



Citation: *JR v Minister of Employment and Social Development*, 2022 SST 1333

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: J. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 17, 2022 (issued
by Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: On the record

Decision date: November 30, 2022

File number: GP-22-957

Decision

[1] The appeal is allowed.

[2] The Appellant, J. R., is entitled to have the February 27, 2020, decision about his Canada Pension Plan (CPP) disability benefits reconsidered.

Overview

[3] The Appellant applied for CPP disability benefits in October 2019. The Minister of Employment and Social Development (Minister) refused his application in a decision on February 27, 2020. The Appellant asked the Minister to reconsider its decision on December 21, 2021.

[4] On February 17, 2022, the Minister refused to reconsider its decision. It said the Appellant's reconsideration request was too late.

What I must decide

[5] I must decide whether the Appellant's reconsideration request was late.

[6] If it was, then I must also decide whether the Minister exercised its discretion judicially (made its decision properly) when it refused to give the Appellant more time to ask it to reconsider its decision.¹

[7] If the Minister didn't exercise its discretion judicially, I will make the decision it should have made. My decision will focus on whether the Appellant has a reasonable explanation for why he was late and whether he showed a continuing intention to ask the Minister to reconsider its decision. It will also focus on whether the Appellant's reconsideration request has a reasonable chance of success and whether giving him more time would be unfair to another party.

¹ When the Minister of Employment and Social Development (Minister) gives more time (or "a longer period" as the law words it) in this situation, that means it accepts to consider the late request.

Reasons for my decision

The Appellant's reconsideration request was late

[8] The Appellant's reconsideration request was late. He asked the Minister to reconsider its February 27, 2020, decision more than one year after the day the Minister told him about it.

[9] An appellant has 90 days to ask the Minister to reconsider a decision.²

[10] If the appellant waits more than 90 days, then their reconsideration request is considered late.

[11] I find that the Minister told the Appellant about the February 27, 2020, decision in early March 2020. That is when the Appellant says he likely received it.

[12] The Appellant says he received the Minister's decision to deny him disability benefits at the beginning of the pandemic, so he was unsure of how to ask the Minister to reconsider its decision. He thought government was in a "massive lockdown." He didn't believe he would be able to contact anyone about his application.

[13] I find that the Appellant asked the Minister to reconsider its February 27, 2020, decision more than one year after the Minister told him about it.

What to consider when a reconsideration request is late

[14] The Minister can reconsider a decision even if the reconsideration request is late. For this to happen, the law says that an appellant has to convince the Minister of two things. The appellant has to show that:³

- they have a reasonable explanation for why they are late
- they always meant to ask the Minister to reconsider its decision—this is called their "continuing intention"

² See section 81 of the *Canada Pension Plan*.

³ See section 74.1(3) of the *Canada Pension Plan Regulations*.

[15] If the appellant asked the Minister to reconsider its decision more than 365 days after the Minister told them about it in writing, then the law says that the appellant has to convince the Minister of two other things too. The appellant has to show that:⁴

- their reconsideration request has a reasonable chance of success
- giving them more time would not be unfair to another party

[16] In total, these are four factors that an appellant has to meet. This means that, if the Appellant doesn't meet one of these four factors, then he isn't entitled to have the Minister's February 27, 2020, decision reconsidered.

The Minister must exercise its discretion judicially

[17] The Minister's decision whether to consider a late reconsideration request is discretionary. Discretion is the power to decide whether to do something. The Minister has to exercise its discretion judicially.⁵

[18] If the Minister has done one of the following, then it didn't exercise its discretion judicially:⁶

- acted in bad faith
- acted for an improper purpose or motive
- considered an irrelevant factor
- ignored a relevant factor
- acted discriminatorily (unfairly)

⁴ See section 74.1(4) of the *Canada Pension Plan Regulations*. There are two other reasons an appellant would have to meet all four factors. They are (1) if the appellant applied again for the same benefit, and (2) if the appellant asked the Minister to rescind or amend (cancel or change) a decision.

⁵ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

⁶ See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

– **The Minister didn't exercise its discretion judicially**

[19] The Minister refused the Appellant's reconsideration request. The Minister said it was because the Appellant didn't give a reasonable explanation for why he was late. It also said the Appellant didn't show that he had always meant to ask it to reconsider its decision.⁷

[20] There is no evidence that the Minister acted in bad faith, for an improper purpose or motive, or discriminatorily.

[21] But the Minister did ignore relevant factors. This means the Minister didn't exercise its discretion judicially when it defined the factors the Appellant had to meet. I will explain this below.

– **The Minister was too strict in what it considered a "reasonable explanation"**

[22] The law says that, when an appellant misses the 90-day deadline, the Minister must consider whether they have a reasonable explanation for why they are late.⁸

[23] In considering whether the Appellant had a reasonable explanation for why he was late, the Minister was stricter than the law required it to be. It found that the Appellant didn't have a reasonable explanation because there was no evidence that he waited to make his reconsideration request because of a medical condition or exceptional circumstances.

[24] The Tribunal's Appeal Division has discussed this type of situation. For example, in April 2021, it said that extenuating or exceptional circumstances that are beyond an appellant's control aren't the same as a reasonable explanation.⁹ The Appeal Division said that holding an appellant to such a high standard would restrict the decision-

⁷ See GD2-7.

⁸ See section 74.1(3) of the *Canada Pension Plan Regulations*.

⁹ See *PP v Minister of Employment and Social Development*, 2021 SST 166 at paragraphs 25 and 26. I don't have to follow Appeal Division decisions. However, I find that that decision explains the right way to interpret the rules the Minister has to follow. The same reasoning applies to this appeal.

maker's ability to consider other common explanations, such as lost mail or bad advice. I agree with the Appeal Division.

[25] Because the Minister was too strict in what it considered a reasonable explanation, it ignored relevant factors it should have considered.

– **The Minister was too strict in what it considered “continuing intention”**

[26] The law says that, when a reconsideration request is late, the Minister must consider whether the appellant showed that they always meant to ask the Minister to reconsider its decision.¹⁰

[27] In considering whether the Appellant showed that he always meant to ask the Minister to reconsider its decision, the Minister was also too strict. The Minister found that the Appellant didn't have a continuing intention because he didn't contact the Minister until December 2021.

[28] This is problematic because it implies that the continuing intention factor can be met only if an appellant keeps the government informed. That is too strict. Showing a continuing intention doesn't mean an appellant has to keep the government informed.

[29] Because the Minister was too strict in what it considered a continuing intention, it ignored relevant factors it should have considered.

– **What happens when the Minister doesn't exercise its discretion judicially?**

[30] I have found that the Minister didn't exercise its discretion judicially. So, I now have to assess for myself whether the Appellant should get more time.

[31] If I find that the Appellant should get more time, then I must send the matter back to the Minister and tell it to reconsider the February 27, 2020, decision. If I don't find that the Appellant should get more time, then I must dismiss his appeal.

¹⁰ See section 74.1(3) of the *Canada Pension Plan Regulations*.

The Appellant meets all four factors

[32] The Appellant asked the Minister to reconsider its decision more than one year after the day the Minister likely told him about it. So, he has to show that he meets all four factors.¹¹ The Appellant does meet all four factors.

– The Appellant has a reasonable explanation for why he was late

[33] I find that the Appellant has a reasonable explanation for why he was late. He says that he believed the government wasn't able to accept and process applications. His confusion is reasonable considering the impact the pandemic had on government departments and services. He didn't think he could ask the Minister to reconsider its decision.

[34] He also says that the legal process caused him anxiety, which made it difficult for him to deal with the paperwork. He had to take medication that made him feel "numb." He was unmotivated and unable to deal with anything. And he was concerned that no one from Service Canada had contacted him to ask about his health.

[35] It is easy to understand how the Appellant was confused by the legal process. Added to that, he was dealing with increasing mental health symptoms and pandemic restrictions. He says that he hoped his condition would improve and that he would be able to go back to work. But his symptoms continued, and he struggled to cope with his limitations.¹² His explanation for why he was late is reasonable.

– The Appellant always meant to ask the Minister to reconsider its decision

[36] I find that the Appellant always meant to try to get CPP disability benefits. Because of his mental health symptoms and the COVID-19 restrictions, he didn't think he could contact the Minister. When he learned he could send his reconsideration request to the Minister, he did.

¹¹ Sections 74.1(3) and (4) of the *Canada Pension Plan Regulations* set out these rules.

¹² The Appellant said this in his letter to the Minister at GD2-22 and in his notice of appeal at GD1.

[37] It makes no sense to expect him to maintain contact with the Minister when he believed he wasn't able to contact it.

[38] The Appellant showed he likely intended to get disability benefits through the reconsideration process.

– **There is a reasonable chance of success**

[39] An application doesn't have a reasonable chance of success if it is clearly going to fail no matter what evidence an appellant may present.¹³

[40] The Appellant's reconsideration request is about his CPP disability benefits application, and that application has a reasonable chance of success.

[41] The Appellant applied for CPP disability benefits related to his physical and mental health.

[42] There is evidence on file confirming that the Appellant had health conditions before the end of his qualifying period, on December 31, 2021. It is possible that there is evidence—including his description of his limitations—that will show that he had a severe and prolonged disability by December 31, 2021.

– **Giving the Appellant more time would not be unfair to another party**

[43] The Minister is the only other party in this appeal. If I give the Appellant more time to ask the Minister to reconsider its decision, the Minister's interests will still be respected.

¹³ The Appeal Division discussed this in *The Estate of JB v Minister of Employment and Social Development*, 2018 SST 564. I find that that reasoning also applies to decisions like the one the Appellant is asking the Minister to reconsider.

Conclusion

[44] The Appellant meets all four factors. So, he is entitled to have the Minister's February 27, 2020, decision reconsidered.

[45] Because of this, I am sending this matter back to the Minister. The Minister must reconsider its February 27, 2020 decision.

[46] This means the appeal is allowed.

Anne S. Clark
Member, General Division – Income Security Section