



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MV v Minister of Employment and Social Development*, 2020 SST 881

Tribunal File Number: GP-20-474

BETWEEN:

M. V.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Jackie Laidlaw

DATE OF DECISION: August 6, 2020

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a CPP disability benefit on September 26, 2018. The Respondent approved the application in a letter dated June 27, 2019. The earliest date of onset is June 2017, with payments starting October 2017. The Appellant appealed the date of onset on March 9, 2020.

[2] This appeal involves whether the Appellant is eligible for a date of onset of disability of April 2015.

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[4] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[5] The Appellant noted that his last day he was able to work was May 2015. He is claiming that April 2015 is the date he became disabled.

[6] The Appellant applied for benefits on September 26, 2018. The maximum retroactive payment for a benefit is 15 months prior to the date of application¹. This is called the earliest date of onset. In this case, the date is June 2017. Payments start four months after the month of the date of determination,² which is October 2017.

¹Subsection 42(2)(b) of the *CPP*

² Subsection 69 of the *CPP*

[7] The exception to the maximum retroactive payment is if the Appellant can be considered to not have the capacity to apply before the date he did.³

SUBMISSIONS

[8] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations).

[9] The Appellant was given until July 10, 2020 to make submissions. On July 4, 2020 he requested an extension to file submissions. I granted the extension to August 3, 2020.

[10] The Appellant never made submissions. I waited a further three days then proceeded to make my determination based on the record.

ANALYSIS

[11] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP.

[12] The purpose of this decision is not to determine if the Claimant had a disability earlier than August 2017. It is to determine if he was able to make an application before the date he applied. I accept that he may have been prevented from working in 2015. He must prove he did not have the mental capacity to make the application before September, 2018.

[13] In *Sedrak v. Canada (Social Development)*, 2008 FCA 86, the Federal Court of Appeal stated that the “capacity to form the intention to apply for benefits is not different in kind from the capacity to form an intention with respect to other choices which present themselves to an applicant.” The Court further held that “nothing in this scheme requires us to give to the word “capacity” a meaning other than its ordinary meaning”.

³ Subsection 60(9) of the CPP provides that an application may be deemed to have been made at an earlier date where the person had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made, and that the application was made within a period after the incapacity ceased and that comprises the same number of days, not exceeding twelve months, as the period of incapacity. According to subsection 60(10) of the CPP the period of incapacity must be a continuous period.

[14] The evidence shows that the Appellant attempted to return to school in September 2016 on a part-time basis though due to his physical disability he could not continue. The decision to return to school is a choice indicating he had a capacity to make decisions.

[15] The Tribunal finds there is no evidence to suggest the Appellant was incapable of forming or expressing an intention to apply for a disability benefit between April 2015 and the date he did apply in September 2018.

[16] Therefore, the date of onset remains 15 months prior to the date he applied for the benefit, which would be June, 2017.

[17] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[18] The appeal is summarily dismissed.

Jackie Laidlaw
Member, General Division - Income Security