



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SM v Minister of Employment and Social Development*, 2021 SST 396

Tribunal File Number: GP-20-1357

BETWEEN:

S. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Date of decision: March 31, 2021

DECISION.

[1] The Claimant is not entitled to a further period of retroactive benefits under the Canada Pension Plan (CPP).

OVERVIEW

[2] This is an appeal for a longer period of retroactive entitlement under the CPP for a disability pension. The Minister received the Claimant's application for the disability pension in June 2019. The Minister allowed the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal on the basis that he should be entitled to a longer period of retroactivity as he had been disabled since 2008.

ISSUES

[3] What is the maximum allowable period of retroactive benefits for a CPP disability benefit?

[4] Is the Claimant entitled to an earlier date of application on the basis of incapacity?

Pre-hearing conference summary

[5] The Claimant was provided with the Intention to Summarily Dismiss. He requested a 3-month adjournment to submit additional documents. However, after the three month period, no documents were received. The Minister had also requested a 3-month adjournment to investigate an allegation of erroneous advice/administrative error. However, no further information was received from the Minister at the expiration of the 3-month period.

[6] A pre-hearing conference was scheduled to address these issues. At the pre-hearing conference, the Claimant said he had not provided any further documentation because the file was in abeyance and he was waiting for the Minister to make a decision on the investigation. However, he told me that he had no further documents to

submit as most of his recollection regarding the erroneous advice given to him by an employee of the Minister was verbal.

[7] I explained to the Claimant that the issue before me was whether he was entitled to a greater amount of retroactivity (payments) then 15 months from the date of his CPP disability application. I explained that the Tribunal does not have the jurisdiction to consider erroneous advice or administrative error.¹ Only the Minister has this authority. He said he understood.

[8] No representative of the Minister attended the pre-hearing conference. Unfortunately, the Minister has not provided the Tribunal with any information regarding the status of their investigation of erroneous advice/administrative error. The Claimant advised me that he would contact Service Canada or his MP to obtain further information regarding the investigation into erroneous advice.

ANALYSIS

What is the maximum allowable period of retroactivity?

[9] The Claimant filed his application for a CPP disability benefit in June 2019.² The CPP contains a deeming provision that allows for an earlier date of disability. However, that is limited to 15 months before the date of the disability application is received by the Minister.³ In the Claimant's case, he was provided with the maximum allowable period of retroactivity at March 2018.⁴ Benefits under the CPP begin four months from the date of disability.

[10] The Minister provided benefits to the Claimant retroactively from July 2018. Accordingly, the Minister provided the Claimant with the maximum allowable retroactive entitlement under the CPP.

¹ *Pincombe v. Canada (Attorney General)*, [1995] F.C.J. No. 1320

² The application is at GD 2-15.

³ Section 42(2)(b)

⁴ This information is at GD 2-12.

[11] I find the decision of the Minister to be correct.

Is the Claimant entitled to an earlier date of application on the basis of incapacity?

[12] The only exception to the rule of maximum retroactive benefits is if the Claimant was not able to form or express an intention to apply for the benefit before the date he actually applied.⁵ I find the incapacity provision cannot be used to advance the Claimant's disability application to an earlier date.

[13] The capacity to form the intention to apply for benefits is not different in kind from the capacity to form an intention with respect to other choices in life. Capacity is to be considered in light of the ordinary meaning of the term and determined on the basis of the medical evidence and of the individual's activities.⁶

[14] The Claimant told me that his reason for not applying earlier for the disability pension was that he had been given wrong advice from an employee of the Minister. He told me that he had never been under a Power of Attorney. He drove a vehicle, paid his own bills, lived on his own, cooked his own meals and did his own grocery shopping. He was generally able to take care of his affairs.

[15] In this case, the facts do not support a finding of incapacity, as that term is understood in the CPP. The Claimant while disabled did not lack capacity. He was able to engage in many of the day-to-day activities that are comparable to maintaining capacity.

[16] In this case, the Claimant cannot benefit from the incapacity provisions.

⁵ Section 60(8) and (9) CPP

⁶ *Sedrak v. Canada (Social Development)*, 2008 FCA 86

CONCLUSION

[17] The appeal is dismissed.

Connie Dyck
Member, General Division - Income Security