



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CI v Minister of Employment and Social Development*, 2021 SST 917

Tribunal File Number: GP-21-513

BETWEEN:

**C. I.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Raymond Raphael

Teleconference hearing on: June 9, 2021

Date of decision: June 11, 2021

## DECISION

[1] The time for the Claimant to ask for reconsideration of the denial of her *Canada Pension Plan* (CPP) disability application should not be extended.

## OVERVIEW

[2] The Minister received the Claimant's application for a CPP disability pension in July 2019.<sup>1</sup> The Claimant stated that she had been unable to work since February 2017 because of several conditions. These included post-traumatic stress disorder and continual breakdowns, recurring heart and stroke concerns, high blood pressure, and arrhythmia.<sup>2</sup> The Minister denied the application on October 16, 2019.<sup>3</sup> The Minister did not receive the Claimant's request for reconsideration until December 14, 2020, which was after the 90-day time limit for doing so.<sup>4</sup> On December 23, 2020, the Minister refused to extend the time for the Claimant to apply for reconsideration.<sup>5</sup> The Claimant appealed to the Social Security Tribunal.

## 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?

## ANALYSIS

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

[4] A discretionary power is not exercised judicially if it can be established that the decision-maker:

- acted in bad faith,

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<sup>1</sup> GD2-31

<sup>2</sup> GD2-184

<sup>3</sup> GD2-22

<sup>4</sup> GD2-16

<sup>5</sup> GD2-9

<sup>6</sup> *Canada (A.G.) v Uppal* 2008 FCA 388

- acted for an improper purpose or motive,
- took into account an irrelevant factor,
- ignored a relevant factor, or
- acted in a discriminatory manner.<sup>7</sup>

[5] It is not my role to determine if 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.

[6] I have assumed the October 16, 2019 initial decision letter was sent to the Claimant by mail. Mail in Canada is usually received within 10 days. I therefore find that the decision was communicated to her by October 28, 2019.<sup>8</sup> She had until January 27, 2020 to request reconsideration.<sup>9</sup> The Minister did not receive her request for reconsideration until December 14, 2020, which was more than a year after the initial decision was communicated to her.

[7] Because the Minister did not receive the Claimant's request for reconsideration until April 16, 2020, it may only allow a longer period to request the reconsideration only if satisfied that:

- there is a reasonable explanation for requesting a longer period,
- the Claimant has demonstrated a continuing intention to request reconsideration,
- the request for reconsideration has a reasonable chance of success, and
- allowing a longer period for making the request would not cause any prejudice to the Minister.<sup>10</sup>

[8] All four factors must be met.<sup>11</sup>

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

<sup>8</sup> October 26 was a Saturday.

<sup>9</sup> Section 81 of the CPP. January 26 was a Sunday.

<sup>10</sup> Subsections 74.1(3) and 71.1(4) of the CPP regulations

<sup>11</sup> *Lazure v Attorney General of Canada* 2018 FC 467, paragraph 25

***The Minister did not exercise its discretion judicially***

[9] I must initially determine whether the Minister exercised its discretion in a judicial manner. For the reasons that follow, I find that it did not.

[10] In her request for reconsideration<sup>12</sup>, the Claimant stated that she did not pursue the request for reconsideration because she thought her health conditions would improve. She also stated that she was overwhelmed by the appeal process and “put it aside.” She was too weak to deal with it at that time. She was in no condition to complete a “daunting and overwhelming” task. She was “depleted” and “too weak to fight.” In December 2020, her family doctor, asked her why she had not appealed the decision. This prompted her to file the request for reconsideration.

[11] In its decision<sup>13</sup> refusing to extend the time for reconsideration, the Minister stated that the Claimant had not provided a reasonable explanation for her lengthy delay in requesting reconsideration. This was because the information she provided did not establish exceptional circumstances that led to the delay. However, the Minister did not provide any reasons for this conclusion. Further, it held the Claimant to an inappropriately high standard. A “reasonable explanation” should not be equated with “exceptional circumstances.” Numerous reasonable explanations for missing a deadline might not involve exceptional circumstances.<sup>14</sup>

[12] The Minister also concluded that the request for reconsideration did not have a reasonable chance of success. It stated that the Claimant had not provided any additional information or given reasons why the decision was incorrect. The Minister ignored relevant factors. First, it was not necessary for the Claimant to provide new information when she filed a request. Different medical adjudicators make the initial and reconsideration decisions. They might come to a different conclusion based on the same medical information. In addition, the Claimant could file additional documentation during the course of the reconsideration. Second,

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<sup>12</sup> GD2-17

<sup>13</sup> GD2-9 to 11

<sup>14</sup> 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

the Claimant did give reasons why the decision was incorrect. She stated that the medically documents clearly indicate that she is disabled.<sup>15</sup>

[13] 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 time for filing the reconsideration request should not be extended***

[14] I am satisfied that there would be no prejudice to the Minister if the time to request reconsideration were extended. I am also satisfied that the request for reconsideration has a reasonable chance of success. However, for the reasons that follow, I find that the Claimant has failed to establish that it is more likely than not, that she has a reasonable explanation for the delay and a continuing intention to appeal.

[15] The October 2019 letter denying the Claimant's request for a disability pension provided information on what she should do if she disagreed with the decision: she must ask the Minister in writing to reconsider the decision within 90 days from when she received the letter. An attachment to the letter explained how she could do this.<sup>16</sup>

[16] The Claimant has not established a reasonable explanation for the delay. At the hearing, she acknowledged that she received the denial decision letter in October 2019. She put it aside because it was "too much for her." In January, her insurer asked for a copy of the denial letter. Since she could not find it, she asked Service Canada for a copy and sent it to her insurer.<sup>17</sup> Her insurer did not follow up with her about appealing the denial. They did not insist that she appeal.

[17] She delayed requesting a reconsideration because the denial was "not that important" due to her "dire" medical conditions. She was suffering from post-traumatic stress disorder, cardiac issues, and bowel problems. She focused on medical emergencies and was always in "survival model" She requested the reconsideration after her family doctor prompted her to do so.

[18] This is not a reasonable explanation for the delay. Most CPP disability claimants suffer from serious medical conditions. The Claimant chose to ignore filing an appeal because she felt

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<sup>15</sup> GD2-17

<sup>16</sup> GD2-22 to 24

<sup>17</sup> GD2-21

dealing with her medical conditions was more important. However, there was no reason why she could not have done both. She was able to write to Service Canada and request another copy of the denial decision. She was able to forward it to her insurer. She was able to file the request for reconsideration after her family doctor prompted her to do so.

[19] The Claimant has also not established a continuing intention to request reconsideration. She did not decide to do this until prompted by her family doctor in December 2019. This was more than a year after she received the denial decision.

[20] The Claimant has been able to establish only two of the factors set out in paragraph 7, above. Since all four factors must be established, the time for filing the reconsideration request should not be extended.

[21] My decision relates only to whether the time for the Claimant to request a reconsideration of the denial decision should be extended. It does not decide whether she is able to meet the CPP disability pension requirements. She can decide to submit a new application for CPP disability.

## **CONCLUSION**

[22] The appeal is dismissed.

Raymond Raphael  
Member, General Division - Income Security