



Citation: *Minister of Employment and Social Development v TC*, 2021 SST 474

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Ian McRobbie

Respondent: T. C.
Representative: Justin Linden

Decision under appeal: General Division decision dated May 29, 2021
(GP-20-1424)

Tribunal member: Neil Nawaz

Type of hearing: On the record

Decision date: September 9, 2021

File number: AD-21-276

Decision

[1] Leave to appeal is granted, and the appeal is allowed. I am giving the decision that the General Division should have given and finding the Respondent disabled as of January 2019.

Background

[2] The Respondent is a former customer service representative who sustained a traumatic head injury in a winter sporting accident. She made an unsuccessful attempt to return to her job but hasn't worked since June 2018. She applied for a Canada Pension Plan (CPP) disability pension in December 2019.

[3] The Minister refused the application. The Respondent appealed that refusal to the Social Security Tribunal's General Division.

[4] The General Division held a hearing by videoconference and found that the Respondent had a severe and prolonged disability as of January 2017. Since a claimant cannot be found disabled more than 15 months before the date of application, the General Division deemed the Respondent's date of disability to be September 2018, with a first payment date of January 2019.¹

[5] The Minister has now requested leave, or permission to appeal, from the Tribunal's Appeal Division. It alleges that the General Division erred in law by deeming the Claimant disabled before he had established coverage for CPP disability benefits.

[6] At the Minister's suggestion, I convened a settlement conference to see if there was common ground on which the parties might reach an agreement.

[7] The parties did reach an agreement, and its terms were read into the record at the end of the settlement conference.² The parties have asked me to prepare a decision that reflects that agreement.

¹ Under s 69 of the *Canada Pension Plan*, payment begins four months after the date of disability.

² Refer to recording of settlement conference on September 7, 2021.

Agreement

[8] The parties agreed that the Appeal Division should allow the appeal because the General Division erred in law by deeming a date of disability onset that was earlier than the end of the Respondent's contributory period. They also agreed that the Appeal Division should give the decision that the General Division should have given and find the Respondent disabled as of January 2019.

Analysis

[9] For the following reasons, I accept the parties' agreement.

[10] Coverage for the CPP disability pension is established by working and contributing to the CPP. To qualify for the CPP disability pension, a claimant must establish a minimum qualifying period (MQP). Under the *Canada Pension Plan*, an MQP is established when a claimant shows valid contributions in at least four calendar years over any six-year period.³ The MQP must also be within the contributory period, which begins when a claimant reaches eighteen years of age and ends the month in which a claimant is determined to have become disabled.⁴

[11] In this case, the General Division determined that the Claimant's MQP was due to end on December 31, 2021. However, the Respondent could not have been deemed disabled as of September 2018, as the General Division would have it, because doing so would have put an end to her contributory period before the establishment of her MQP. As of September 2018, the Respondent was still short of her fourth year of required contributions, as can be seen from this summary of her valid earnings:⁵

	Unadjusted pensionable earnings	Basic exemption amount
2015	0	5,300
2016	7,200	5,400
2017	25,440	5,500
2018	11,538	5,500
2019	4,794	5,700
2020	5,828	5,800

³ *Canada Pension Plan*, s 44(2)(a)(i) .

⁴ *Canada Pension Plan*, s 44(2)(b).

⁵ These figures are taken from the Respondent's most recent record of earnings, GD6-3.

[12] Contributions made after the date of disability onset cannot be considered. It was an error of law for the General Division to determine that the Respondent's disability started before her MQP had been established.

Remedy

[13] When the General Division makes an error, the Appeal Division can fix it by one of two ways: (i) it can send the matter back to the General Division for a new hearing or (ii) it can give the decision that the General Division should have given.⁶

[14] The Tribunal is required to proceed as quickly as fairness permits. Since the main issue in this appeal is a matter of law, I am satisfied that I have all the information I need to determine the Respondent's deemed date of disability onset myself.

[15] In this case, the Respondent had two coverage periods. As the General Division noted, the Claimant's earnings and contributions gave her an MQP ending on December 31, 2021. But she also had another coverage period under an exception to the general rule known as the "proration" provision.⁷ Because she recorded earnings (\$4,794) in 2019 below the basic exemption amount following three years of valid earnings and contributions, the Respondent was eligible for the disability pension if she could show that her disability began between January 1, 2019 and October 31, 2019.⁸

[16] I have reviewed the Respondent's medical records and listened to a recording of her testimony before the General Division. Based on that evidence, I am satisfied that the Claimant's disability became severe and prolonged as of January 2019.

⁶ DESDA, s 59(1).

⁷ Set out in ss 19 and 44(2.1) of the *Canada Pension Plan*.

⁸ I agree with the Minister's calculation of the proration period set out in note 19 of its submissions, AD1-28.

Conclusion

[17] The appeal is allowed in accordance with the agreement. Because the Respondent became disabled as of January 2019, her pension starts as of May 2019.



Member, Appeal Division