



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *VR v Minister of Employment and Social Development*, 2021 SST 134

Tribunal File Number: GP-18-2180

BETWEEN:

**V. R.**

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: March 1, 2021

## **DECISION**

[1] The Claimant is not eligible for the *Canada Pension Plan* (CPP) disability pension. She is not entitled to make a Charter argument because she failed to provide a Charter Argument Notice that complies with paragraph 20(1)(a) of the Social Security Tribunal (Tribunal) Regulations.

## **OVERVIEW**

[2] The Claimant was 69 years old when she applied for a CPP disability pension in January 2018. The Minister denied her application both initially and on reconsideration. The Minister stated that she had to be under 65 to be eligible for CPP disability. The Claimant appealed to the Tribunal.

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

## **ISSUES**

1. Is the Claimant eligible for the CPP disability pension?
2. Is the Claimant entitled to proceed with a Charter claim?

## **POTENTIAL CHARTER CLAIM**

[4] In March 2019, the Tribunal notified the Claimant that it was considering summarily dismissing her appeal. This was because she had turned 65 in September 2013 and did not apply until January 2018.<sup>1</sup>

[5] In her response, the Claimant stated, amongst other things, that the denial of her application was “discrimination.”<sup>2</sup>

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<sup>1</sup> GDO: Notice of Intention to summarily dismiss the appeal.

<sup>2</sup> GD6-1

[6] In April 2019, the Tribunal contacted the Claimant by telephone because she had raised a potential Charter argument. The Tribunal explained to the Claimant that to make a Charter argument she would have to file a completed Charter Argument Notice. On April 16, 2019, the Tribunal wrote to the Claimant. The Tribunal reviewed the matters that had been discussed. The Tribunal enclosed a copy of the form for the Charter Argument Notice. The Tribunal notified the Claimant that if she wished to make a Charter argument to the Tribunal, she must file a completed Charter Argument Notice by June 10, 2019.

[7] The Tribunal granted the Claimant three extensions of time to file the Charter Argument Notice. The first extension was until December 11, 2019. The second was until January 17, 2020. The third was until April 3, 2020.<sup>3</sup>

[8] The Tribunal received the Claimant's Charter Argument Notice on April 6, 2020.<sup>4</sup> On May 22, 2020<sup>5</sup> the Tribunal wrote to the Claimant that:

- The Tribunal member assigned to this appeal had reviewed her Charter Argument Notice.
- Her notice does not set out the provision(s) of the CPP that she alleges infringe her charter rights. At GD17-10, she noted "Canada Pension Plan –Disability Pension." This does not set out the provision(s) she is challenging. Both, the Tribunal and the Minister should not have to speculate on this.
- She had until the close of business on Friday, June 5, 2020, to file a further notice setting out the specific provision(s) of the CPP she alleges infringe her Charter rights.

[9] The Claimant has not responded to this letter.

[10] After May 22, 2020, the Tribunal attempted to contact the Claimant on several occasions, but was unable to reach her. The Tribunal records reveal that voice mail messages were left for her on the following dates: June 11, 2020; June 22, 2020; July 29, 2020; August 25, 2020; September 8, 2020; October 5, 2020; October 6, 2020; and, February 18, 2021. The Claimant did not respond to any of these voice mail messages.

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<sup>3</sup> GD8 to GD11, GD13, and GD16

<sup>4</sup> GD17

<sup>5</sup> GD18

[11] In addition, the Minister has written on three occasions submitting that the Claimant's notice is deficient because it does not set out the provisions of the CPP she is challenging. The Minister asked the Tribunal to dismiss the Claimant's constitutional appeal.<sup>6</sup> Copies of the Minister's letters were sent to the Claimant.

[12] The Tribunal recognizes that the Claimant may be away. On May 22, 2020, she wrote that she would be away after June 10<sup>th</sup> for at least 3-4 months for treatment.<sup>7</sup> More than eight months have passed since the Claimant may have gone away. She has not attempted to contact the Tribunal. She has not notified that Tribunal of any new contact information. She is obligated to notify the Tribunal of any change in her contact information without delay.<sup>8</sup>

[13] I am obligated to conduct proceedings as informally and quickly as the circumstances and considerations of fairness and natural justice permit.<sup>9</sup> It is now close to 2 ½ years since the Claimant filed her appeal. It is close to two years since the Tribunal notified her of her obligation to file a Charter Argument Notice if she wishes to pursue a constitutional appeal. The Tribunal granted her several extensions of time to file her Charter Argument Notice. She has not responded to the Tribunal's notice that that her Charter Argument Notice is deficient. Considering all of these circumstances, it is not in the interests of fairness and natural justice to delay this matter further.

[14] Subparagraph 20(1)(a) of the Tribunal Regulations provides that a party who wishes to put at issue the constitutional validity or applicability of any provision of the CPP must file a notice that:

- i. Sets out the provision that is at issue, and
- ii. Contains any submissions in support of the issue that is raised.

[15] The Federal Court has stated that the notice must contain the statutory or regulatory provision(s) at issue.<sup>10</sup> Despite being given ample opportunity to do so, the Claimant has not

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<sup>6</sup> GD19 to GD22

<sup>7</sup> GD19

<sup>8</sup> Section 6 of the Tribunal Regulations

<sup>9</sup> Paragraph 3(1)(a) of the Tribunal Regulations

<sup>10</sup> *Langlois v Attorney General of Canada*, 2018 FC1108, para 13

corrected the deficiency in her Charter Argument Notice. It does not set out the provisions of the CPP that the Claimant alleges infringe her Charter rights.

[16] Since the Claimant has failed to deliver a notice that complies with the requirements of the Tribunal Regulations, she cannot raise any constitutional issues in this appeal.

### **ANALYSIS**

[17] The Claimant turned 65 in September 2013. She did not apply for a CPP disability pension until January 2018. The CPP provisions provide that the Claimant must be under 65 to be eligible for CPP. Since she applied in January 2018, the earliest date she could be eligible for CPP disability is February 2017. Since the Claimant was 68 at that time, she is not eligible for CPP disability.

[18] I recognize that the Claimant may be severely disabled. However, the CPP provisions bind me. I am statutory decision-maker and am required to interpret and apply the provisions as they are set out in the CPP. I have no authority to make exceptions to the provisions of the CPP. Nor can I render decisions on the basis of fairness, compassion, or extenuating circumstances

### **CONCLUSION**

[19] The appeal is dismissed

Raymond Raphael  
Member, General Division - Income Security