



Citation: *TW v Minister of Employment and Social Development*, 2023 SST 242

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: T. W.
Representative: Steven Sacco

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 11, 2022 (issued by
Service Canada)

Tribunal member: Brianne Shalland-Bennett

Type of hearing: Teleconference

Hearing date: March 9, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: March 14, 2023

File number: GP-22-1445

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. W., isn't entitled to have the August 11, 2022, decision about her *Canada Pension Plan* (CPP) disability benefits reconsidered.

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

Overview

[4] The Appellant applied for CPP disability benefits in June 2021. The Minister of Employment and Social Development Canada (Minister) refused her application on August 30, 2021.

[5] The Appellant asked the Minister to reconsider its decision on April 4, 2022. On August 11, 2022, the Minister refused to reconsider its decision. It said the Appellant's reconsideration request was too late.

What I must decide

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

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

[8] If the Minister didn't exercise its discretion judicially, I will consider if the Appellant had a reasonable explanation for why she was late and whether she showed a continuing intention to ask the Minister to reconsider its decision.

[9] The Appellant has to meet both factors. If she doesn't meet one of these two factors, she isn't entitled to have the Minister's decision reconsidered.

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, which means it accepts to consider the late request.

[10] If the Minister did exercise its discretion judicially, the Appellant is not allowed more time to request a reconsideration

Reasons for my decision

The Appellant's reconsideration request was late

[11] An appellant has 90 days to ask the Minister to reconsider a decision.² If the appellant waits over 90 days, then their reconsideration is considered late.

[12] The Appellant's reconsideration request was late.

[13] I find the Appellant was told about the August 11, 2021, decision in September 2021. The Appellant confirmed she received the decision in September 2021.

[14] The Appellant asked the Minister to reconsider its August 11, 2021, decision on May 4, 2022. This is over 90 days from when I find the decision was communicated to her. So, her reconsideration request was late.

The Minister must exercise its decision judicially

[15] The Minister's decision on 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.³

[16] If the Minister has done one of the following, then it didn't exercise its discretion judicially:⁴

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

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

³ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

⁴ See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

- acted discriminatorily (unfairly)

The Minister exercised its discretion judicially

[17] The Minister exercised its decision judicially when deciding not to allow the Appellant more time to request reconsideration.

[18] The Minister denied the Appellant's request for reconsideration because the Minister determined the Appellant didn't explain the delay and because she did not show a continued intention to request a reconsideration.⁵

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

[20] The Minister also didn't ignore a relevant factor or consider an irrelevant factor. Here is what I considered:

[21] First, I find the Minister considered the medical evidence included in the file. It considered the Appellant's conditions, limitations, and all the evidence. In their reasons for denying the Appellant's late appeal it considered her family doctor's report and decided she wasn't unable to manage her own affairs because of her limitations.⁶

[22] This finding is supported by the Appellant's testimony at the hearing. I will discuss this next.

[23] Second, at the hearing, the Appellant said her medication conditions didn't affect her ability to submit the reconsideration. She understood what the August 2021 decision said and what her deadlines were to appeal. But she didn't disagree with the Minister's decision.⁷

[24] Third, the Appellant explained why she asked for a reconsideration late at the hearing. But she never gave the Minister any of these reasons before then.

⁵ See GD1-8 to 11.

⁶ See GD1-10.

⁷ The Appellant's testimony can be heard in the audio recording of the March 9, 2023, hearing.

[25] On May 4, 2022, the Minister gave the Appellant a chance to give it more information to support why the reconsideration request was late.⁸

[26] The Appellant and her representative didn't provide reasons as to why the appeal was late, such as information about the Appellant's experiences with her insurer.

[27] The Appellant is getting long term disability benefits from her insurer. As a part of her contract, she also had to apply for CPP disability benefits. She had to send the Minister's decision to them when she got it, no matter the outcome.

[28] The Appellant sent the August 30, 2021, decision letter to her insurer in September 2021. She said her medical conditions impacted her ability to send the decision to her insurer right away. But she sent it a few days after. At that time, she asked her insurer to let her know if there was anything else she had to do. Months later, in May 2022, they told her she should ask the Minister to reconsider the decision and gave her a representative to help her to do so.

[29] The Appellant didn't tell this to the Minister. So, the Minister could not consider this explanation when making its decision.

[30] Even if I found the Appellant's explanation reasonable, I can't interfere with the Minister's decision. My role is not to determine the outcome of the Minister's analysis or make a different decision. My role is to determine if the Minister exercised discretionary authority judicially. And I find it did.

What I have to consider when a reconsideration request is late

[31] 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:⁹

- they have a reasonable explanation for why they are late

⁸ See GD2-19 to 21.

⁹ See section 74.1 (3) of the *Canada Pension Plan Regulations*.

- they always meant to ask the Minister to reconsider its decision – this is called their “continuing intention”

[32] I don’t have to do that here, because I already found the Minister exercised its discretion judicially. But I will explain why this appeal would not have succeeded, even if I found the Appellant’s explanation reasonable.

[33] I find the Appellant would not have been able to meet both factors, even if I found the Appellant’s explanation reasonable.

[34] I find the evidence doesn’t support that the Appellant always meant to ask the Minister to reconsider its decision.

[35] At the hearing, the Appellant was satisfied with the August 2021 decision. She said it didn’t make sense for her to ask for a reconsideration. She only did it because her insurer told her to. That is why she signed the consent with her representative in May 2022.¹⁰ This is 5 months after her 90-day deadline.

Conclusion

[36] There is no evidence to show the Minister acted in bad faith, for an improper purpose, or in a discriminatory manner. The Minister considered all relevant factors. There is no evidence the Minister considered irrelevant factors.

[37] I find the decision to deny the Appellant a longer period to make a reconsideration request was made judicially.

[38] The Appellant is not allowed more time to request a reconsideration of the August 11, 2021, decision.

Brianne Shalland-Bennett
Member, General Division – Income Security Section

¹⁰ See GD2-24.