



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *HL v Minister of Employment and Social Development*, 2021 SST 987

Tribunal File Number: GP-21-1653

BETWEEN:

H. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Jackie Laidlaw

DATE OF DECISION: December 15, 2021

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a CPP disability benefit. The Respondent approved the application on October 8, 2019. The Appellant appealed date of onset of the disability to the Social Security Tribunal (Tribunal) on July 29, 2021.

[2] This appeal involves a retroactive payment of the disability benefit.

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[4] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[5] The Appellant applied for a CPP disability benefit on February 6, 2019.

[6] Payments for her benefit began in March 2018.

SUBMISSIONS

[7] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations).

[8] The Appellant submitted that:

- a) Her disability began in 1991 from a work related accident, which put her on WCB. She had two subsequent accidents in 1994 and 1998.
- b) She should be considered disabled as of October 2014 when she stopped working.

- c) She did not have the capacity to apply earlier as she had surgery and was recovering until February 2017.

ANALYSIS

[9] The issue of “capacity” is not that the Appellant did not have the physical ability to apply earlier. The Tribunal accepts that she was going through treatments and recovery before she applied for the benefit. “Capacity” is a much more stringent legal test and involves the mental ability to form the intention to apply for the benefit.¹ The Federal Court of Appeal has found incapacity, in this context, has been held to mean an incapacity to form an intention to apply, not the appellant’s physical difficulties resulting from her conditions.²

[10] The Tribunal is aware that the Appellant stopped working in October 2014. However, the *Canada Pension Plan* says an appellant can’t be considered disabled more than 15 months before the Minister receives their disability pension application. After that, there is a four-month waiting period before payments start.³

[11] The Appellant applied in February 2019, which means she cannot be considered disabled before November 2017. The four-month wait period after the deemed date of onset meant her benefits started March 2018. She has been paid according to the legislation.

[12] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP.

[13] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

¹ Subsection 60(9) of the CPP provides that an application may be deemed to have been made at an earlier date where the person had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made, and that the application was made within a period after the incapacity ceased and that comprises the same number of days, not exceeding twelve months, as the period of incapacity. According to subsection 60(10) of the CPP the period of incapacity must be a continuous period.

² E.D.B. v. Canada (Minister of Human Resources and Skills Development, [2011] F.C.J. No 670, 2011 FCA 158

³ Section 69 of the *Canada Pension Plan* sets out this rule. This means that payments can’t start more than 11 months before the application date.

CONCLUSION

[14] The appeal is summarily dismissed.

Jackie Laidlaw
Member, General Division - Income Security