



Citation: *MM v Minister of Employment and Social Development*, 2022 SST 971

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated August 30, 2022
(GP-22-843)

Tribunal member: Neil Nawaz

Decision date: September 29, 2022

File number: AD-22-641

Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] For years, the Applicant received a Canada Pension Plan (CPP) disability pension. In January 2022, the month after the Applicant turned 65, the Minister converted his CPP disability pension to a CPP retirement pension.¹

[3] The Applicant was surprised and upset to learn that, as a result of the conversion, his monthly pension would be dropping from \$632.48 to \$166.46. He asked the Minister to reconsider her decision. He thought that his pension was too low. He accused family members of stealing his identity and his CPP contribution credits.

[4] The Minister investigated the Applicant's claims but found no evidence of fraud. She maintained her original assessment of the Applicant's retirement pension.

[5] The Applicant appealed the Minister's assessment to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. The General Division determined that it had no authority to look into the Applicant's fraud allegations. It decided that, based the Applicant's record of earnings and contributions, the Minister had calculated the retirement pension correctly.

[6] The Applicant is now requesting permission to appeal from the Appeal Division. He maintains that his pension should be higher and alleges that, in coming to its decision, the General Division made the following errors:

- It didn't give him a chance to comment on the Minister's assessment of his retirement pension;

¹ Under section 70(2) of the *Canada Pension Plan*, recipients of the disability pension are deemed to have applied for the retirement pension in the month they turn 65.

- It found that it lacked the authority to consider his claim that his pension credits had been stolen;
- It refused to consider his allegations of fraud; and
- It focused on the calculation of his retirement pension rather than on the inaccuracies in his record of earnings and contributions.

Issue

[7] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.²

[8] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.⁵

[9] I have to decide whether the Applicant has raised an arguable case that falls under one or more of the permitted grounds of appeal.

Analysis

[10] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant does not have an arguable case.

² *Department of Employment and Social Development Act* (DESDA), section 58(1).

³ DESDA, sections 56(1) and 58(3).

⁴ See DESDA, section 58(2).

⁵ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

There is no arguable case that the General Division denied the Applicant a full hearing

[11] The Applicant argues that the General Division proceeded unfairly by not giving him an opportunity to comment on the Minister's assessment of his retirement pension.

[12] I don't see a case here.

[13] The Applicant filed his notice of appeal with the General Division on April 27, 2022, and his hearing was held on August 24, 2022. During the intervening four months, the Applicant had an opportunity to make in his case in writing. The record shows that he took advantage of that opportunity, submitting several documents that he believed would prove his entitlement to a higher pension. When the General Division held its hearing, it did so by teleconference, allowing the Applicant to elaborate at length about his reasons for appealing.⁶

[14] It is hard to see how the Applicant was deprived of his right to be heard.

[15] On August 18, 2022, six days before the hearing and nearly a month after the submissions deadline,⁷ the Applicant filed more written submissions with the Tribunal.⁸ After the hearing, General Division allowed the Minister an opportunity to respond to the submission. The Minister submitted a brief letter,⁹ which the Tribunal copied to the Applicant, making it clear that he was not expected to provide a yet another response to a response.¹⁰

[16] Again, I don't see how the General Division's process denied the Applicant a chance to say his piece.

⁶ I listened to the recording of the General Division's hearing.

⁷ See Tribunal's letter dated June 20, 2022 establishing a submissions deadline of July 20, 2022.

⁸ See Applicant's email dated August 18, 2022, GD10.

⁹ See Minister's letter dated August 30, 2022, GD12.

¹⁰ See Tribunal's letter dated August 30, 2022, GD13.

There is no arguable case that the General Division had jurisdiction to consider the Applicant's fraud claims

[17] From the start, the Applicant has insisted that relatives somehow stole his CPP contribution credits from him. The Minister looked into this allegation but could find no evidence to support it.¹¹ When the issue was raised at the General Division, the presiding member decided that she had no jurisdiction to consider it: "At the start of the hearing, I explained that I had no authority to make a decision on these matters. The only issue before me is the amount of the [Applicant's] CPP retirement pension."¹²

[18] I don't see an arguable case that the General Division erred in coming to this conclusion.

[19] Under the *Canada Pension Plan*, a claimant's record of earnings is conclusively presumed to be accurate.¹³ A contributor who is not satisfied with the record may request the Minister to reconsider information on it, and the Minister **may**, in response to such a request, correct such information. However, the use of the word "may" in the applicable provision indicates that any action that the Minister takes is at her discretion; it is up to her to decide whether a correction is warranted.

[20] Unfortunately for the Applicant, that means the Minister's refusal to adjust his record of earnings is beyond the review of this Tribunal. The Minister investigated the matter at the Applicant's request and decided that there was no evidence of fraud or misappropriated contributions. That ended the matter. The General Division has no authority to review a discretionary decision of the Minister.¹⁴ The General Division has no authority to alter or correct a record of earnings.¹⁵

¹¹ See Minister's investigation report dated March 25, 2022, GD2-30.

¹² See General Division decision, paragraphs 7–9.

¹³ See *Canada Pension Plan*, section 97(1).

¹⁴ *Pincombe v Canada (Attorney General)* (1995), 189 N.R. 197 (FCA).

¹⁵ Previous cases have ruled that section 97 of the *Canada Pension Plan* did not give the CPP Review Tribunal (the predecessor of the General Division) the jurisdiction to impute contributions that don't appear in the record of earnings. See for instance *Minister of Social Development v Menard* (July 2006), CP 22041 (PAB).

There is no arguable case that the General Division ignored the Applicant's allegations of fraud

There is no arguable case that the General Division erred by focusing on the calculation of the Applicant's retirement pension

[21] As discussed, the Minister found no evidence that the Applicant had been the victim of identity theft and made a discretionary decision to affirm the record of earnings. The General Division therefore had no choice but to presume the record of earnings was correct.

[22] The General Division then considered how the Minister calculated the Applicant's retirement pension according to the highly technical rules set out in sections 48 to 51 of the *Canada Pension Plan*:

The Minister stated that the [Applicant's] contributory period was from January 1975 to December 2021, after which he began receiving CPP retirement. This is 564 months. Of this, the Minister excluded 128 months because the [Applicant] was disabled. This left 436 months in his contributory period. The drop-out factor for the pension calculation was $436 \times 15\%$, which leaves 370 months in the contributory period.

The [Applicant's] income for the years above totaled \$203,607.15. The Minister multiplied this by 25% and divided the total by the number of contributory months minus the number of drop-out months. This gave a figure of \$137.57 per month.

Since the [Applicant] started getting a CPP disability pension in 2011, the retirement rate from that year was escalated by a factor of 1.21. This resulted in a figure of \$166.46.¹⁶

[23] The General Division could find no error in the above calculation and neither can I.¹⁷ More than that, the Applicant has never challenged the calculation — only the numbers underlying it.

¹⁶ See Minister's written submissions, GD3-9.

¹⁷ See General Division's decision, paragraphs 16–18.

[24] The problem for the Applicant, and others in his position, is that, for any given recipient, a CPP disability pension will always be higher than a retirement pension. That is because of the way the two pensions are structured. The disability pension contains a minimum flat-rate portion,¹⁸ whereas the retirement pension is entirely based on the cumulative amount of a contributor's earnings and contributions. When, as in the Applicant's case, the disability pension is converted to retirement, the flat-rate portion drops off, leading to a sometimes drastic drop in the monthly amount if the recipient's historical earnings and contributions are relatively modest. In such cases, the Old Age Security pension is supposed to "replace" the flat-rate portion of the CPP disability pension.

[25] However much the Applicant may disagree with the result, this is what Parliament has mandated. The General Division had no choice but to apply the law as written.

Conclusion

[26] The Applicant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, permission to appeal is refused.



Member, Appeal Division

¹⁸ The flat-rate portion of the CPP disability pension was \$510.85 per month in 2021.