Social Security Tribunal of Canada
Tribunal de la sécurité sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2021 SST 73

Tribunal File Number: AD-21-33

BETWEEN:

**S. S.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: February 24, 2021

Canada

## DECISION AND REASONS

### DECISION

[1] I am refusing the application for leave to appeal. The appeal will not proceed any further.

[2] There is no arguable case that the General Division made an error. These reasons explain how I reached that conclusion.

### OVERVIEW

[3] S. S. (the Claimant) is 48 years old. She has two children. They were born in 1992 and 1998. She cared for the children full time at home. Her medical condition started in December 2010 when doctors first diagnosed and treated her in the hospital for schizophrenia. She was in hospital again in 2012 for the same reason. She tried to work in 2011 and in 2013 but she could not keep a job due to her medical condition. She has not worked outside the home at all since 2013. Her doctors say that she is unable to work because her condition is severe and prolonged.

[4] The Claimant applied for a disability pension under the *Canada Pension Plan* (CPP) in 2018. The Minister denied the application initially and on reconsideration. The Claimant appealed to this Tribunal.

[5] The General Division dismissed her appeal. The Claimant could not show that she had a severe and prolonged disability on or before the end of her minimum qualifying period (or MQP) which ended on December 31, 1997. The Claimant's schizophrenia did not start until December 2010. The Claimant asks for leave (permission) to appeal the General Division's decision.

[6] I must decide whether there is an argument that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify giving the Claimant permission (leave) to appeal.

[7] There is no arguable case that the General Division made such an error. As a result, I am denying the Claimant permission to appeal.

### ISSUE

[8] Is it arguable that the General Division made an error of fact about the Claimant's earnings in 1988, 1989, or 1991?

## ANALYSIS

[9] The Appeal Division does not give people a chance to re-argue their case in full at a new hearing. Instead, the Appeal Division reviews the General Division's decision to decide whether it made an error calling for a review. That review is based on the wording of the DESDA, which sets out the grounds of appeal. The three reasons for an appeal arise when the General Division fails to provide a fair process, makes an error of law, or makes an error of fact.[1]

[10] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success of satisfying the Appeal Division that the General Division made a reviewable error.[2] To meet this requirement, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.[3]

### No arguable case for an error of fact about the Claimant's earnings in 1988, 1989 or 1991

[11] There is no arguable case that the General Division made an error of fact about the Claimant's earnings in 1988, 1989 or 1991.

[12] The Claimant had to show that she had a severe and prolonged disability on or before the end of her minimum qualifying period (MQP).[4] The MQP is calculated based on the Claimant's contributions to the CPP.

[13] In order to calculate the MQP, the Record of Earnings (ROE) is the document the Minister uses to decide which years the Claimant had earnings high enough to have contributed to the CPP (which is called a valid contribution). The CPP says that the ROE is presumed to be accurate, and cannot be called into question after four years.[5]

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[1] DESDA, s 58(1).
[2] DESDA, s 58(2).
[3] The Federal Court explained this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[4] *Canada Pension Plan*, section 42(2).
[5] CPP section 96 allows for a process for claimants to ask the Minister to reconsider an entry in the record of earnings, but section 97(1) explains that regardless of that process, the record is presumed to be accurate four years after the Minister makes the entry.

[14] The contributory period is the time during which a claimant can contribute to the CPP. To qualify for a CPP disability pension, claimants need to make a certain amount of contributions before the end of their MQP.

[15] Before January 1, 1998, one of the ways to meet the contribution requirements was to have two years of valid contributions within a three-year period.

[16] The contributory period starts the month after the claimant turns 18.[6] The Claimant turned 18 in October 1990, so her contributory period started in November 1990.

[17] The Claimant did not meet the contribution requirements for the CPP at the time she applied for the disability pension. However, she met the "late applicant rule" which allows claimants to establish an MQP based on contributions made earlier in their contributory period. The Claimant had earnings high enough to have contributed to the CPP in both 1990 and 1991.[7] That means she had valid contributions to the CPP in two of three years.

[18] The Claimant had children in 1992 and 1998, which meant that those years are removed from her contributory period. Removing those years extended her MQP.[8] Her MQP ends December 31, 1997 (that is the latest the Claimant's MQP can extend given that the two out of three year rule for contributions ended in January 1998).[9]

[19] The Claimant argues that she worked in 1988 and 1989 part-time while she was in school and that the General Division's decision does not acknowledge this.[10] The Claimant is correct that the ROE does not reflect the work she did in those years and therefore it did not form part of the General Division's analysis.[11] But that is because she was not yet 18 in 1988 and 1989, so

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[6] CPP, section 44(2)(b) the contributory period starting January 1966 or the month after a person turns 18, whichever is later.
[7] It may seem that the Claimant did not have enough earnings in 1990, but she did. She turned 18 in 1990. Section 19(a) of the CPP explains how to prorate her earnings requirement for that year. With that proration, she meets the requirement.
[8] Removing those years from the contributory period is sometimes called the child-rearing drop out provision.
[9] CPP, section 44(1)(b)(ii) allows the Minister to consider whether the Claimant met the requirements for contributions to the CPP at any time in their contributory period. The requirements from 1987 to 1997 allowed the Claimant to qualify if she had valid contributions in 2 out of 3 years.
[10] AD1-5.
[11] GD2-42 and GD2-46.

those years are not part of her contributory period and therefore not relevant to calculating her MQP.

[20] If the Claimant is correct that she worked those years, and that she made enough money in those two years to have contributed to the CPP, the fact that the General Division did not consider this work is not an error of fact. The Claimant's earnings in those years cannot change the calculation of her MQP because those years are outside her contributory period.

[21] If having worked those years cannot change the calculation of the MQP, then even a mistake about them will not be an error of fact. An error of fact has to be material. That means it has to be a mistake that, if fixed, could have led to a different outcome.[12]

[22] The fact that the Claimant might have worked part time in 1988 and 1989 does not change whether she proved she was disabled on or before December 31, 1997 when her MQP ended. The Claimant herself argues she did not become disabled until December 2010.

[23] The Claimant also argues that the General Division made an error of fact by ignoring that she worked in 1991 at a grocery store.[13] The ROE shows that the Claimant did have earnings in 1991 that meant she contributed to CPP that year.[14]

[24] As a result, even if the General Division had specifically noted that she worked at a grocery store that year, the outcome of the case would be the same. She had earnings in 1991 that meant she contributed to the CPP that year, which in turn led to the finding that the Claimant's MQP ended on December 31, 1997. Whether the Claimant worked at the grocery store in 1991 does not have the potential to change the outcome. It cannot change an analysis about whether the Claimant met the definition of having a severe disability on or before December 31, 1997.

[25] The Claimant does not have medical information or other evidence to show that she met the definition of having a severe and prolonged disability on or before December 31, 1997 (when her MQP ended). That was the test she had to meet at the General Division in order to receive a

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[12] DESDA s 58(1)(c) defines an error of fact occurring when the General Division **bases its decision** on a finding that is perverse or capricious or made without regard for the material.
[13] AD1-5.
[14] GD2-42 and D2-46.

disability pension under the CPP. Unfortunately, even though the Claimant has a disability now, there is no arguable case that the General Division made an error in denying her appeal.

[26] The Claimant must show that there is an argument that the General Division made an error. She pointed to possible errors of fact but I have explained why they do not show an arguable case for an error.

[27] I reviewed the recording of the hearing and the documents from the record at the General Division.[15]

[28] The General Division did not ignore or misunderstand the facts of the case. The Claimant's doctor is supportive of her application for a disability pension. There is no doubt that the Claimant has a medical condition.

[29] But the Claimant (and her doctors) do not actually take the position that she had a disability that impacted her ability to work back in 1997, and she needed to have that disability on or before December 31, 1997 in order to qualify for a disability pension. I have no information that would change that MQP date for the Claimant.

[30] The Claimant has made no argument that she did not receive a fair process. The General Division's decision shows that it applied the required legal tests.

[31] The Claimant did not show an arguable case that the General Division made an error under the DESDA.

**CONCLUSION**

[32] I refuse the application for leave to appeal.

Kate Sellar
Member, Appeal Division

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| REPRESENTATIVE: | S. S., self-represented |

[15] The Federal Court called for that kind of a review in a case called *Karadeolian v Canada (Attorney General)*, 2016 FC 615