



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. P. v Minister of Employment and Social Development*, 2020 SST 504

Tribunal File Number: AD-20-663

BETWEEN:

R. P.

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: June 17, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant has a long history of anxiety and depression and has never held anything other than a short-term job. In May 2017, she applied for a Canada Pension Plan (CPP) disability pension.

[3] In May 2018, the Minister approved the Claimant's application with a first payment date of June 2016, which it determined was the maximum period of retroactivity permitted under the law.¹

[4] The Claimant appealed the Minister's determination of her pension's start date to the General Division of the Social Security Tribunal. She claimed that she had been incapacitated from making an application before May 2017.

[5] The General Division held a hearing by teleconference and, in a decision dated March 3, 2020, dismissed the appeal. It found that the Claimant's condition, and her activities in the months and years leading up to May 2017, did not suggest that she was incapable of forming or expressing an intention to make an application earlier than that date.

[6] The Claimant is now requesting leave to appeal from the Appeal Division.² She argues that the General Division denied her claim without understanding that her illness, which began early in life, prevented her from making decisions as an adult. She says that the General Division should have understood this, given all the medical records on file. She questions whether an

¹ At the time of her application, the Claimant's earnings and CPP contributions gave her a minimum qualifying period (MQP) ending December 31, 2005 (see Record of Earnings and Minister's Earnings Investigations Worksheet, GD2-90-99). The MQP was later extended to December 31, 2012 after the Claimant applied for, and received, a division of her former husband's pension credits. Although the Minister determined that the Claimant was actually disabled as of December 31, 2005 (see Initial Adjudication Summary, GD2-100), it found that the law deemed her disabled no earlier than February 2016, with payment to start four months later.

² Claimant's application requesting leave to appeal from the Appeal Division dated June 3, 2020, AD1.

hour-long hearing was adequate to review her medical history, and she wonders why the General Division does not have its own team of doctors, who could have better assessed her mental illness.

[7] I have reviewed the General Division's decision against the underlying record. I have concluded that the Claimant has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUE

[8] There are three grounds of appeal to the Appeal Division. A claimant must show that the General Division (i) did not follow procedural fairness or made an error of jurisdiction; (ii) made an error of law; or (iii) made an important error of fact.³

[9] An appeal can proceed only if the Appeal Division first grants leave to appeal.⁴ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁵ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁶

[10] I have to decide whether the Claimant has raised an arguable case that falls under one or more of the permitted grounds of appeal.

ANALYSIS

[11] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division committed in coming to its decision and explain how those errors, if any, fit into the one or more of the three grounds of appeal permitted under the law.

³ Section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

⁴ DESDA, sections 56(1) and 58(3).

⁵ DESDA, section 58(2).

⁶ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[12] The Claimant argues that the General Division dismissed her appeal despite medical evidence indicating that she was “incapable of forming or expressing an intention to make an application”⁷ before May 2017.

[13] I do not see a reasonable chance of success for this argument. In its role as fact finder, the General Division is entitled to a degree of deference in how it chooses to weigh the evidence. My review of its decision indicates that the General Division meaningfully analyzed the information available to it and came to the defensible conclusion that, more likely than not, the Claimant was capable of forming or expressing an intention to apply for a CPP disability pension before May 2017, the month in which she finally did submit her application. In particular, the General Division placed weight on the fact that the Claimant was the primary caregiver for her sons, born in 1994 and 1998, and remained so after she and her husband separated in 2010. As the General Division noted, the Claimant may not have known about the rules and processes associated with CPP disability benefits, but that is not the same thing as lacking an ability to form or express an intention to make an application.

[14] I want to emphasize that, under the *Canada Pension Plan*, disability and incapacity are two different concepts. One is an inability to regularly pursue a substantially gainful occupation; the other is an inability to form or express an intention to make an application for disability benefits. The first is generally much harder to prove than the second. While the Claimant has long suffered from debilitating anxiety and depression, that does not mean that she met the relatively heavy burden of proving that she could not form or express an intention to apply for benefits.

[15] The Claimant suggests that the Tribunal itself should have conducted its own mental health assessment to determine whether she met the standard for incapacity. This does not reflect the law as written, which permits a finding of incapacity “on the basis of evidence provided by or on behalf of that person.”⁸ It is not the job of the Tribunal, the Minister, or any person other than a claimant, to show that he or she is incapable of forming or expressing an intention to make an application.

⁷ This is the legal standard for incapacity, as set out in section 60(8) of the *Canada Pension Plan*.

⁸ *Canada Pension Plan*, section 60(8).

[16] While the General Division did not arrive at the conclusion the Claimant would have preferred, it is not my role, as a member of the Appeal Division, to reassess the evidence but to determine whether the decision is defensible on the facts and the law. An appeal to the Appeal Division is not an opportunity for an applicant to re-argue their case and ask for a different outcome. My authority permits me to determine only whether any of the Claimant's reasons for appealing fall within the specified grounds of appeal and whether any of them have a reasonable chance of success.

CONCLUSION

[17] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.



Member, Appeal Division

REPRESENTATIVE:	R. P., self-represented
-----------------	-------------------------