



Citation: *RM v Minister of Employment and Social Development (Minister)*, 2021 SST 857

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant/Claimant: R. M.
Representative: Norm Groleau

Respondent: Minister of Employment and Social Development (Minister)

Decision under appeal: Minister of Employment and Social Development decision dated April 12, 2021 (issued by Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: Teleconference

Hearing date: October 27, 2021

Hearing participants: Appellant/Claimant
Appellant's/Claimant's Representative
Appellant's/Claimant's Spouse (moral support)

Decision date: November 16, 2021

File number: GP-21-1450

Decision

[1] The appeal is dismissed.

[2] The Claimant, R. M., isn't entitled to have a longer period of time to request reconsideration of the July 15, 2020 decision about his *Canada Pension Plan (CPP)* disability application.

Overview

[3] The Claimant applied for CPP disability benefits in January 2020. The Minister denied the application on July 15, 2020. The Claimant asked the Minister to reconsider the denial on March 19, 2021. On April 12, 2021 the Minister refused the request because it was more than 90 days after the Claimant received the July 15, 2020 decision.

Reasons for my decision

A claimant has 90 days to ask the Minister to reconsider a decision

[4] If claimants disagree with a decision of the Minister, they have 90 days to ask the Minister to reconsider the decision.¹

[5] If a person waits more than 90 days before asking the Minister to reconsider the decision, then the request for reconsideration is considered to be late.

What the Minister must consider when a request for reconsideration is late

[6] The Minister can reconsider a decision even if the request for reconsideration is late. However, the Minister can only do so if satisfied that:²

- there is a reasonable explanation for requesting a longer period; and
- the person demonstrated a continuing intention to request a reconsideration.

¹ Section 81 of the *Canada Pension Plan*

² Subsection 74.1(3) of the *Canada Pension Plan Regulations*

[7] Both of the factors (above) must be met. This means that if the Claimant does not meet one of the factors then his request for additional time to pursue a late reconsideration cannot be granted.

The Minister's discretion must be exercised judicially

[8] The Minister's decision to grant or refuse additional time to request reconsideration is considered a discretionary decision. The Minister's discretion must be exercised judicially.³

[9] This means that the decision maker must not:⁴

- act in bad faith,
- act for an improper purpose or motive,
- take into account an irrelevant factor,
- ignore a relevant factor, or
- act in a discriminatory manner.

What I must decide

[10] I must decide if the Claimant's request for reconsideration was late. If it was, then I must also decide if the Minister exercised its discretion in a judicial manner when it decided to refuse a longer period of time for the Claimant to request a reconsideration.

The Claimant's request for reconsideration was late

[11] I find the Claimant requested reconsideration of the July 15, 2020 decision more than 90 days after the decision was communicated to him.

[12] The Minister's July 15, 2020 decision was sent to the Claimant's mailing address. Mail in Canada is usually received in 10 days. Therefore, I find it was likely

³ This is explained in *Canada (Attorney General) v. Uppal*, 2008 FCA 388

⁴ This is explained in *Canada (Attorney General) v. Purcell*, [1996] 1 FC 644

communicated to him by July 27, 2020.⁵ The Claimant had until October 26, 2020 to request reconsideration.⁶

[13] The Minister did not receive the Claimant's request for reconsideration until March 19, 2021. Therefore, it was filed late (i.e. more than 90 days after the Claimant likely received the July 15, 2020 decision).

The Minister exercised its discretion judicially

[14] The Minister exercised its discretion judicially when deciding not to allow the Claimant to have more time to request reconsideration.

[15] The Minister denied the Claimant's request for reconsideration because the Minister determined the Claimant did not provide a reasonable explanation for the delay and because he did not show a continued intention to request a reconsideration.⁷

[16] There is no evidence that the Minister acted in bad faith, for an improper purpose or motive, or in a discriminatory manner.

The Minister did not consider an irrelevant factor or ignore a relevant factor

[17] During the hearing the Representative argued the Minister ignored relevant factors when considering the Claimant's request. Specifically, the Representative and Claimant identified three factors the Minister did not consider. They were whether the Covid restrictions had any impact on the Claimant's delay; the fact that other federal deadlines were relaxed or suspended; and, the Claimant's belief that his appeal to his insurance company included his CPP matter.

[18] I find the Claimant's submissions are not persuasive. For the following reasons I find the evidence does not prove that the Minister considered irrelevant factors or ignored relevant factors.

⁵ 10 days from the date of the letter falls on a Saturday. Since there is usually no mail delivery on weekends I chose the next business day.

⁶ 90 days from the date of the letter falls on a Sunday. Therefore, I chose the next business day when the Claimant could have submitted his request.

⁷ The Minister's explanation begins at page GD2-33

- **Covid Restrictions**

[19] The Representative did not say the Covid restrictions **actually** delayed the Claimant's request for reconsideration or contributed to the delay. He said they **might have** affected him and were, therefore, relevant. He said the Minister should have considered them. I appreciate that we all have heightened awareness of Covid restrictions and they play an important part in our lives. I also appreciate that a claimant's actions and decisions can be affected by many different events in his life including Covid restrictions. If I accept the Representative's argument, the Minister would have to anticipate and identify facts that might delay a particular claimant's request even when the claimant does not say the facts caused or contributed to the delay.

[20] It is the Claimant's responsibility to request the reconsideration and provide an explanation for the delay. The Minister's role is to consider whether the Claimant's explanation is reasonable. The Minister may request additional information from a claimant if the Claimant failed to provide required information or if the Minister finds there is insufficient information for the Minister to consider the request.⁸

[21] The Minister is allowed to ask for more information but it is not required. The Minister did not request additional information and considering the facts in this appeal that seems reasonable. The Claimant already provided the required information and made submissions about the factors the Minister had to consider.

[22] The Claimant was represented by a lawyer (Representative). The Representative wrote to the Minister for additional time to request reconsideration of the July 15, 2020 decision. The Representative acknowledged the fact the request was late, said the Claimant always intended to request reconsideration and explained why there was a delay. The Representative also gave details about the Claimant's efforts to retain the Representative to pursue his application. The Representative addressed the relevant factors in his submission.

⁸ Subsection 74.1(2) of the *Canada Pension Plan Regulations*

- **Other relaxed or suspended federal deadlines**

[23] The Representative argued that the Minister should have considered that other federally legislated deadlines such as deadlines to file income tax returns were relaxed or suspended. He did not suggest deadlines established by the CPP were also relaxed or suspended. Administrative tribunals are created by legislation and only have the powers granted by the governing statute. This means the rules and deadlines apply to the Claimant's appeal as they appear in the CPP and its regulations. I cannot change or waive them, or require the Minister to change or waive them.⁹

- **Claimant's additional explanation**

[24] During his testimony the Claimant talked about why he did not send his request for reconsideration earlier. He explained that his insurance company required him to apply for CPP disability benefits. When his CPP application was denied he was also pursuing an appeal for long term disability (LTD) benefits. He said since his insurer required him to file for CPP he assumed the appeal for LTD would also include the CPP benefits. Therefore he did not request reconsideration until he was told his insurance appeal would not deal with his CPP application. The Claimant did not explain this to the Minister when he filed his late request. Therefore, the Minister could not consider this explanation.

[25] Even if I found the Claimant's explanation reasonable, I cannot interfere with the Minister's decision. My role is not to determine the outcome of the Minister's analysis or make a different decision. My role is to determine whether the Minister's discretionary authority was exercised in a judicial manner.

[26] The legislation says that when a reconsideration request is late, the Minister may allow a longer period of time to make the request if the Minister is satisfied there was a

⁹ See, generally, the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22.

reasonable explanation for requesting a longer period and the claimant demonstrated a continuing intention to request a reconsideration.¹⁰

i. Reasonable explanation

[27] The Representative explained he was not retained until January 2021 and filed the request in March 2021. When he submitted the request he acknowledged the fact that it was late. The Representative asked the Minister to consider that he was not retained until January 2021 and to also consider the Claimant's health that caused or contributed to the delay. The Representative did not provide any other explanation for the delay or say there were other facts to explain the delay.

[28] The Minister considered the Representative's letter when deciding if the Claimant's explanation was reasonable. The Minister decided it was not. In his letter to the Minister the Representative did not provide additional facts to show why the Claimant did not retain him until after the 90-day period expired or why he did not submit the Claimant's request until approximately two months later. The Representative did not identify any other facts that would explain the delay.

ii. Claimant's continuing intention

[29] The Minister said there is no evidence the Claimant contacted the Ministry to pursue the reconsideration. The Minister did not mention other ways in which the Claimant might have showed a continuing intention except to note the Representative's letter explaining the Claimant contacted him in January 2021. The Minister's consideration regarding this factor is understandably brief since the Claimant did not provide evidence of efforts he took to pursue the reconsideration until after the end of the 90-day period when he retained his lawyer.

¹⁰ Subsection 74.1(3) of the *Canada Pension Plan Regulations*

Conclusion

[30] There is no evidence to show the Minister acted in bad faith, for an improper purpose or in a discriminatory manner. The Minister considered all relevant factors. There is no evidence the Minister considered irrelevant factors. The decision to deny the Claimant a longer period to make a request for reconsideration was made in a judicial manner.

[31] The Claimant is not allowed further time to request a reconsideration of the July 15, 2020 decision.

[32] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section