



Citation: *KR v Minister of Employment and Social Development*, 2021 SST 655

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: K. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 9, 2021 (issued by
Service Canada)

Tribunal member: Tyler Moore

Type of hearing: Teleconference

Hearing date: September 27, 2021

Hearing participant: Appellant

Decision date: ~~October 25, 2021~~
CORRIGENDUM DATE: November 3, 2021

File number: GP-21-501

Decision

[1] The appeal is allowed in part.

[2] The Claimant, K. R., is eligible for a Canada Pension Plan (CPP) disability pension. The payment became correct in pay as of November 2020. I have no jurisdiction, however, over the repayment of a provincial plan.

[3] This decision explains why I am allowing the appeal in part.

Overview

[4] The Claimant is 47 years old. She last worked as a full-time administrator from November 2017 until August 2018. She indicated that she could no longer work as of that time because of chronic stress, abuse, and post-traumatic stress disorder (PTSD).

[5] The Claimant applied for a CPP disability pension on June 19, 2019. She included a signed Consent to Deduction and Payment that instructs the Minister of Employment and Social Development (Minister) to reimburse those months where benefits were payable to her under the CPP and a Provincial Assistance Program. In this case, the Claimant began receiving benefits through the AISH provincial assistance program effective June 2019.

[6] The Minister granted the Claimant's application for a CPP disability pension at the reconsideration level, with a date of onset of disability of October 2020. That date coincided with the date of the CPP credit split attribution.

[7] In January 2020, the Claimant submitted her 1st application for a division of unadjusted pensionable earnings (credit split). The credit split range was from 1992 to 2007. It did not impact her minimum qualifying period date. She then submitted a 2nd application for a credit split on October 28, 2020. The credit split range based on that application was from 2008 to 2016. After the credit split the Claimant had 26 years of valid earnings and CPP contributions, and her minimum qualifying period date changed.

[8] The Claimant and Minister are in agreement that the Claimant's disability began in August 2018 when she stopped working. The Claimant argues, however, that the full amount of her CPP disability pension should have been paid directly to her effective

June 7, 2019. It should not have been used to reimburse AISH. She has experienced financial hardship as a result.

[9] The Minister says the Claimant's appeal should be allowed in part. The Claimant became disabled in August 2018 when she stopped working. However, the earliest date of payment is November 2020, which is the date of attribution of the CPP credit split. As far as reimbursing the provincial program AISH, the Minister argues that the Claimant signed the Consent to Deduction and Payment. The reimbursement to AISH for the months where benefits were payable to the Claimant under the CPP and AISH is not appealable.

Issues

[10] Did the Claimant have a disability that was severe and prolonged by December 31, 2020? This date based on information from her October 2020 credit split application.

[11] Was the reimbursement from the Claimant's CPP disability pension to AISH done correctly, and in accordance with the CPP legislation?

[12] The *Canada Pension Plan* defines "severe" and "prolonged."

[13] A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.¹

[14] This means I have to look at all of the Claimant's medical conditions together to see what effect they have on her ability to work. I also have to look at her background (including her age, level of education, and past work and life experience). This is so I can get a realistic or "real world" picture of whether her disability is severe. If the Claimant is able to regularly do some kind of work that she could earn a living from, then she isn't entitled to a disability pension.

¹ Section 42(2)(a) of the *Canada Pension Plan* gives this definition of severe disability.

[15] A disability is **prolonged** if it is likely to be long continued and of indefinite duration, or is likely to result in death.²

[16] This means the Claimant's disability can't have an expected recovery date. The disability must be expected to keep the Claimant out of the workforce for a long time.

[17] The Claimant has to prove that she had a severe and prolonged disability. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she is disabled.

Reasons for my decision

The Claimant was disabled as of August 2019 [2018]

[18] Both the Minister and Claimant conceded that she became disabled, according to the CPP definition, as of August 2018 when she stopped working. I agree with this. The Claimant had substantially gainful earnings in 2013 and 2018. That was prior to any CPP credit splitting.

[19] Between November 2017 and August 2018, the Claimant was working full-time as an administrator at a construction company. She stopped working because of stress/anxiety, ongoing court cases she was dealing with, and back pain. She reportedly received some disability compensation through her employer until she started receiving AISH.

[20] The medical evidence also supports that the Claimant was disabled before December 31, 2020. For example:

- In April 2019, Dr. Nwachukwu, psychiatrist, reported that the Claimant was had been suffering from schizoaffective disorder and generalized anxiety disorder with a date of onset of 2000. She had a lifelong personality disorder. Dr. Nwachukwu was of the opinion that the Claimant had extreme anxiety and emotional dysregulation, paranoid and persecutory delusions, and a chronically

² Section 42(2)(a) of the *Canada Pension Plan* gives this definition of prolonged disability.

depressed mood. She could not earn a living or engage socially in an appropriate manner.

[21] Since there is agreement between all parties that the Claimant met the definition of a severe and prolonged disability, according to the CPP, I will not assess her work capacity any further. The Claimant met the criteria for a CPP disability pension as of August 2018.

The Tribunal has no jurisdiction over re-payment to provincial plans

[22] The Claimant argues that she should be receiving about \$1600/month from AISH in addition to about \$1152/month from her CPP disability pension. Right now she is only receiving \$1671.33/month in total because her CPP disability pension is being re-routed to repay AISH. The Claimant argues that she is not receiving enough money each month to meet her basic financial needs. Because of that, she has had to live out of her vehicle for the last 500 days.

[23] Unfortunately, as a Tribunal member I do not have the authority or jurisdiction to decide about the repayment of a provincial plan such as AISH. It does not comprise one of the types of decisions that may be appealed to the SST, as per sections 81 and 82 of the Canada Pension Plan.

When payments start

[24] All parties agree that the Claimant became disabled as of August 2018. Her minimum qualifying period date is December 31, 2020. Again, that date is a direct result of the October 2020 credit split application. Prior to that credit split, the Claimant's minimum qualifying period date was December 31, 2010. Based on the evidence presented, the Claimant would not have been eligible for a CPP disability pension when her minimum qualifying period date was December 31, 2010.

[25] The Claimant is right that according to paragraph 42(2)(b) of the CPP, a person may be deemed disabled up to a maximum of 15 months before the month in which their application was received. Section 69 of the CPP also sets out that when a disability pension is approved, it is payable for each month starting with the fourth

month after the month in which the person became disabled. However, subsection 55.2(9) of the CPP, sets out that the effective date of payment for a CPP disability pension is established by the date of attribution of the credit split. This means that the effective date of payment starts the month after the month in which the credit split takes place.

[26] In this case, because the Claimant's credit split took place in October 2020, her CPP disability pension correctly became in pay as of November 2020. The Claimant was not eligible for a disability pension at an earlier date. Section 55.2 sets out that in no case shall a benefit that was not payable in the absence of the credit split be paid in the month in which the credit split takes place, or any month before. That means that the Claimant was not eligible for CPP disability pension payments before November 2020.

Conclusion

[27] I find that the Claimant was eligible for a Canada Pension Plan disability pension with an effective date of onset of disability of August 2018. However, in accordance with section 55.2 of the CPP, payment of her CPP disability pension was correctly calculated to become in pay as of November 2020. I do not have the authority to decide about the repayment the provincial AISH plan.

[28] This means the appeal is allowed in part.

Tyler Moore
Member, General Division – Income Security Section