



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MM v Minister of Employment and Social Development*, 2021 SST 304

Tribunal File Number: AD-21-162

BETWEEN:

M. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Kate Sellar

Date of Decision: June 29, 2021

DECISION AND REASONS

DECISION

[1] I am denying the Claimant an extension of time for her late application for permission (leave) to appeal.

[2] The Claimant was successful at the General Division of this Tribunal. She receives the disability pension under the *Canada Pension Plan* (CPP). There is no issue left that she needs to appeal. The Claimant does not meet the test to get an extension of time to appeal because there is no issue she needs to address in an appeal. She has no reasonable chance of success on appeal and that is the most important factor in this case.

OVERVIEW

[3] The Claimant applied for a CPP disability pension in November 2017. She had to show that her disability was severe and prolonged within the meaning of the CPP on or before the end of her minimum qualifying period (MQP).¹ Her MQP ended on December 31, 2009. The Minister denied her application initially and on reconsideration.

[4] The Claimant appealed to the General Division. The General Division granted her appeal. The Claimant proved she had a severe and prolonged disability as of October 2008, when she stopped working.

[5] The earliest the Claimant could be entitled to the disability pension is 15 months before she applied.² The General Division therefore found she was eligible as of August 2016. Payments start four months after the deemed date of disability, as of December 2016.³

[6] I must decide whether the Claimant's application for permission to appeal is late. If it is late, I need to decide whether I will grant an extension of time.

[7] The Claimant's application for permission to appeal is late. I deny the extension of time. The Claimant has no arguable case that I can deal with on appeal.

¹ *Canada Pension Plan*, s 42(2).

² *Canada Pension Plan*, s 42(2)(b).

³ *Canada Pension Plan*, s 69.

ISSUES

[8] The issues are:

1. Is the application for leave to appeal late?
2. If the application is late, does the Claimant meet the test for an extension of time?

ANALYSIS

Is the Claimant's application late?

[9] The Claimant's application for permission to appeal is late.

[10] Claimants have 90 days from when the Tribunal communicates the General Division decision to ask for permission to appeal to the Appeal Division.⁴ The Appeal Division may allow more time to make an application for leave to appeal. However, a claimant may not, in any case, make an application more than a year after the day on which the Tribunal communicates the decision to the claimant.⁵

[11] The General Division decision is dated August 21, 2020.⁶ The cover letter the Tribunal sends to the Claimant and the Minister with the decision is also dated August 21, 2020. The Claimant has not argued that she did not receive the General Division decision in a timely manner when it was issued that summer.

[12] The Claimant's application is late. The Tribunal received her request for permission to appeal on May 14, 2021, more than 90 days after she received the General Division decision.

[13] The Claimant's application is less than one year late, so I can apply the test to decide whether she can have an extension of time.

Does the Claimant meet the legal test for an extension of time?

[14] The Claimant does not meet the legal test for receiving an extension of time.

⁴ DESDA, s 57(1)(b).

⁵ DESDA, s 57(2).

⁶ AD01A.

[15] In order to decide whether to grant an extension of time to appeal a General Division decision, I must consider four questions.⁷ They are:

1. Was there was a continuing intention to pursue the application?
2. Is there a reasonable explanation for the delay?
3. Is there a prejudice to the other party in allowing the extension?
4. Does the matter disclose an arguable case?

[16] The weight I must give to each of these questions may be different in each case. In some cases, different factors will be relevant. The overriding consideration is that the decision about an extension of time serves the interests of justice.⁸

Was there a continuing intention to pursue the application?

[17] The Claimant has not shown a continuing intention to pursue the application.

[18] The Claimant is to pursue the appeal as diligently as can reasonably be expected.⁹

[19] In January 2021, as the Claimant points out, the Tribunal responded to a request by the Claimant for a recording of the hearing and a copy of the General Division decision “on letterhead.”

[20] It was not until several months after that, in May 2021, that she filed her application for leave to appeal.

[21] I do not have a record before me that shows a continuing intention to appeal.

Is there a reasonable explanation for the delay?

[22] The Claimant has not provided a reasonable explanation for the delay.

⁷ The Federal Court set out these questions to consider in a case called *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

⁸ The Federal Court of Appeal explained this in a case called *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

⁹ The Federal Court explained this in a case called *Caisse Populaire Desjardins Maniwaki v Canada (Attorney General)*, 2003 FC 1165.

[23] The Claimant says that she delayed in filing the application for leave to appeal because she was working on an overpayment issue relating to her provincial benefits.

[24] While I understand that if a person receives a disability pension under the CPP, this can have an impact on provincial social benefits, the Claimant's reason for delay is not reasonable. The progress and outcome of the overpayment issue provincially does not have an impact on the Claimant's entitlement to a CPP disability pension, which was the decision the Claimant eventually appealed.

c) Is there prejudice to the Minister in allowing the extension?

[25] There is no prejudice to the Minister in allowing the Claimant an extension of time.

[26] If I gave the Claimant the extension of time, the Minister would have the ability to argue the case, even though months have passed since the General Division hearing.

d) Does the matter disclose an arguable case?

[27] I am not satisfied that Claimant's matter discloses an arguable case.

[28] In cases where the Claimant asks for an extension of time at the Appeal Division, an arguable case means that there needs to be some reasonable chance of success.¹⁰ This is a low test to meet.

[29] The Claimant points out her in appeal that:

- She asked for items to be couriered to her (including the recording of the General Division decision) in January 2021 and the Tribunal did that for her;
- she has a early resolutions hearing scheduled at the Social Benefits Tribunal in Ontario to resolve an overpayment issue that happened when she got her first payment from Service Canada; and

¹⁰ The Federal Court of Appeal explained this in a case called *McKinney v Canada (Attorney General)*, 2008 FCA 409.

- she went through a lot of stress a result of the appeal process to get her CPP disability pension.

[30] The Claimant's appeal does not raise an arguable case. The Claimant was successful at the General Division and there is nothing left for her to appeal. The General Division allowed the appeal and found she was entitled to payments for the disability pension as far back as they are allowed to go (15 months before she made her application, and then payments start four months after that).

[31] It seems that the Claimant's issue is related to the way the provincial government treated the Claimant's provincial benefits after this Tribunal granted her appeal for a CPP disability pension. However, this Tribunal is not the place to deal with that particular problem with the provincial government benefit.

No extension of time

[32] The Claimant does not meet the test for an extension of time. The Claimant has not shown a continuing intention to appeal. She does not have a reasonable explanation for the delay. Although the Minister would not be prejudiced because of the delay, the Claimant has no arguable case.

[33] In this case, the most important factor by far is the arguable case. Since the Claimant does not have an arguable case on appeal, it is not in the interests of justice for her to have an extension of time to appeal. If she were to have an extension of time, there is no issue left for her to appeal anyway: she has already been successful at this Tribunal.

[34] I am satisfied that the Claimant had an opportunity to raise all the issues. The General Division applied the facts of the case (which are not in dispute) to the settled law. The General Division decided that the Claimant is eligible for the disability pension. The payment start date the General Division identified is as early as it can be while still following the law.

[35] The Appeal Division does not have the ability to require a different provincial tribunal to come to any particular conclusion about an overpayment. This is the case even when that

overpayment may be the result of receiving a CPP disability pension while also receiving provincial benefits.

CONCLUSION

[36] I am refusing the extension of time to apply for leave to appeal. The Claimant was successful in her appeal at the General Division. The General Division found that the Claimant was eligible for a disability pension under the CPP. The Claimant has not raised anything further that would justify an extension of time to appeal.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	M. M., self-represented
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