



Citation: *MW v Minister of Employment and Social Development*, 2023 SST 466

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	M. W.
Respondent:	Minister of Employment and Social Development
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Decision under appeal:	General Division decision dated January 25, 2023 (GP-22-1249)
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Tribunal member:	Kate Sellar
Decision date:	April 19, 2023
File number:	AD-23-331

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not go ahead to the next step. These reasons explain why.

Overview

[2] The Minister of Employment and Social Development (Minister) granted M. W. (Claimant) a *Canada Pension Plan* (CPP) disability pension with payments starting April 2019.¹

[3] The Claimant asked the Minister to reconsider its decision on November 12, 2021. The Claimant wanted the disability pension payments to begin as of February 2014. In a letter dated June 13, 2022, the Minister refused to reconsider because the Appellant had asked more than 90 days after the Minister notified him of its decision.²

[4] The Claimant appealed the Minister's decision to this Tribunal. The General Division decided the following:

- The Claimant's request for reconsideration was late.³
- The Minister didn't act judicially when it refused the extension.⁴
- The Claimant cannot have more time to ask for reconsideration because his appeal had no reasonable chance of success. The Claimant's disability payments cannot start when he is asking for them to start (in February 2014).⁵

[5] I must decide whether the General Division may have made an error under the *Department of Employment and Social Development Act* (Act) that would justify granting the Claimant permission to appeal.

¹ See GD2-21.

² See GD2-5.

³ See paragraphs 11 to 14 in the General Division decision.

⁴ See paragraphs 15 to 19 in the General Division decision.

⁵ See paragraphs 22 to 24 in the General Division decision.

[6] The Claimant has not raised any argument for an error by the General Division that would justify granting him permission to appeal. I cannot give the Claimant leave (permission) to appeal

Issues

[7] The issues in this appeal are as follows:

- a) Is there an arguable case that the General Division made an error that would justify me giving the Claimant permission to appeal?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[8] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- interpreted or applied the law incorrectly; or
- got the facts wrong.⁶

[9] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.⁷

[10] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

⁶ See section 58.1(a) and (b) of the *Department of Employment and Social Development Act* (Act).

⁷ See section 58.1(c) of the Act.

There is no arguable case for an error about when the disability pension payments start.

[11] The Claimant wants his pension to start in February 2014. In the CPP Medical Report he provided with his application, the Claimant's doctor explained that the Claimant's primary medical condition (his chronic low back pain) started in February 2014.⁸

[12] The General Division explained that his case had no reasonable chance of success: his payments cannot start any earlier than April 2019.⁹

[13] So how does the General Division (or Service Canada) decide when disability pension payments start?

[14] There are four important rules that apply to the Claimant.

– Rule 1: The pension coverage rule

[15] To be eligible for a disability pension, claimants have must be covered under the Canada Pension Plan (the Plan). Based on the Claimant's contributions, the Claimant has coverage. His coverage ended on December 31, 2017.

[16] This doesn't mean that the Claimant is eligible for payments starting in December 2017. This just means he has coverage under the Plan up to that date. There are more rules to apply next. The next rule is about disability.

– Rule 2: The disability during the coverage period rule

[17] To be eligible for a disability pension, claimants must show that they have a severe and prolonged disability during their coverage period.¹⁰ The Claimant proved he had a severe and prolonged disability starting in February 2014 according to his medical

⁸ See GD2-196.

⁹ See paragraphs 22 to 24 in the General Division decision.

¹⁰ See section 42(2) of the *Canada Pension Plan* (CPP).

documents.¹¹ So he was disabled during his coverage period (because his coverage period didn't end until December 31, 2017).

[18] This doesn't mean that the Claimant is eligible for pension payments starting from 2014 when he became disabled. It just means that he met the requirement to show that he was disabled during his coverage period. There are more rules to apply next. The next rule covers the timing of payments when claimants apply to the CPP late.

– Rule 3: The rule on the earliest a person can be considered disabled for payment

[19] Claimants cannot receive payments for a disability pension starting any earlier than 15 months before they applied.¹²

[20] Practically speaking, this means that when claimants apply for disability pensions a long time after their disability started and/or a long time after their coverage periods ended, their pension payments start later than they would like.

[21] The General Division had to follow the rule: the earliest the Claimant can be considered disabled for the purpose of payment is 15 months before he applied. Fifteen months before the March 2020 application is December 2018. This is several years after the Claimant actually became disabled in February 2014.

[22] This doesn't mean that the Claimant can have payments starting in December 2018. That is the earliest date he can be considered disabled for the purpose of payment. But there is one more rule to apply about payment. The next rule that applies is a waiting period rule.

¹¹ See GD2-191 for what the Minister calls the established date of onset of the Claimant's disability.

¹² See section 42(2)(b) of the CPP.

– **4. The waiting period payment rule**

[23] The waiting period rule means that payments start four months after the date claimants are considered disabled for the purpose of payment (the date we calculated in the previous rule above).¹³

[24] Four months after December 2018 is April 2019. That is the first month that the waiting period is over, and the Claimant can receive his first payment of his disability pension. There are no more rules that apply that impact when the Claimant's payments start.

The General Division applied the rules: no argument for an error

[25] The General Division applied these four rules to calculate the Claimant's start date for payments.

[26] The Claimant has not challenged whether his coverage period was calculated correctly, or when he applied for the disability pension.

[27] The Claimant's concern on appeal is this: he wonders why he had to prove that he was disabled way back in February 2014 if in the end, he only gets payments starting so much later in April 2019.

[28] The answer to the Claimant's question is that some rules require considering dates for the purpose of coverage and proving disability, and some rules require considering dates for the purpose of payment.

[29] While the Claimant ultimately proved he had a disability before December 31, 2017 so he qualified for the pension, the Minister cannot pay a pension until long after February 2014 because he applied late.

¹³ See section 69 of the CPP

[30] The earliest he could be considered to have become disabled is 15 months prior to the date of his application. Payments can only start four months after that date.

[31] The General Division had no choice but to apply these rules. There is no argument here that the General Division made an error about the dates for the Claimant's coverage, disability, payment, or the waiting period. The Claimant hasn't set out any evidence about those issues that the General Division didn't already have.

The Claimant does not have an argument about those dates that has a reasonable chance of success.

[32] The rules that applied to the Claimant's case can be confusing, so I am hopeful that this explanation helps the Claimant to understand why the Minister cannot pay him the disability pension starting from February 2014.

Conclusion

[33] I have refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division