



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2020 SST 1186

Tribunal File Number: GP-20-970

BETWEEN:

S. S.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Tyler Moore

DATE OF DECISION: November 5, 2020

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a Canada Pension Plan (CPP) disability pension while already receiving a CPP retirement pension. The Respondent denied her application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on June 26, 2020.

[2] This appeal involves whether the Appellant can cancel her CPP retirement pension in favour of a disability pension. If not, then is she eligible for the post-retirement disability benefit (PRDB).

[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] I have decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[5] The Appellant was born on July X, 1955. She has been in receipt of a CPP retirement pension since August 2015. Her current application for a CPP disability pension was received in January 2020.

[6] The Claimant's minimum qualifying period date is December 31, 2018. She does not have 25 years of valid CPP contributions that would allow the calculation of her minimum qualifying period using 3 of the last 6 years of valid CPP contributions. So, the calculation of her minimum qualifying period was done using the most recent 4 of the last 6 years of valid CPP contributions. Those years include 2013, 2014, 2016, and 2017.

SUBMISSIONS

[7] 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).

[8] The Appellant submitted that:

- a) She applied for an early CPP retirement pension based on poor legal advice and financial hardship.
- b) She was not aware that there was a 15 month deadline to make a CPP disability pension application after she started receiving her CPP retirement pension. If she had been aware, she would have applied for a disability pension sooner.
- c) She worked for as long as she did because she had to. Her family doctor finally advised her that she had to stop working because of her condition in October 2018.

[9] The Respondent previously submitted that:

- a) The Appellant cannot cancel her retirement pension in favour of a disability pension because the maximum retroactivity permitted does not allow for her to be deemed disabled prior to the date her retirement pension became payable.
- b) The Appellant does not meet the contributory requirements to be eligible for the PRDB. She does not have a minimum qualifying period date that is January 2019 or later.

ANALYSIS

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

[11] I find that the Appellant is not able to cancel her CPP retirement pension in favour of a disability pension. She is also not eligible to be considered for the post-retirement disability benefit (PRDB).

[12] In order to be able to cancel a CPP retirement pension in favour of a disability pension, a person must be deemed to be disabled before the month their retirement pension became in pay.¹ The earliest that a person can be deemed to be disabled is 15 months before the date their disability pension application was received.² In this case, the Appellant's CPP disability pension application was received more than 15 months after her retirement pension became in pay. As a result, she could not be deemed to be disabled before the month her retirement pension became in pay.

[13] To be eligible for the PRDB, the Appellant would need to have a minimum qualifying period that is January 2019 or later. The Appellant's minimum qualifying period has been calculated by the Minister to be December 31, 2018. That calculation uses the Appellant's valid years of CPP contributions in 2013, 2014, 2016, and 2017. I have also considered the calculation of the Appellant's minimum qualifying period considering the six preceding full calendar years before the date her CPP disability pension application was received.³ She still does not meet the contribution requirements for a minimum qualifying period of January 2019 or later. That renders her ineligible to be considered for the PRDB.

[14] While I am sympathetic to the Appellant's circumstances, I am bound by the CPP legislation. Accordingly, I find that the appeal has no reasonable chance of success.

CONCLUSION

[15] The appeal is summarily dismissed.

Tyler Moore
Member, General Division - Income Security

¹ Subsection 66.1(1.1) of the *CPP*

² Paragraph 42(2)(b) of the *CPP*

³ *N.L. v. Minister of Employment and Social Development*, AD 20-560