



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *LT v Minister of Employment and Social Development*, 2021 SST 289

Tribunal File Number: GP-21-504

BETWEEN:

L. T.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Date of decision: May 6, 2021

DECISION

[1] The time for the Claimant to ask for reconsideration of the denial of her *Canada Pension Plan* (CPP) disability application should be extended.

OVERVIEW

[2] The Minister received the Claimant's application for a CPP disability pension in January 2020.¹ The Claimant stated that she had been unable to work since January 2017 because of several conditions. These included severe depression, bipolar disorder, anxiety, high blood pressure, and stress.²

[3] The Minister denied the application on April 28, 2020.³ The Minister did not receive the Claimant's request for reconsideration until September 21, 2020, which was after the 90-day time limit for doing so.⁴ On November 18, 2020, the Minister refused to extend the time for the Claimant to apply for reconsideration.⁵ The Claimant appealed to the Social Security Tribunal.

[4] I decided this appeal based on the documents and submissions filed because I determined that a hearing was not required and there were no gaps in the information or need for clarification.

ISSUES

1. Did the Minister exercise its discretion judicially when it refused to extend the time for the Claimant to request reconsideration?
2. If not, should I extend the time for the Claimant to do so?

¹ GD2-30

² GD2-33

³ GD2-20. There is also a copy of a denial letter dated May 15, 2020 in the hearing file at GD2-17. There is no explanation in the hearing file as to why this second letter was sent.

⁴ GD2-16

⁵ GD2-9

ANALYSIS

[5] The Minister's decision to grant or refuse a late reconsideration request is a discretionary one. The Minister must exercise its discretion judicially.⁶

[6] A discretionary power is not exercised judicially if it can be established that 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.⁷

[7] It is not my role to decide whether the Minister made the correct determination. My role is to determine whether it exercised its discretion in a judicial manner. The Claimant has the burden of proof to establish that the Minister failed to do so.

[8] I have assumed the Minister sent the denial decision to the Claimant by mail. Mail in Canada is usually received within 10 days. I therefore find that the reconsideration decision was communicated to the Claimant by May 7, 2020. She had until August 6, 2020, to request reconsideration.⁸ The Minister did not receive her request for reconsideration until September 21, 2020.⁹

[9] Because the Minister did not receive the Claimant's request for reconsideration until September 21, 2020, it may only allow a longer period to request the reconsideration if satisfied

⁶ *Canada (A.G.) v Uppal* 2008 FCA 388

⁷ *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

⁸ Section 81 of the CPP

⁹ GD2-16

that 1) there is a reasonable explanation for requesting a longer period, and 2) the Claimant has demonstrated a continuing intention to request reconsideration.¹⁰ Both factors must be met.¹¹

The Minister did not exercise its discretion judicially

[10] I must initially determine whether the Minister exercised its discretion in a judicial manner.

[11] On October 7, 2020, the Minister wrote to the Claimant.¹² It told the Claimant that if she wished to pursue a late request for reconsideration she should:

- provide an explanation for the delay in sending the request,
- tell how she kept to keep the department informed of her intent to request reconsideration,
- explain the reasons why she disagreed with the decision.

[12] The Claimant responded on October 29, 2020.¹³ She explained that the request was late because she was waiting for a response by Dr. Andrawis, her family doctor, to the denial decision. She also stated that she was depressed to the extent that she often could not get out of bed. This impeded her ability to respond to the denial decision letter. She further stated that Covid-19 slowed down her ability to respond to the denial decision.

[13] In its decision, the Minister made a bald assertion that the information provided by the Claimant failed to establish that Covid-19 was an exceptional circumstance that led to the delay. It concluded that the Claimant had not provided a reasonable explanation for what it referred to as a “lengthy” delay.

[14] The Minister did not act judicially when it came this conclusion:

- First, it held the Claimant to an inappropriately high standard. A “reasonable explanation” should not be equated with “exceptional circumstances.” Numerous

¹⁰ Subsection 74.1(3) of the CPP Regulations

¹¹ *Lazure v Attorney General of Canada* 2018 FC 467, paragraph 25

¹² GD2-13

¹³ GD2-11

reasonable explanations for missing a deadline might not involve exceptional circumstances.¹⁴

- Second, the Minister did not consider the Claimant's medical condition. The Claimant had stated that her depression contributed to the delay. The Minister ignored a relevant factor when it failed to consider her medical condition when concluding that there was no reasonable explanation for delay.
- Third, the Minister stated that there had been a lengthy delay. However, the Minister received the request for reconsideration only about six weeks after the deadline.

[15] The Minister also concluded that the Claimant did not demonstrate a continuing intention to request reconsideration because she did not contact the department until it received her reconsideration request on September 21, 2020. However, there are other ways to demonstrate a continuing intent. For example, one way might be taking steps to obtain additional medical information for the purpose of making the request. The Minister ignored a relevant factor. It did not consider the steps taken by the Claimant to obtain additional medical information. Therefore, the Minister failed to act judicially.

The time for filing the reconsideration request should be extended

[16] Since I have found that the Minister did not exercise its discretion judicially, I must now determine whether the time for filing the reconsideration request should be extended.

The Claimant has established a reasonable explanation for the delay.

[17] In considering whether there is a reasonable explanation. I should consider the reality of the Claimant's particular circumstances.

[18] In her disability application, the Claimant stated that she suffered from, amongst other conditions, severe depression, bipolar disorder, fatigue, and anxiety.¹⁵ She recorded numerous difficulties with communication and thinking.¹⁶ In the September 2019 initial CPP medical report, Dr. Andrawis stated that the Claimant suffered major depressive disorder with mixed anxiety and significant insomnia. She was, amongst other impairments, fatigued, unable to focus

¹⁴ This is discussed in an unreported decision of the Appeal Division of this Tribunal in a decision called *P.P. v. Minister of Employment and Social Development*, AD-21-11, at para 26

¹⁵ GD2-33

¹⁶ GD2-45 to 47

on tasks, and unable to make decisions. She could not be exposed to stressful situations and was unable to communicate with the public.¹⁷

[19] On August 13, 2020, which was only one week after the deadline for requesting reconsideration, Dr. Monaghan, psychiatrist, provided an update letter to Dr. Andrawis. He stated that the Claimant had requested the update letter because she wanted to appeal the CPP denial decision. She had previously spoken about this with Dr. Andrawis. He had diagnosed the Claimant with chronic depression with anxious distress and agitation (agitated depression), which overlapped with bipolar spectrum.¹⁸ On August 31, 2020, Dr. Andrawis wrote supporting the Claimant's disability application. He stated that the Claimant's symptoms prevented her from concentrating on tasks or handling stressful situations.¹⁹

[20] The Claimant filed the August 13, 2020 and August 31, 2020, letters in support of her request for reconsideration. Covid-19 has created general disruption and delay. This understandably delayed the Claimant's obtaining these reports. The request for reconsideration was sent only about six weeks after the deadline.

[21] Considering the combined effect of these circumstances, I am satisfied that there is a reasonable explanation for the delay in requesting reconsideration.

The Claimant has established a continuing intention to request reconsideration

[22] In order to succeed, the Claimant must demonstrate a continuing intention to appeal during the 90-day period for requesting reconsideration (in this case by August 6, 2020) and continuously thereafter. The continuing intention to request reconsideration is often intertwined with the reasonable explanation for delay. While the length of delay is a relevant factor, the more important consideration is the reason for the delay.²⁰

[23] In this case, the reason for the delay was the Claimant's steps to obtain additional medical information during the general disruption and delay caused by Covid-19. The Claimant took

¹⁷ GD2-74

¹⁸ GD2-22

¹⁹ GD2-24

²⁰ *Canada (Attorney General) v. Burke*, 2012 FCA139

steps to obtain additional medical information from her family doctor and psychiatrist prior to the 90-day deadline. She saw her psychiatrist about only one week after the deadline on referral from her family doctor. This means that the steps for her to meet with her psychiatrist would likely have started well before the deadline. Her request for reconsideration was sent only about six weeks after the deadline.

[24] I am also satisfied that the Claimant has established, that it is more likely than not, that she had a continuing intention to request a reconsideration.

CONCLUSION

[25] It is more likely than not, that the Claimant has established both factors required to allow a longer time for reconsideration as set out in paragraph 8, above.

[26] The time for the Claimant to request reconsideration is extended to September 21, 2020, which is the date the Minister received her reconsideration request. The appeal is allowed and this matter is sent back to the Minister to make the reconsideration decision.

Raymond Raphael
Member, General Division - Income Security