



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2021 SST 42

Tribunal File Number: AD-20-830

BETWEEN:

S. S.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shirley Netten

DATE OF DECISION: February 8, 2021

DECISION AND REASONS

Decision

[1] The appeal is allowed. S. S. (Claimant) met the contribution requirement for the PRDB in 2019.

Overview

[2] The Claimant began receiving her Canada Pension Plan (CPP) retirement pension in August 2015. In January 2020, she applied for a CPP disability pension. In initial and reconsideration decisions, Service Canada¹ denied the application because the Claimant was too late to cancel her retirement pension in favour of a disability pension. Service Canada also decided that the Claimant was not entitled to the post-retirement disability benefit (PRDB) because her “qualifying period ends before January 2019.”

[3] The Claimant appealed to the General Division. The General Division summarily dismissed the appeal, on the basis that it had no reasonable chance of success. The General Division found that the Claimant could not cancel her retirement pension. The General Division also found that the Claimant was ineligible for the PRDB because she did not meet “the contribution requirements for a minimum qualifying period of January 2019 or later.”

[4] The Claimant appealed to the Appeal Division. She accepts that she could not cancel her retirement pension, but she disputes the General Division’s conclusion about the PRDB.

Parties’ agreement

[5] The parties participated in a settlement conference. They agree on the outcome of this appeal. The General Division made an error of law. The General Division failed to consider the “late applicant” provision when deciding that the Claimant did not meet the contribution requirement for the PRDB. The Claimant met the contribution requirement for the PRDB as a

¹ On behalf of the Minister of Employment and Social Development.

late applicant, because she had sufficient contributions in four of the six full years preceding the year 2019.

Error of law: the General Division failed to consider the late applicant provision

[6] The PRDB is a monthly benefit available to recipients of an early CPP retirement pension who become disabled. The PRDB is payable on top of the retirement pension, in an amount equal to the flat-rate component of the CPP disability benefit, up to the age of 65.²

[7] Not all disabled recipients of an early retirement pension are eligible for the PRDB. There is also a contribution requirement. For claimants without 25 years of CPP contributions (as in this case), the requirement is to have made a minimum level of contributions for “at least four of the last six years.”³

[8] The “last six years” are the preceding full calendar years.⁴ Ordinarily, these are the six calendar years preceding the date of application.⁵ The General Division was correct that, based on a 2020 application, the Claimant did not meet the contribution requirement. This is because she had the minimum level of contributions for only 3 years in the period 2014 to 2019.⁶

[9] There is a special provision in the law for those who apply late: a person who would have been eligible if they had applied earlier is still eligible for the PRDB.⁷ If the Claimant had completed an application in 2019, the “last six years” would have been the years 2013 to 2018, inclusive. The Claimant had the minimum level of contributions in four of those six years. Consequently, the late applicant provision allows the Claimant to meet the contribution

² The basic requirements are found in section 44(1)(h) of the *Canada Pension Plan*. In 2020, the PRDB was \$505.79.

³ Sections 44(1)(h) and 44(4)(a) of the *Canada Pension Plan*.

⁴ This interpretation is found in an Appeal Division decision called *N. L. v Minister of Employment and Social Development*, 2020 SST 741. The Minister and the Claimant accept this interpretation.

⁵ Section 44(1)(h)(i) of the *Canada Pension Plan*.

⁶ The minimum level of contributions requires contributions on pensionable earnings not less than the basic exemption. Under section 20(1), the basic exemption is 10% of the year’s maximum pensionable earnings. The Claimant’s pensionable earnings were below the minimums in 2015 (\$3483, under the minimum of \$5300) and 2018 (\$4630, under the minimum of \$5500). She had no pensionable earnings in 2019. These figures are not in dispute.

⁷ Section 44(1)(h)(ii) of the *Canada Pension Plan*. The possibility of using a date earlier than the actual application date was also identified in *N.L.*: see paragraph 34 and footnote 27. The earlier date cannot be earlier than January 2019, when the PRDB came into effect.

requirement. The General Division's failure to consider and apply the late applicant provision was an error of law.

Remedy (fixing the General Division’s error)

[10] The remedy in this case is clear. By applying the late applicant provision, the Claimant met the contribution requirement for the PRDB in 2019. It is undisputed that she met the minimum level of contributions in four of the preceding six years (2013, 2014, 2016 and 2017). As a result, the Claimant is not disqualified from the PRDB based on insufficient contributions.

[11] This decision does not mean that the Claimant is entitled to the PRDB. She met three of the four requirements in 2019: she was receiving a CPP retirement pension, she was under the age of 65, and she met the contribution requirement. Service Canada must now decide whether the Claimant was disabled, and if she was thereby entitled to the PRDB. If the Claimant disagrees with Service Canada’s decision on these points, she can request a reconsideration of their decision and, if necessary, appeal to this Tribunal.

Conclusion

[12] On the issue of the contribution requirement for the PRDB, I am replacing the General Division’s decision with the following: The Claimant met the contribution requirement for the PRDB in 2019. She is not disentitled from the PRDB for insufficient contributions.

Shirley Netten
Member, Appeal Division

APPEARANCES:	S. S., Appellant Samaneh Frounchi, Representative for the Respondent
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