situation with his representative. He made the decision to allow his friend to represent him during the appeal process. It was his belief that he did not qualify for the CPP disability pension based on information he had previously received. After consulting and discussions with his representative (who is also his friend), he made the decision to apply for the CPP disability pension.

[24] I considered that the Claimant said he had difficulty making decisions, difficulty with memory and confusion. However, the Claimant did apply for the Assured Income for the Severely Handicapped (AISH) program in February 2011. He said he was denied because of his financial situation. He also made his first inquiry about the CPP disability program at that time.

[25] All of these decisions support that the Claimant did not lack the capacity to form or express the intention to apply for the CPP disability benefit prior to October 2018.

[26] The Claimant said that he was told by a representative of AISH in February 2011 that he would not qualify for the CPP disability pension. While I am sympathetic to the Claimant's situation, I do not have the jurisdiction to determine erroneous advice or an administrative error.

Financial hardship

[27] The Claimant testified that he is experiencing financial hardship, as he has had not income since 2011.¹⁰ While I am sympathetic to the Claimant's situation, financial hardship is not relevant to the determination of eligibility for a disability pension. It is not a basis on which disability benefits are paid.¹¹

¹⁰ The Claimant's notice of appeal is at GD 1-5

¹¹ *Canada (MHRD) v. Rice*, 2002 FCA 47

CONCLUSION

[28] The Claimant has received the maximum retroactive date allowed to him. The result is that his appeal is dismissed.

Connie Dyck
Member, General Division - Income Security