



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AS v Minister of Employment and Social Development*, 2020 SST 1168

Tribunal File Number: GP-19-1989

BETWEEN:

A. S.

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: June 9, 2020

DECISION

[1] The Claimant is entitled to have her late request for reconsideration determined according to the rules set out in the *Canada Pension Plan (CPP)* and *the Canada Pension Plan Regulations (CPP Regulations)*. My reasons are explained in this decision.

OVERVIEW

[2] The Claimant applied for a CPP disability pension on May 7, 2012.¹ The Minister denied her application on September 7, 2012.² The Claimant did not request the Minister reconsider that decision.

[3] The Claimant filed a second application for disability benefits on May 14, 2015.³ The Minister denied her application on September 9, 2015.⁴ The Claimant's representative filed a request for reconsideration on August 18, 2016.⁵ The Minister denied the request because it was late.⁶ The Claimant did not appeal further.

[4] The Claimant filed a third application for disability benefits on December 12, 2016.⁷ The Minister approved her application and found she was entitled to disability benefits effective January 2016. On April 24, 2019, the Claimant requested the Minister reconsider the September 7, 2012 decision and change the effective date of her benefits.⁸ Specifically the Claimant requested the Minister pay her disability pension as of May 2012 when she first applied.

[5] On July 4, 2019, the Minister denied the Claimant's request for a reconsideration of the September 2012 decision because it was late. The Claimant appealed the denial to the Social Security Tribunal.

¹ GD2-229

² GD2-225

³ GD2-160

⁴ GD2-155

⁵ GD2-142

⁶ GD2-140

⁷ GD2-55

⁸ GD2-24

Why the appeal cannot address the Claimant's application for disability benefits.

[6] I cannot determine the Claimant's entitlement to additional or different benefits. She raised several questions including the following: whether she is entitled to an earlier effective date for her disability benefits; proof of how the CPP invests contributions; whether she is entitled to receive her benefits in a lump sum; and, how she can be expected to live considering her personal financial and living arrangements. Unfortunately, this appeal cannot answer any of those questions.

[7] The September 7, 2012 decision and the issues the Claimant raised about it are not a part of this appeal. A party may appeal to the Tribunal from a reconsideration decision or a refusal to allow a longer period to request reconsideration.⁹ The September 7, 2012 decision was not a reconsideration decision. In July 2019, the Minister refused to allow the Claimant a longer period to request reconsideration. That is what this appeal is about.

ISSUE

[8] Did the Minister exercise its discretion judicially when deciding the Claimant was not entitled to a longer period to request a reconsideration of the September 7, 2012 decision?

ANALYSIS

What is required of the Minister when exercising discretion?

[9] The authority of the Minister to allow or refuse additional time to make a late request for reconsideration is discretionary. Specifically, the Minister **may** allow a longer period but is not **required** to do so.¹⁰ The CPP Regulations set out the relevant circumstances the Minister must consider when deciding whether to allow a longer period for the person to request reconsideration.¹¹

[10] The law requires the Minister to follow a detailed procedure when a claimant files a late reconsideration request. A claimant who is dissatisfied with a decision normally has 90 days to

⁹ Sections 81 and 82 *Canada Pension Plan*

¹⁰ Subsection 81(1) *Canada Pension Plan*

¹¹ Section 74.1 *Canada Pension Plan Regulations*

ask the Minister to reconsider the decision. The Minister may allow a longer period to request reconsideration if satisfied that (i) there is a reasonable explanation for requesting a longer period and (ii) the person demonstrated a continuing intention to request a reconsideration.¹²

[11] If the reconsideration request comes more than 365 days after the claimant was notified of the decision, the Minister must also be satisfied that (i) the request has a reasonable chance of success and (ii) no prejudice would be caused to any party by allowing a longer period to make the request.¹³ The Minister must consider all four criteria and be satisfied that all are met.¹⁴ The decision of the Minister to grant or refuse a late reconsideration request is a discretionary decision but the discretion must be exercised judicially.¹⁵

[12] A discretionary power is not exercised “judicially” if it can be established that the decision-maker:

- a) acted in bad faith,
- b) acted for an improper purpose or motive,
- c) took into account an irrelevant factor,
- d) ignored a relevant factor, or
- e) acted in a discriminatory manner.¹⁶

I cannot conclude the Minister exercised the discretion judicially

[13] The CPP requires the Minister to provide reasons for its decisions.¹⁷ The Minister requested the Claimant respond to questions and said her answers were considered.¹⁸ However, the letter refusing her request does not explain why the Minister denied her request. Because there are no reasons, it is not possible to for me to know what the Minister considered in

¹² Section 74.1(3) *Canada Pension Plan Regulations*

¹³ Section 74.1(4) *Canada Pension Plan Regulations*

¹⁴ *Lazure v Canada (Attorney General)*, 2018 FC 467.

¹⁵ *Canada (A.G.) v. Uppal*, 2008 FCA 388

¹⁶ *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

¹⁷ Subsection 81(2) *Canada Pension Plan*

¹⁸ See GD2-14 and 17

deciding to refuse to allow a longer period for the Claimant to request a reconsideration. I cannot determine if the Minister considered irrelevant factors or failed to consider relevant factors. I cannot determine if the Minister acted in bad faith, for an improper purpose or motive, or in a discriminatory manner. For those reasons, I cannot conclude the Minister's discretion was exercised judicially.

Why I decided this appeal on the record.

[14] I can decide an appeal on the basis of documents and submissions filed or I can hold a hearing. Tribunal Regulations permit either and provide guidance on how to choose. I should choose a process that is just, quick, least expensive and informal.¹⁹ 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.

[15] The issue on appeal is not complex. It is limited to the question of whether the Minister considered the late request judicially. There is a complete record of the relevant letters and decisions on file. The Minister's position was set out in the notes on file and the Claimant made written submissions on the question on appeal. There is no indication that credibility is an issue on appeal. Proceeding on the record is fair and just. It is quick, the least expensive and the most informal way to proceed.

The Claimant was not available to discuss her appeal.

[16] The Claimant declined to provide any contact information except her mailing address. She required all communication to be in writing. The Tribunal wrote to the parties to inform them they could make written submissions on the question of whether the Minister should have considered the Claimant's late request for the Minister to reconsider the September 2012 decision. The Claimant sent letters in February and March 2020. She said she had no further documents or evidence to submit.

[17] In her March letter the Claimant stated in part that she "...reserves the right to a de jure appeal..." The Tribunal attempted to contact the Claimant to confirm her appeal would proceed

¹⁹ Sections 2 and 28 of the *Social Security Tribunal Regulations*

on the basis of evidence and submissions filed. Unfortunately, the letter could not be delivered as the Claimant moved. Claimants are required to file any change in their contact information without delay.²⁰ Since she did not provide up to date contact information the Tribunal could not reach her to inform her the appeal would proceed on the basis of the evidence and documents on file.

The appeal should not be delayed

[18] I am satisfied the appeal should continue and a decision on the basis of the evidence and material on file is the most fair and just way to proceed. I am not satisfied the appeal should be delayed because the Claimant failed to maintain contact with the Tribunal.

[19] The Claimant was aware of the question to be addressed in the appeal. She had the opportunity to make submissions and provide information. She filed information and said she had nothing more to submit. It was the Claimant's choice to communicate only in writing and she failed to give the Tribunal her current contact information. There may be a delay in communicating the decision to the Claimant but that is a direct result of her choice to only communicate by mail. She will receive a copy of the decision when she contacts the Tribunal and provides her contact information.

CONCLUSION

[20] The appeal is allowed. The Minister's decision to refuse the Claimant's request for a longer period to request reconsideration was not made in a judicial manner. I direct the Minister to consider the Claimant's late request for reconsideration according to the CPP and the CPP Regulations.

Anne S. Clark
Member, General Division - Income Security

²⁰ Section 6 of the *Social Security Tribunal Regulations*