



Citation: *SR v Minister of Employment and Social Development*, 2022 SST 1738

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

Decision

Appellant: S. R.
Representative: J. J.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated April 1, 2022 (issued by Service Canada)

Tribunal member: James Beaton
Type of hearing: Teleconference
Hearing date: September 6, 2022
Hearing participants: Appellant
Appellant's representative
Interpreter
Decision date: September 15, 2022
File number: GP-22-756

Decision

[1] The appeal is dismissed.

[2] The Appellant, S. R., can't have more time to ask the Minister of Employment and Social Development to reconsider its decision to deny her a Canada Pension Plan (CPP) disability pension.

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

Overview

[4] The Appellant applied for a CPP disability pension on May 7, 2018.¹ The Minister refused her application on February 25, 2019.² The Appellant asked the Minister to reconsider its decision on March 28, 2022. The Minister refused to reconsider because she had asked more than 90 days after she 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 is entitled to a CPP disability pension. It is about whether her request for reconsideration was late and, if it was, whether the Minister should have given her 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 GD2-26.

² See GD2-20 to GD2-22.

³ See GD2-8 and GD2-9.

[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 to deny them 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. 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 by October 18, 2021. I will explain how I came to this conclusion.

[13] The Appellant's file contains a letter (called a "decision letter") from Service Canada, addressed to the Appellant. It is dated February 25, 2019.⁵ The letter explains that the Minister refused the Appellant's application. However, the Appellant says she didn't receive the letter. There is no proof (such as a delivery receipt) to show that the Appellant received the letter.

[14] The Appellant called Service Canada on September 1, 2021, to ask about her application. The call record shows that the Appellant asked Service Canada to send her its decision letter.⁶ It doesn't say that the Service Canada employee told her what the Minister's decision was during the phone call. The Appellant could not remember whether she was told the decision on the phone.

[15] The Appellant remembered being told that she would receive the letter five to six weeks after the phone call. She believes that she received it within that timeframe,

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

⁵ See GD2-20 to GD2-22.

⁶ See GD2-16.

although she doesn't remember exactly when.⁷ Therefore, I find that she received it no later than October 18, 2021 (slightly more than six weeks after September 1, 2021).

[16] The Appellant had 90 days after October 18, 2021, to ask for reconsideration. She didn't ask for reconsideration until March 28, 2022. This was 161 days after she was notified of the Minister's decision. So her request was late.

The Minister didn't act judicially

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

[17] 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 reconsideration⁸

[18] If a person asks for reconsideration **more than 365 days** after they were notified of the Minister's decision, 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 Minister⁹

The Minister must act judicially when it considers these factors

[19] 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

⁷ The Appellant said this at the hearing.

⁸ 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.

⁹ See section 74.1(4) of the *Canada Pension Plan Regulations*.

- discriminate against the Appellant¹⁰

The Minister didn't act judicially

[20] The Minister didn't act judicially when it decided not to give the Appellant more time to ask for reconsideration. The Minister considered an irrelevant factor. Specifically, the Minister applied the wrong test when it determined that the Appellant didn't have a reasonable explanation for being late.

[21] The Appellant told the Minister she was late because she has a medical condition that impacts her memory and ability to make decisions. She didn't understand that she could request a reconsideration. She only found out when she talked to a lawyer. She didn't talk to a lawyer right away because she didn't want to leave her house during the COVID-19 pandemic.¹¹

[22] The Minister didn't accept the Appellant's explanation as reasonable because it wasn't an "extenuating circumstance" that was unusual, unexpected, or beyond her control.¹²

[23] The law doesn't say that the Appellant's explanation must involve an extenuating circumstance that was unusual, unexpected, or beyond her control. The law only says that her explanation must be **reasonable**. The Minister's test was too strict and wasn't based on the law. So it was an irrelevant factor.

The Appellant should not have more time to ask for reconsideration

[24] 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:

- she has a reasonable explanation for being late

¹⁰ See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

¹¹ See GD2-10.

¹² See GD2-37 and GD2-38.

- she had a continuing intention to ask for reconsideration

[25] Because I have found that the Appellant asked for reconsideration within 365 days of being notified of the decision, I **do not** have to consider whether:

- her request for reconsideration has a reasonable chance of success
- allowing her more time would prejudice the Minister

The Appellant doesn't have a reasonable explanation for being late

[26] The Appellant should not have more time to ask for reconsideration, because she doesn't have a reasonable explanation for being late. Since she doesn't have a reasonable explanation, it doesn't matter whether she had a continuing intention to ask for reconsideration.

What the Appellant says about why she was late

[27] The Appellant says she was late for these reasons:¹³

- She had trouble understanding the decision letter because English is her second language. Her first language is Punjabi. She testified that she had help completing her disability application.
- She could not get help to understand the letter because she was afraid to leave her house. She didn't want to get COVID-19. She says she has high blood pressure, high cholesterol, and a weak immune system, which makes her vulnerable to getting a severe case of COVID-19.
- She phoned a local community centre for help. She said she had trouble reaching anyone. When she did speak to someone, she was told that the community centre could not help her. They told her to get someone with expertise in disability matters.
- She talked to some friends who suggested she contact Mr. Johal, a lawyer.
- She phoned Mr. Johal, who said she would need to make an appointment and come to his office. She didn't remember when she phoned him.

¹³ See GD1-3, GD2-10, and the hearing recording.

- She forgot to make an appointment because her anxiety makes her forgetful.
- About two months later, she remembered to make an appointment. She did. She went to Mr. Johal's office. They both wore masks due to the pandemic.
- She hired Mr. Johal, who helped her appeal to the Tribunal. Mr. Johal represented her at the hearing.

What the Minister says about the Appellant's explanation

[28] The Minister says the Appellant's explanation isn't reasonable.¹⁴

[29] The Minister says there is no evidence that the Appellant has trouble understanding English. She was able to communicate with a Service Canada employee on the phone more than once. She maintained a job in the finance industry, which shows she can communicate in English.

[30] The Minister says there is no medical evidence that the Appellant has issues with her memory.

[31] The Minister points out that the Appellant didn't sign a consent form until March 22, 2022.¹⁵ By signing the form, the Appellant gave Service Canada permission to get medical and personal information about her directly from other people and organizations. The Minister's argument seems to be that the Appellant didn't take any steps to ask for reconsideration until March 22.

[32] Finally, the Minister argues that COVID-19 restrictions weren't in place for more than a year after the Appellant was notified of the Minister's decision. However, I have found that the Appellant was first notified in 2021. I take official notice that COVID-19 restrictions were in place in Canada throughout 2021.

What I conclude about the Appellant's explanation for being late

[33] I find that the Appellant's explanation for being late isn't reasonable.

¹⁴ See GD2-37 and GD2-38, and GD4.

¹⁵ The form is at GD2-15.

[34] The decision letter says the Appellant's application was denied. It says "You have the right to ask that this decision be reconsidered. If you decide to do this, you must write to us within 90 days from the date you receive this letter." It gives a phone number for the Appellant to call if she had questions.¹⁶

[35] I believe she was able to understand at least these parts of the decision letter.

[36] Although she worked mostly with Punjabi clients as a financial advisor, she also completed English forms. She had to write an exam in 2008 (in Canada) to get an insurance licence for her job.¹⁷ Even though she got help to complete her disability application, this doesn't mean she was unable to do it herself.

[37] The fact that the Appellant phoned a community centre for help supports that she understood the basic contents of the decision letter. If she could not at least read the letter, she would not have been able to get help over the phone—so she would have had no reason to phone. Instead, she would have had to go to the community centre in person—something she didn't intend to do, because of COVID-19.

[38] Even if she didn't understand everything in the letter, the letter includes a phone number that she could have called for help. Again, I find that the Appellant would have been able to understand what Service Canada employees told her over the phone. She called Service Canada herself to request the decision letter. It would not make sense for her to call if she knew that she would not understand what they told her anyway. During the hearing, she rarely relied on the interpreter to understand or answer questions.

[39] The fact that the Appellant could have gotten the information she needed over the phone means she didn't need to leave her house to ask for reconsideration. I also note that an appellant doesn't need a lawyer to ask for reconsideration.

¹⁶ See GD2-20 to GD2-22.

¹⁷ The Appellant said this at the hearing.

[40] I acknowledge that the Appellant says she is forgetful. However, there isn't enough medical evidence to suggest that she was any more forgetful than the average person between October 2021 and March 2022.

[41] There are only two clinic notes in the medical evidence that mention forgetfulness. They are both from the same doctor, Dr. Stroganova (a psychiatrist), and they are both based on what the Appellant told her. One note is from September 2017.¹⁸ The other note is from May 2018.¹⁹ The Appellant's family doctor, Dr. Bibi, completed a medical report in 2018. It doesn't mention any issues with memory.²⁰ The medical evidence from 2021 and 2022 doesn't mention any issues with memory either.²¹

Summary of my findings

[42] In summary, I make the following findings on a balance of probabilities:

- The Appellant got the decision letter by October 18, 2021.
- This means her request for reconsideration was about 71 days late.
- The Minister didn't act judicially when it decided not to give her more time.
- This means I must decide whether she should be given more time.
- She should not be given more time, because she doesn't have a reasonable explanation for being late.
- She understood the decision letter enough to know that she had 90 days to ask for reconsideration. She could have phoned Service Canada if she had questions. She would have understood what they told her.
- She didn't need to leave the house or speak to a lawyer to ask for reconsideration.
- Between the time she got the decision letter and the time she asked for reconsideration, she wasn't any more forgetful than the average person. So if she forgot, this isn't a reasonable explanation for being 71 days late.

¹⁸ See GD2-49.

¹⁹ See GD2-63.

²⁰ See GD2-101 to GD2-104.

²¹ See GD3-7, GD3-8, GD3-41 to GD3-44, GD3-47, and GD3-48.

Conclusion

[43] The Appellant can't have more time to ask the Minister to reconsider its decision to deny her a CPP disability pension.

[44] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section