



Citation: *Minister of Employment and Social Development v LS*, 2022 SST 1424

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: Minister of Employment and Social Development
Representative: Joshua Toews

Respondent: L. S.

Decision under appeal: General Division decision dated October 17, 2022
(GP-21-1201)

Tribunal member: Neil Nawaz

Type of hearing: On the record

Decision date: December 22, 2022

File number: AD-22-915

Decision

[1] The appeal is allowed. The General Division made an error when it found that L. S. was entitled to a Canada Pension Plan (CPP) disability pension as of July 2020. The pension will instead begin as of January 2020.

Overview

[2] Ms. S. is a 42-year-old former civil servant who has been diagnosed with fibromyalgia, chronic fatigue syndrome, and anxiety and depression. She applied for a CPP disability pension, claiming that she was no longer capable of paid employment.

[3] The Minister refused the application. Ms. S. appealed that refusal to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and allowed the appeal. It found that she had a severe and prolonged disability as of September 2019, the last time she worked.

[4] However, a claimant can't be considered disabled more than 15 months before the Minister received their disability pension application.¹ The General Division found that Ms. S. submitted her application in June 2021 and deemed her disabled as of March 2020. After the statutory four-month waiting period, Ms. S.'s pension was to start in July 2020.²

[5] The Minister then asked the Appeal Division for permission to appeal. The Minister took no issue with the granting of the pension, only its timing. She alleged that the General Division got Ms. S.'s application date wrong and thus miscalculated her CPP disability pension's start date. She noted that the application date was not June 2021 but May 2020. That meant there was no need to assign a deemed date of disability. Ms. S.'s pension was therefore payable as of January 2020—four months after her actual date of disability in September 2019.

¹ See section 42(2)(b) of the *Canada Pension Plan*.

² See section 69 of the *Canada Pension Plan*.

[6] After reviewing the Minister's written submissions, I scheduled a settlement conference to see if there was some basis on which the parties might reach an agreement.

[7] The parties did reach an agreement.³ They have asked me to prepare a decision that reflects that agreement.

Agreement

[8] At the settlement conference, the Minister and Ms. S. agreed that the General Division had "based its decision on an erroneous finding of fact made in a perverse or capricious manner without regard for the material before it."⁴ They agreed that Ms. S. applied for the CPP disability pension in May 2020, not June 2021, as the General Division had found. That meant that the pension should have started in January 2020—four months after the date on which the General Division had found Ms. S.'s disability actually began.

Analysis

[9] For the following reasons, I accept the parties' agreement.

[10] I have looked at the file and agree with the Minister that Ms. S. applied for the disability pension on May 21, 2020. That date is listed on many of the Minister's letters and internal documents.⁵

[11] That said, the General Division's mistake was an easy one to make. The Minister uses an online application that, when reproduced for assessment and adjudication purposes, does not actually list the date of application.⁶

³ Refer to the recording of the settlement conference held on December 22, 2022.

⁴ This is the wording of section 58(1)(c) of the *Department of Employment and Social Development Act*. It sets out one of the grounds of appeal to the Appeal division.

⁵ See, for instance, Service Canada's Intranet Delivery System benefits printout (GD2-4) and its initial refusal letter dated November 10, 2020 (GD2-19).

⁶ See Ms. S.'s online disability application, GD2-14.

[12] However, there was a date—June 23, 2021—stamped at the bottom of each page of the application, as it was on every other page of the hearing file. That was not the date of application but the date on which the Social Security Tribunal received documents relevant to Ms. S.'s case.

[13] I can understand why the General Division was confused. The application form had no application date, but it did have another date, prominently displayed at the bottom of each page. Still none of that changes the fact that Ms. S. submitted her application more than a year earlier than the General Division said she did. Since the application was submitted within 15 months of the actual onset of her disability, it is the latter date—September 2019—that marks the start of the four-month waiting period.

Conclusion

[14] The appeal is allowed in accordance with the parties' agreement. The General Division made an error when it found that Ms. S. was entitled to a CPP disability pension as of July 2020. Her pension will instead begin as of January 2020.



Member, Appeal Division