



Citation: *MW v Minister of Employment and Social Development*, 2023 SST 132

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: M. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 13, 2022 (issued by
Service Canada)

Tribunal member: James Beaton

Type of hearing: In writing

Decision date: January 25, 2023

File number: GP-22-1249

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. W., can't have more time to ask the Minister of Employment and Social Development (Minister) to reconsider its decision about when his Canada Pension Plan (CPP) disability pension starts.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Minister granted the Appellant a CPP disability pension with payments beginning as of April 2019.¹ The Appellant asked the Minister to reconsider its decision on November 12, 2021, because he wanted his payments to begin as of February 2014.² In a letter dated June 13, 2022, the Minister refused to reconsider because the Appellant had asked more than 90 days after he was notified of the decision.³

[5] The Appellant appealed to the Social Security Tribunal's General Division.

[6] This appeal isn't about whether the Appellant's CPP disability pension should start earlier. It is about whether his request for reconsideration was late and, if it was, whether the Minister should have given him more time to ask for reconsideration.

What I have to decide

[7] First, I have to decide if the Appellant's request for reconsideration was late.

[8] If the Appellant's request was late, then I have to decide whether the Minister acted judicially when it refused to give the Appellant more time to ask for reconsideration.

¹ See GD2-21.

² See GD2-10 to 13.

³ See GD2-5.

[9] If I decide that the Minister didn't act judicially, then I have to decide whether the Appellant should have more time to ask for reconsideration.

Reasons for my decision

[10] The Appellant's request for reconsideration was late. The Minister didn't act judicially. But the Appellant still should not have more time to ask for reconsideration.

The Appellant's request for reconsideration was late

[11] If a person disagrees with the Minister's decision about a CPP disability pension, they can ask the Minister to reconsider. They have to do this within 90 days after they were notified of the decision in writing. If a person waits more than 90 days after they were notified before asking for reconsideration, their request is late.⁴

[12] The Appellant was notified of the Minister's decision in writing by March 13, 2021.

[13] On March 17, 2021, the Appellant phoned Service Canada. He said he was okay with the letter he had received dated March 13, 2021.⁵ This must have been referring to a letter dated February 13, 2021, since there is no letter dated March 13 in the file. That letter says the Appellant's application for a disability pension was approved, with benefits effective April 2019.⁶ This fulfilled the Minister's requirement to give written notice of its decision, even though the Minister sent another letter on March 22, 2021, with additional information.⁷

[14] The Appellant acknowledged that he asked for reconsideration more than 90 days after he was notified of the Minister's decision (although he says he didn't know he only had 90 days to do so). In other words, he acknowledged that his request was late.⁸

⁴ See section 81(1) of the *Canada Pension Plan* and section 74.2 of the *Canada Pension Plan Regulations*.

⁵ See GD2-173 and 174.

⁶ See GD2-21.

⁷ See section 60(7) of the *Canada Pension Plan*. The March 22, 2021, letter is at GD5-1 and 2. The Appellant doesn't remember getting it (GD5-3), but that doesn't matter since he got the February 13 letter.

⁸ See GD2-10.

The Minister didn't act judicially

– What the Minister must consider when a request for reconsideration is late

[15] If a request for reconsideration is late, the Minister can give a person more time to ask. To do this, the Minister must be satisfied that:

- there is a reasonable explanation for why the request was late
- the person showed a continuing intention to ask for reconsideration⁹

[16] If a person asks the Minister to reconsider a decision about a benefit, and that person has previously applied for the same benefit, the Minister must also be satisfied that:

- the request for reconsideration has a reasonable chance of success
- allowing the request would not prejudice (unfairly disadvantage) the Minister¹⁰

[17] The Appellant had applied for a disability pension before.¹¹ This is mentioned in the February 13, 2021, letter itself. Therefore, the Minister had to consider **all four** of these factors.

– The Minister must act judicially when it considers these factors

[18] The Minister must act judicially when it considers these factors. This means the Minister must not:

- act in bad faith
- act for an improper purpose or motive (the wrong reason)
- consider an irrelevant factor
- ignore a relevant factor
- discriminate against the Appellant¹²

⁹ See section 81(1) of the *Canada Pension Plan* and section 74.1(3) of the *Canada Pension Plan Regulations*. See also *Lazure v Canada (Attorney General)*, 2018 FC 467.

¹⁰ See section 74.1(4) of the *Canada Pension Plan Regulations*.

¹¹ See GD2-109. It doesn't matter whether that application was approved.

¹² See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

– **The Minister didn't act judicially**

[19] The Minister didn't act judicially when it decided not to give the Appellant more time to ask for reconsideration. The Minister only considered two of the four factors that it had to consider.¹³

The Appellant should not have more time to ask for reconsideration

[20] Because the Minister didn't act judicially, I must now decide whether the Appellant should have more time to ask for reconsideration. When I do this, I must consider the same factors that the Minister had to consider. In other words, the Appellant must show on a balance of probabilities that:

- he has a reasonable explanation for being late
- he had a continuing intention to ask for reconsideration
- his request for reconsideration has a reasonable chance of success
- allowing him more time would not prejudice the Minister

[21] The Appellant must prove **all** of these things. If the Appellant doesn't prove one of these things, it doesn't matter whether he proves the other three.

– **The Appellant has no reasonable chance of success**

[22] The Appellant's request for reconsideration has no reasonable chance of success. He wants his payments to begin in February 2014. The *Canada Pension Plan* says an applicant can't be considered disabled more than 15 months before the Minister receives their disability pension application.¹⁴ After that, there is a 4-month waiting period before payments start.¹⁵

¹³ See GD2-173 and 174.

¹⁴ See section 42(2)(b) of the *Canada Pension Plan*.

¹⁵ See section 69 of the *Canada Pension Plan*.

[23] The Minister received the Appellant's application in March 2020.¹⁶ That means he is considered to have become disabled in December 2018. Payments of his pension start four months later, in April 2019.

[24] The Appellant can't be paid a disability pension before April 2019. He has already received all of the back-payments that he is entitled to. This means his request for reconsideration has no reasonable chance of success.

Conclusion

[25] The Appellant can't have more time to ask the Minister to reconsider its decision about when his CPP disability pension starts.

[26] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section

¹⁶ See GD2-78.