



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MS v Minister of Employment and Social Development*, 2020 SST 1229

Tribunal File Number: GP-20-183

BETWEEN:

**M. S.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

Decision by: Virginia Saunders

Claimant represented by: Jose Carlos Macedo

Date of decision: September 16, 2020

## **DECISION**

[1] The appeal is allowed. I am granting the Claimant a longer period to request reconsideration of the decision to deny her application for a *Canada Pension Plan* (CPP) disability pension. The Claimant's application is returned to the Minister for reconsideration on its merits.

## **OVERVIEW**

[2] The Claimant applied for a CPP disability pension in January 2019.<sup>1</sup> The Minister of Employment and Social Development (the Minister) denied the application. The Minister notified the Claimant of its decision in a letter dated July 10, 2019.<sup>2</sup>

[3] A person whose CPP disability application has been denied can ask the Minister to reconsider it. The request has to be made within 90 days, but the Minister can grant a longer period in some circumstances.<sup>3</sup>

[4] The Claimant requested reconsideration of the July 2019 decision.<sup>4</sup> The Minister decided the request was too late, and refused to extend the time limit to request reconsideration.<sup>5</sup> The Claimant appealed to the Social Security Tribunal.

## **WHAT I HAVE TO DECIDE**

[5] This appeal is not about whether the Claimant should get a disability pension. It is about whether the Minister should have given her more time to request reconsideration of the decision to deny her disability application.

[6] I have to decide if the Minister exercised its discretion judicially when it refused to allow the Claimant a longer period to request reconsideration of the July 2019 decision.

---

<sup>1</sup> GD2-15

<sup>2</sup> GD2-12

<sup>3</sup> Subsection 81(1) *Canada Pension Plan*

<sup>4</sup> GD2-9

<sup>5</sup> GD2-7

[7] If I decide the Minister did not act judicially, I have to decide whether I should extend the time for the Claimant to request reconsideration.

## **ANALYSIS**

### **The Claimant's request for reconsideration was beyond the 90 day time limit**

[8] It usually takes mail 10 days to be delivered in Canada, so the Claimant likely received the Minister's decision by July 22, 2019.<sup>6</sup> Therefore the Minister had to receive her request for reconsideration by October 21, 2019. The Minister did not receive it until November 4, 2019, two weeks late.

### **The Minister did not act judicially**

[9] Before granting a longer period to request reconsideration, the Minister has to be satisfied that there is a reasonable explanation for requesting a longer period, and that the person demonstrated a continuing intention to request reconsideration.<sup>7</sup>

[10] The Minister's decision about whether to extend the time to request reconsideration beyond the 90 day time limit is a discretionary one. It must be exercised in a judicial manner.<sup>8</sup> A discretionary power is not exercised in a judicial manner if the decision-maker:

- acted in bad faith,
- acted for an improper purpose or motive,
- took into account an irrelevant factor,
- ignored a relevant factor, or
- acted in a discriminatory manner.<sup>9</sup>

[11] The Minister's adjudicator explained the decision not to extend time in a Decision Document it sent to the Claimant.<sup>10</sup> After reviewing the adjudicator's reasons, I am satisfied the

---

<sup>6</sup> The tenth day after the date of the letter was a Saturday, when mail is not usually delivered. July 22 was the first day of mail delivery after that.

<sup>7</sup> Subsection 74.1(3) *Canada Pension Plan Regulations*

<sup>8</sup> *Panopoulos v. Canada (Attorney General)*, 2010 FC 877; *Canada (A.G.) v. Uppal*, 2008 FCA 388

<sup>9</sup> This was explained by the Federal Court of Canada in *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644.

<sup>10</sup> GD2-41

Minister did not exercise its discretion in a judicial manner, because it ignored relevant factors in deciding not to extend the time.

### **The Minister ignored relevant factors**

#### ***Reasonable explanation for requesting a longer period***

[12] When the Claimant asked for reconsideration, she sent a cover letter and a report from her family doctor, Dr. Fernandez. She explained that the request was late because it had taken her doctor some time to prepare the report.<sup>11</sup>

[13] According to the Decision Document, the adjudicator decided there was no reasonable explanation for the Claimant's delay because the information in the doctor's report "did not support exceptional circumstances" that led to the delay. But the Claimant did not say the delay was caused by her medical condition. She said it was because her doctor took a long time to get the report to her. Something that is beyond a person's control is a relevant factor to consider in deciding if there is a reasonable explanation for the delay. But the adjudicator did not consider the Claimant's explanation at all. The decision was based solely on Dr. Fernandez' report about her medical condition.

[14] I find the Minister ignored this relevant factor in making its decision.

#### ***Continuing intention to seek reconsideration***

[15] The adjudicator decided the Claimant did not demonstrate a continuing intention to seek reconsideration because she did not contact the department that made the decision until she asked for reconsideration in November 2019.<sup>12</sup> But the CPP does not say an applicant has to notify the Minister of her intentions during the 90-day time limit. The adjudicator ignored the Claimant's information about how she had to wait for her doctor to prepare his report, so that she could send it to the Minister with her request for reconsideration. This information was relevant to the issue of the Claimant's continuing intention to request reconsideration.

[16] I find the Minister ignored this relevant factor in making its decision.

---

<sup>11</sup> GD2-9-11

<sup>12</sup> GD2-42

### **The Minister should have allowed the Claimant a longer period**

[17] By ignoring relevant factors on both of the matters under consideration, the Minister did not exercise its discretion judicially when it decided not to allow the Claimant a longer period to request reconsideration. As a result, I have authority to give the decision the Minister should have given.<sup>13</sup>

[18] The Claimant had a reasonable explanation for needing a longer period to request reconsideration. She also had a continuing intention to make the request. Dr. Fernandez did not put a date on his report. However, the Claimant sent it to the Minister at the end of October. That tells me she likely asked for it within a reasonable time after receiving the decision denying her application, and within the 90-day time limit. She explained later that she does not understand English very well. She was relying on a community organization to help her with her application. She believed she could not ask for reconsideration until she had new medical evidence.<sup>14</sup> The Claimant had to wait for that evidence, for reasons beyond her control. That is why her request for reconsideration was late.

[19] The Claimant has satisfied both factors that must be met. She is entitled to a longer period to request reconsideration.

### **CONCLUSION**

[20] The time for the Claimant to request reconsideration is extended to November 4, 2019, which is when the Minister received her request. The matter is sent back to the Minister to make the reconsideration decision.

[21] The appeal is allowed.

Virginia Saunders  
Member, General Division - Income Security

---

<sup>13</sup> Subsection 54(1) *Department of Employment and Social Development Act*

<sup>14</sup> GD3-2-3