



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MV v Minister of Employment and Social Development*, 2020 SST 880

Tribunal File Number: AD-20-743

BETWEEN:

**M. V.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: October 7, 2020

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] M. V. applied for a Canada Pension Plan disability pension in September 2018. He said that he was disabled by Chron's disease and associated limitations. He says that he could no longer work because of his condition in May 2015. The Minister of Employment and Social Development granted the application and decided that the Claimant was disabled 15 months before he made the application, which is the maximum retroactivity permitted under the *Canada Pension Plan*.<sup>1</sup>

[3] The Claimant appealed the Minister's decision regarding when he first became entitled to the disability pension to the Tribunal. The Tribunal's General Division summarily dismissed the appeal. It decided that the Claimant had received the maximum retroactivity permitted, and he was not incapable of forming or expressing an intention to make the application before he did, so the appeal had no reasonable chance of success.

[4] The Claimant's appeal from this decision is dismissed. The General Division made no error upon which the Appeal Division can intervene.

### PRELIMINARY MATTER

[5] This appeal was decided on the basis of the documents filed with the Tribunal for the following reasons

- a) The legal issue to be decided is straightforward;
- b) The parties were given the opportunity to provide written submissions and they both declined to do so;<sup>2</sup>

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<sup>1</sup> *Canada Pension Plan* s. 42(2)(b)

<sup>2</sup> AD2, AD3

- c) There are no gaps in the documents filed such that an oral hearing is required;
- d) The Tribunal can decide issues of law and fact necessary to dispose of an appeal;<sup>3</sup> and
- e) The Tribunal must conclude appeals as quickly as the considerations of fairness and natural justice permit.<sup>4</sup>

## ISSUE

[6] Did the General Division make a reviewable error?

## ANALYSIS

[7] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.<sup>5</sup>

The Appeal Division cannot intervene unless the General Division has made at least one of these errors.

[8] The General Division must provide the parties with a fair process. This means that each party must have the opportunity to present their case to the Tribunal, to know and answer the other party's legal case and to have a decision made by an independent decision maker based on the law and the facts.

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<sup>3</sup> *Department of Employment and Social Development Act* s. 64(1)

<sup>4</sup> *Social Security Tribunal Regulations* s. 3(1)

<sup>5</sup> This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

[9] The General Division provided a fair process. It gave the Claimant notice that it intended to summarily dismiss his appeal, and provided an opportunity to respond to this. It extended the time for the response when the Claimant requested this. After this time expired, the General Division made its decision.<sup>6</sup> The appeal cannot succeed on this basis.

[10] The General Division also did not make any errors in law. It correctly stated that the maximum retroactivity permitted under the *Canada Pension Plan* is 15 months before the application for the disability pension was made.<sup>7</sup> The Claimant received this.

[11] The *Canada Pension Plan* provides an exception to this maximum retroactivity rule. If a claimant is unable to form or express an intention to make an application, the date that the application is deemed to have been made can be changed.<sup>8</sup> The General Division decision refers to this.<sup>9</sup> The General Division's explanation of this exception to the 15-month rule could have been clearer. However, the law with respect to this issue is set out in the decision. The decision demonstrates that the General Division considered whether the Claimant could rely on this exception to the 15-month rule. It made no error in law.

[12] In addition, in the documents filed with the Appeal Division the Claimant wrote that his mental capacity had nothing to do with his claim; he did not know that he could apply for the disability pension sooner.<sup>10</sup> Therefore, the General Division made no error when it decided that the Claimant could not rely on the incapacity exception to the 15-month rule.

[13] Unfortunately, that the Claimant was unaware of this disability pension sooner is not an error upon which the Appeal Division can intervene.

[14] The General Division decision also correctly states that it must summarily dismiss an appeal if it has no reasonable chance of success.<sup>11</sup> It applied this law to the facts to make its decision. It made no error in doing so.

[15] The appeal cannot succeed on the basis that the General Division made an error in law.

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<sup>6</sup> See General Division decision at paras. 8-10

<sup>7</sup> General Division decision at para.6

<sup>8</sup> See *Canada Pension Plan* s. 60(8) to s. 60(10)

<sup>9</sup> General Division decision at paras. 12, 13

<sup>10</sup> See AD1C-3

<sup>11</sup> General Division decision at para. 3

[16] Finally, the facts are undisputed. There is no suggestion that the General Division based its decision on any important factual error. The General Division made no error in this regard.

**CONCLUSION**

[17] The appeal is dismissed. The General Division made no reviewable error.

Valerie Hazlett Parker  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	M. V., Appellant  Ian McRobbie, Counsel for the Respondent