



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. W. v Minister of Employment and Social Development*, 2020 SST 713

Tribunal File Number: GP-19-893

BETWEEN:

S. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Anne S. Clark

Teleconference hearing on: June 30, 2020

Date of decision: July 21, 2020

DECISION

[1] The Claimant is not entitled to cancel her *Canada Pension Plan* (CPP) retirement pension in favour of a CPP disability benefit.

OVERVIEW

[2] In June 2017, the Claimant started but did not complete an online application for a retirement pension. The Minister received the Claimant's application for a CPP retirement pension on October 23, 2018. The Minister approved the application. In discussion with the Claimant, the Minister said her pension could be retroactive to July 2017, the month after she began the first application. The Claimant agreed thinking this was a good decision for her.

[3] In March 2019, the Claimant applied for a disability pension. She planned to apply for a disability pension and requested medical information. She decided to apply for a retirement pension first thinking the pensions were inter-related and she could change one for the other at a later date. The Minister denied the application for a CPP disability pension initially and on reconsideration because the application was more than 15 months after the retirement pension became payable. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] To qualify for a CPP disability pension, the Claimant must prove that it is more likely than not that she became disabled by the end of the month before her retirement pension was payable. This is because she cannot receive a CPP retirement pension and a CPP disability pension at the same time.¹ Since the retirement pension was payable in July 2017 she must be found disabled on or before June 30, 2017.

PRELIMINARY MATTERS

[5] The Claimant said she was very confused about the CPP retirement and disability pensions. She attributes some if not most of her confusion to the system that is in place and the lack of assistance the Ministry gave her. She also thinks some of the decisions she made were wrong or not the best decisions for her. She believes she based her decisions on incorrect

¹ Paragraph 44(1)(b) *Canada Pension Plan*

information and advice employees of the Ministry gave her. Her complaints included the fact that no one at the Ministry informed her of the potential impact of making her retirement pension effective from the date she began her first online application for retirement benefits. She also expressed concern that no one informed her that she had to raise her concerns about erroneous advice and administrative errors at the Ministry and not at the Tribunal. She said no one told her she could not appeal that issue to the Tribunal.

[6] I explained to the Claimant that I have no jurisdiction to deal with an issue of erroneous advice. Only the Minister and the Federal Court (if the Claimant appeals the Minister's decision) have this jurisdiction.² I also explained that I could not offer her advice or guidance on the best way to pursue a complaint before the Ministry. I told her most processes have time limits that can be rigid and she should not delay in contacting the Ministry for information on how to proceed with her complaint.

ISSUE

[7] Can the Claimant cancel her CPP retirement for a CPP disability pension?

ANALYSIS

[8] A claimant cannot collect a CPP retirement pension and a disability pension at the same time. A claimant can be eligible to cancel a retirement pension in favour of a disability pension if the claimant is "deemed" disabled the month before the retirement pension became payable.³ The earliest a claimant can be "deemed" disabled is fifteen months before the date the Minister received the disability application.⁴ The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favour of a disability pension where the disability application is made fifteen months or more after the retirement pension started to be paid.

[9] The record shows that the Claimant's CPP retirement pension became payable in July 2017. She filed her application for a CPP disability pension in March 2019, which is more than 15 months after her retirement pension became payable.

² *Pincombe v. AG Canada* [1955] F.C.J. 1320

³ Subsection 66.1(1.1) *Canada Pension Plan*

⁴ Paragraph 42(2)(b) *Canada Pension Plan*

[10] A possible exception to the rule would be if the Claimant were not able to form or express an intention to apply for the benefit before the date she actually applied.⁵ The Claimant does not allege she was not able to form or express an intention to apply for the disability pension before March 2019 and there is no evidence on the record to show that might be the case.

[11] During her testimony, the Claimant said she felt she was not emotionally or intellectually capable of filing her application before March 2019. I asked her if it was her intention to say she was, for any period, incapacitated as defined by the CPP. She was not aware of the section of the legislation and said she had not intended to seek a finding that she was incapacitated. She was unsure of the meaning of incapacity under the CPP and I read her the relevant definition.⁶ She stated she did not believe she met the definition of incapacity and did not want to pursue a claim that she was incapacitated as defined by the CPP.

[12] The Claimant urged me to approve her appeal because she would never have agreed to the retroactive payment of her retirement pension if she had known it would affect her eligibility for a disability benefit.

[13] I am sympathetic to the Claimant's situation, but I am bound by the legislation. As a Tribunal Member, I am required to apply the provisions as they are set out in the CPP. The CPP does not allow me to make exceptions to the rules based on fairness, compassion, or extenuating circumstances.

CONCLUSION

[14] The Claimant is not eligible to cancel her retirement pension in favour of a disability benefit because she filed her disability application more than 15 months after her retirement pension became payable.

[15] The appeal is dismissed.

Anne S. Clark
Member, General Division - Income Security

⁵ Subsections 60(8) and (9) *Canada Pension Plan*

⁶ Section 60(8) *Canada Pension Plan*