



Citation: *DC v Minister of Employment and Social Development*, 2022 SST 1723

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

**Decision**

**Appellant:** D. C.  
**Representative:** D. H.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated December 9, 2020 (issued  
by Service Canada)

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**Tribunal member:** Antoinette Cardillo  
**Type of hearing:** Videoconference  
**Hearing date:** December 7, 2022  
**Hearing participants:** Appellant  
Appellant's representative  
**Decision date:** December 23, 2022  
**File number:** GP-21-524

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Appellant applied for a Canada Pension Plan (CPP) disability benefit in March 2015.<sup>1</sup> She based her disability claim on psychosis, anxiety, paranoia, depression and agoraphobia. She stopped working in January 2013. The Appellant was granted a CPP disability benefit with a date of onset of December 2013, 15 months prior to the date of application.

[4] The Minister of Employment and Social Development (Minister) reassessed the Appellant's continuing eligibility for CPP disability benefits following the receipt of earnings information from the Canada Revenue Agency showing she had income in 2017 of \$37,996. In 2018, she had earnings of \$61,420. The Minister determined that there was an overpayment of \$23,751.92 for the period of May 2017 to December 2018.

[5] The Appellant appealed the Minister's decision to the Social Security Tribunal - General Division (Tribunal) stating that she was not disputing the decision to cease issuing her CPP disability benefits, rather she was disputing the overpayment. She was questioning the conduct of her insurance company for having her apply for the CPP disability benefit in the first place and the fact that they had failed to inform Service Canada of her return to work.

[6] The Minister said that the evidence showed that the Appellant no longer met the severe and prolonged criteria within the meaning of the CPP as of the end of April 2017. She returned to regular and gainful employment in January 2017. She was provided a three-month paid work trial from February 1 to April 30, 2017. Her CPP disability benefit

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<sup>1</sup> See application at GD2-42.

was ceased as of the end of April 2017. Also, the Minister submitted that it was the Appellant's responsibility to report her return to work. If a person who has been determined to be disabled within the meaning of the Act returns to work, the person shall inform the Minister without delay.

## **Reasons for my decision**

[7] The Appellant does not dispute her eligibility to the CPP disability benefit. She acknowledges that she returned to work in January 2017. She does however dispute the overpayment determined by the Minister. Therefore, my decision will only address the overpayment issue.

### **- Reporting Responsibility**

[8] Upon signing her CPP disability application, she agreed to report any changes to her situation, including a return to any work or an improvement in her medical condition. When her application was approved, the Appellant received a letter and she was reminded of this requirement in the Notice of Entitlement letter sent shortly after the decision to grant the benefit.<sup>2</sup>

[9] The CPP Regulations are very clear stating that if a person who has been determined to be disabled within the meaning of the CPP returns to work, the person shall so inform the Minister without delay.<sup>3</sup>

### **- Overpayment**

[10] The Tribunal can only review decisions made by the Minister under the CPP that relate to a benefit that may be paid to a person or the amount of the benefit that may be paid to a person. The Tribunal cannot review decisions made by the Minister on an overpayment.<sup>4</sup> I advised the Appellant and her Representative at a Case Management

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<sup>2</sup> See GD2-45, GD2-29, GD2-7 and GD2-14.

<sup>3</sup> Subsection 70.1 of the CPP Regulations.

<sup>4</sup> Sections 81 and 82 of the CPP.

teleconference and at the hearing of my lack of jurisdiction to review a decision on an overpayment.

[11] At the hearing, the Appellant and her Representative said that they had an issue with the overpayment because they thought that their insurance company would advise the Minister of her return to work. They also asked that I pay particular attention to the fact that her earnings were not considered gainful until September 2017. The Appellant had a gradual return to work. The Appellant's Representative also raised some tax concerns.

[12] Where a person has received a benefit payment to which they are not entitled, the CPP says that, under certain circumstances, the Minister can remit part or all of an overpayment. This means the benefit recipient is no longer responsible for the part of the overpayment that has been remitted. However, remission is considered an exercise of the Minister's discretion.<sup>5</sup> This means that I do not have the jurisdiction to order the remission of the overpayment. The Appellant could raise the remission issue directly with the Minister.

[13] I am required to interpret and apply the provisions set out in the CPP.

[14] Accordingly, the appeal is dismissed. The Appellant was not entitled to receive a CPP disability pension after the end of April 2017 because she returned to work and she did not advise the Minister of her return to work. An overpayment has resulted. I do not have the authority to review the Minister's decision on the overpayment or waive the repayment obligation.

## **Conclusion**

[15] This means the appeal is dismissed.

Antoinette Cardillo - Member, General Division – Income Security Section

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<sup>5</sup> Subsection 66(3) of the CPP.