



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AG v Minister of Employment and Social Development*, 2020 SST 926

Tribunal File Number: GP-19-1704

BETWEEN:

A. G.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Teleconference hearing on: June 2, 2020

Date of decision: June 8 2020

DECISION

[1] The Claimant (A. G.) is not entitled to have his *Canada Pension Plan* (CPP) disability pension paid earlier than May 2017.

OVERVIEW

[2] The Minister received the Claimant's application for a disability pension on April 3, 2018. The Minister approved the application and determined the Claimant's date of onset was January 2017. The full fifteen months retroactivity was allowed. Payments began four months later on May 2017. The Claimant appealed this decision. He disagreed with the Minister's finding that he was not incapacitated prior to the submission of his CPP disability application¹. The Claimant has appealed to the Social Security Tribunal.

ISSUE

[3] Was the Claimant incapable of forming or expressing an intention to make an application before April 2018 making him 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 pension². The Claimant applied for the disability pension in April 2018. He was deemed disabled in January 2017, which is 15 months before the month he applied. The Minister used that date to calculate his retroactive benefits.

[5] The CPP provides an exception to the 15-month retroactivity rule. The Claimant may be paid additional retroactivity if he was incapable of forming or expressing an intention to make an application before the day on which he made the application³.

¹ The Claimant's argument is found at GD 1-5

² *Canada Pension Plan* s. 42(2)(b)

³ *Canada Pension Plan* s. 60(8-10)

Incapacity under the CPP

[6] To prove he meets the definition of incapacity the Claimant must show he was unable to form or express the intention to apply for benefits before the date he actually did. Medical evidence about his 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 capacity to form or express an intention to apply⁴.

The Claimant's disability

[7] The evidence on file shows that the Claimant suffers from post-traumatic stress disorder, depression and anxiety. The test for incapacity is only satisfied if there is a period of time he could not form the intention or communicate the intention to apply for benefits. Evidence of his disability does not prove incapacity if there is no evidence he could not form or express the intention to apply. The evidence on file and the Claimant's testimony do not show a period when he met the definition of incapacity.

[8] A Declaration of Incapacity completed by Dr. Rai says that the Claimant's incapacity began in September 2010. It was unknown when the incapacity ceased⁵. The Claimant said he has suffered for many years because of childhood trauma. He did not feel he was able to speak about the abuse he endured or to seek professional help until 2012 when he told his family doctor⁶. He self-medicated his anxiety and memories of abuse with marijuana.

[9] The Claimant's disability is not in dispute. The Minister agreed he is entitled to disability benefits because he has a severe and prolonged disability within the meaning of the CPP. I do not discount or disbelieve any of the testimony of the Claimant. I believe he has suffered for many years because of the abuse he endured. However, the test before me is quite specific. It is not

⁴ *Morrison v. Canada (Minister of Human Resources Development)*, 1997 Carswell Nat 3378

⁵ The Declaration of Incapacity is at GD 2-55.

⁶ This is at GD 2-119

whether the Claimant was disabled, but rather whether he was incapable of forming or expressing the intention to apply for benefits.

The Claimant's activities during the claimed period of incapacity

[10] In addition to the medical evidence, it is important to consider the Claimant's activities during the time when he claims he was incapable of forming or expressing the intention to apply for benefits. His activities can help determine whether he lacked the capacity as defined by the CPP⁷. The capacity to form or express an intention to make an application is not different from the capacity to make other choices.

[11] I find that the Claimant's activities before he applied for disability benefits do not demonstrate that he was unable to form or express the intention to apply for benefits.

[12] He told me that he was involved in the family business since he was 15 years old until about 2009. He said in 2010, he worked outside of the family business for the first time ever. A man offered him over \$100,000 to come and work for him. The Claimant said he was not in a good mental condition at that time, but he accepted the job. It only lasted for 6 months and ended June 1, 2010⁸. The fact that he made the decision to stop working for his family, and start a new job is a decision that shows capacity.

[13] He told me that he has made the decision to not tell his family about the abuse he suffered. He decided to tell his family doctor in 2012. He told me that this had been his doctor for decades and he although he had a long relationship with him, including providing him with stock tips, he was not comfortable sharing that he had been abused. While I can appreciate the difficulty sharing such personal information would cause, these are all decisions that the Claimant made. He attended appointments on his own and was solely in charge of making decisions related to his care.

⁷ *Slater v. Canada (Attorney General)*, 2008 FCA 375

⁸ This information was provided by the Claimant at the hearing and is at GD 2-164.

[14] To the Claimant's credit, he did decide to hold people accountable for the actions of the abuser. In 2014, he decided to tell a Brother of the Collegiate. He told me that he was friends with this brother and he wanted to talk to him before filing a legal claim. He told me that he was given a lot of "solace" and encouraged to move forward with the claim. The decision to consult with the Brother of the Collegiate before pursuing legal action, shows a clear though out decision.

[15] The Claimant told he was on the internet one day and saw a particular law firm provided help to people who had been sexually abused. The Claimant said he waited a few months and then met with the lawyers. He eventually hired lawyers to help him pursue legal action. On April 2, 2015 a Statement of Claimant was filed and on November 20, 2015, a Statement of Defence was filed⁹. The hiring of a lawyer, providing instructions to the lawyer and proceeding with the lawsuit, all support the Claimant's ability to make decisions, showing capacity.

[16] The Claimant's lawyers referred him for a psychological assessment in June and July 2017.¹⁰ The Claimant gave his consent to the psychologist to proceed with the examination. The Claimant described his family and living arrangements, his family background, issues pertaining to education, employment and substance use¹¹.

[17] The Claimant told me that he made the decision to give away the money he was awarded. He chose to give it to individual people that he knew who were in financial need.

[18] The Claimant filed a CPP disability application on April 3, 2018. He told me that he had help from his daughter because he has difficulty reading and completing forms. He told me this has always been the case, even when he was in university.

CONCLUSION

[19] I am sympathetic to the Claimant's situation. I understand that his life has been impacted by the abuse he suffered. There is no dispute that he is disabled. However, the test before me is

⁹ This information is at GD 2-74.

¹⁰ The psychological assessment is at GD 2-64.

¹¹ This is noted by the psychologist at GD 2-73.

whether he was incapable of forming or expressing the intention to apply for the CPP disability benefits sooner than he did in April 2018.

[20] The Claimant's description of his condition and his activities and the evidence on file do not prove on a balance of probabilities that he was, for any period, incapable of forming or expressing an intention to make an application before April 3, 2018. Therefore, he is not entitled to additional retroactive disability benefits.

[21] The appeal is dismissed.

Connie Dyck
Member, General Division - Income Security