



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AS v Minister of Employment and Social Development*, 2020 SST 982

Tribunal File Number: GP-20-1113

BETWEEN:

**A. S.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Raymond Raphael

Date of decision: October 5, 2020

## **DECISION**

[1] The time for the Claimant to ask for reconsideration of the denial of her *Canada Pension Plan* (CPP) disability application should be extended.

## **OVERVIEW**

[2] The Minister received the Claimant's application for a CPP disability pension on June 28, 2019.<sup>1</sup> The Claimant stated that she had been unable to work since October 2017 because of bipolar disorder and anxiety.<sup>2</sup> The Minister denied the application on October 30, 2019.<sup>3</sup>

[3] The Minister received the Claimant's request for reconsideration on February 18, 2020, which was after the 90-day time limit.<sup>4</sup> On March 22, 2020, the Minister refused to extend the time for the Claimant to apply for reconsideration.<sup>5</sup> The Claimant appealed to the Social Security Tribunal.

[4] I decided this appeal based on the documents and submissions filed because a further hearing was not required and there were no gaps in the information in the file or need for clarification.

## **ISSUES**

1. Did the Minister exercise its discretion judicially when it refused to extend the time for the Claimant to request reconsideration?
2. If not, should I extend the time for the Claimant to do so?

## **ANALYSIS**

[5] The Minister's decision to grant or refuse a late reconsideration request is a discretionary one. The Minister must exercise its discretion judicially.<sup>6</sup>

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<sup>1</sup> GD2-17

<sup>2</sup> GD2-20

<sup>3</sup> GD2-11

<sup>4</sup> GD2-10

<sup>5</sup> GD2-8

<sup>6</sup> *Canada (A.G.) v Uppal* 2008 FCA 388

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

- acted in bad faith,
- acted for an improper purpose or motive,
- took into account an irrelevant factor,
- ignored a relevant factor, or
- acted in a discriminatory manner.<sup>7</sup>

[7] It is not my role to determine if the Minister made the correct determination. My role is to determine whether it exercised its discretion in a judicial manner. The Claimant has the burden of proof to establish that the Minister failed to do so.

[8] I have assumed the denial letter was sent to the Claimant by mail on October 30, 2019. Mail in Canada is usually received within 10 days. I therefore find that the reconsideration decision was communicated to the Claimant by November 11, 2019.<sup>8</sup> She had until February 10, 2020 to request reconsideration.<sup>9</sup> The Minister received her request for reconsideration on February 18, 2020.<sup>10</sup>

[9] Because the Minister did not receive the Claimant's request for reconsideration until February 18, 2020, it may only allow a longer period to request the reconsideration if satisfied that 1) there is a reasonable explanation for requesting a longer period, and 2) the Claimant has demonstrated a continuing intention to request reconsideration.<sup>11</sup> Both factors must be met.<sup>12</sup>

***The Minister did not exercise its discretion judicially***

[10] I must initially determine whether the Minister exercised its discretion in a judicial manner.

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<sup>7</sup> *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

<sup>8</sup> November 9 and 10 were on a weekend.

<sup>9</sup> Section 81 of the CPP; February 8 and 9 were on a weekend.

<sup>10</sup> GD2-10

<sup>11</sup> Subsection 74.1(3) of the CPP Regulations

<sup>12</sup> *Lazure v Attorney General of Canada* 2018 FC 467, paragraph 25

[11] When denying the Claimant's request for a late reconsideration, the Minister acknowledged that the Claimant had been battling mental health issues for many years. However, it determined that there was no information to support that she had been incapable of filing a request for reconsideration within the 90-day time limit. It also stated that her letter requesting reconsideration was received more than 101 days after the initial deny decision. It noted that she did not make any contact with Service Canada between the denial decision and her request for reconsideration,

[12] The Minister failed to act in a judicial manner because it ignored a relevant factor: that the Claimant's request for reconsideration was dated and presumably mailed by February 13, 2020. This was only three days past the time for her to request reconsideration. Given that the Claimant likely required time to prepare the letter, this suggests that she had an intention to appeal within the 90-day time period.

[13] The Minister also applied an incorrect test when determining if the Claimant had a reasonable explanation for delay. The Minister stated that there was no information to support that the Claimant would have been incapable of providing a request for reconsideration in a timely manner. The test is whether the Claimant has a reasonable explanation for the delay, not whether she was incapable of making the request in a timely manner.

[14] I find that the Minister did not exercise its discretion judicially.

***The time for filing the reconsideration request should be extended***

[15] Since I have found that the Minister did not exercise its discretion judicially, I must now determine whether the time for filing the reconsideration request should be extended.

[16] I have considered that the Claimant sent her reconsideration request within three days of deadline. I have also considered that she has a history of significant mental health issues. The CPP medical report from Dr. Patmandis, psychiatrist, diagnosed bipolar affective disorder. Dr. Patmandis stated that the Claimant was impaired by bipolar mood disorder, and that her functional limitations included low stress tolerance and cognitive impairment.<sup>13</sup> In addition, Dr.

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<sup>13</sup> GD2-57, 58

Lu, family doctor, stated that the Claimant became ill with pneumonia while she was in the process of submitting her request for reconsideration in December 2019. She did not recover until February of 2020. <sup>14</sup>

[17] I find that it is more likely than not that the Claimant has established both factors required to allow a longer time for reconsideration as set out in paragraph 9, above.

## **CONCLUSION**

[18] The time for the Claimant to request reconsideration is extended to February 18, 2020, which is the date the Minister received her reconsideration request.

[19] The appeal is allowed and this matter is sent back to the Minister to make the reconsideration decision.

Raymond Raphael  
Member, General Division - Income Security

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<sup>14</sup> GD3-2