



Citation: *DC v Minister of Employment and Social Development*, 2023 SST 383

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

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

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**Decision under appeal:** General Division decision dated December 23, 2022  
(GP-21-524)

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**Tribunal member:** Kate Sellar  
**Decision date:** **April 4, 2023**  
**File number:** AD-23-318

## Decision

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

## Overview

[2] D. C. (Claimant) stopped working in January 2013. She had psychosis, anxiety, paranoia, depression, and agoraphobia. She applied for a *Canada Pension Plan* (CPP) disability pension in March 2015. The Minister of Employment and Social Development (Minister) approved the Claimant's application.

[3] The Minister reassessed the Claimant's eligibility for the disability pension after it received earnings information from the Canada Revenue Agency. The Claimant's earnings in 2017 were \$37,996. In 2018, her earnings were \$61,420. The Minister decided that it had overpaid the Claimant \$23,751.92 from May 2017 to December 2018.

[4] The Claimant appealed to this Tribunal. She didn't dispute the decision to stop her disability pension. Rather, she argued that she should not be required to repay the assessed overpayment due to her long-term disability insurer's conduct in the matter.

## Issue

[5] The issue in this appeal is as follows:

- a) Can it be argued that the General Division failed to exercise its powers when it refused to consider the role the Claimant's long-term disability insurer played in the Claimant's history with the CPP disability pension?

## **I'm not giving the Claimant permission to appeal**

[6] 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.<sup>1</sup>

[7] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.<sup>2</sup>

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

### **No argument for an error about failing to exercise its powers**

[9] The Claimant argues that the General Division made an error by failing to exercise its powers. The Claimant says that the General Division should have exercised its power to consider the broader mitigating and extraordinary factors involved in her CPP disability pension overpayment. She wanted the General Division to consider and discuss some wider policy implications about claimants receiving long-term disability benefits.

[10] The General Division needed to decide whether the Minister proved that the Claimant stopped having a severe disability within the meaning of the CPP. If she did stop having a severe disability under the CPP, the General Division needed to decide when that happened. The Claimant agreed that her disability stopped, her issue was about the fairness of having to repay an overpayment given the wider circumstances involved in her appeal.

[11] The General Division explained in its decision that if it found that the Claimant received pension payments during a period when she stopped being disabled under the

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<sup>1</sup> See section 58.1(a) and (b) of the *Department of Employment and Social Development Act (Act)*.

<sup>2</sup> See section 58.1(c) of the Act.

CPP, the General Division doesn't have the power to change the overpayment or waive the repayment obligation.<sup>3</sup>

[12] In my view, there is no arguable case that the General Division failed to exercise its powers. The General Division does not have the power to decide anything about the overpayment based on any responsibility that the Claimant argues the long-term disability insurer had in this matter.

[13] In this case, the long-term disability insurer required the Claimant to apply for CPP disability pension. Then the long-term disability insurer clawed back some of her benefits. As a result, the Claimant received some taxable payments (from her CPP disability pension), rather than receiving only non-taxable benefits from the long-term disability insurer.

[14] Further, the Claimant gave the long-term disability insurer permission to communicate with Service Canada. The Claimant argues that the long-term disability insurer failed in its moral and fiduciary obligation to advise Service Canada that she returned to work.

[15] The Claimant raises important issues about the way long-term disability insurers operate in Canada in the context of the social security system (and more specifically, the CPP disability pension). But this Tribunal simply cannot address those questions for the Claimant. The Tribunal doesn't have the power to change the Claimant's repayment obligation based on her arguments about the long-term disability insurer's involvement in the matter.

[16] On the overpayment issue, the Claimant can contact the Service Canada office that issued her decision to request remittance in writing.

[17] The appeal to the General Division was only about whether the Claimant stopped being disabled for the purpose of the CPP. The Claimant hoped that the Appeal Division

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<sup>3</sup> See paragraph 14 in the General Division's decision.

would have broader powers to consider the overall fairness of collecting an overpayment given her circumstances. I don't have the power to do that.

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

## **Conclusion**

[19] I've refused permission to appeal. This means that the appeal will not go ahead to the next step.

Kate Sellar

Member, Appeal Division