



Citation: *MF v Minister of Employment and Social Development*, 2023 SST 303

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. F.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated May 12, 2023
(GP-20-1060)

Tribunal member: Kate Sellar

Decision date: **September 26, 2023**

File number: AD-23-755

Decision

[1] I'm refusing leave (permission) to appeal. The appeal will not go ahead. These are the reasons for my decision.

Overview

[2] M. F. (Claimant) worked most of her life in laundry services until 2018, when she stopped working due to her disability. She applied for a *Canada Pension Plan* (CPP) disability pension on September 27, 2018. The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed to this Tribunal.

[3] The General Division dismissed the Claimant's appeal. To be eligible for the disability pension, the Claimant had to show that her disability was severe and prolonged within the meaning of the CPP:

- after August 23, 2011 (the date of her Review Tribunal decision on an earlier application) and on or before December 31, 2012; or
- in 2013 by the end of August, and continuously after that.

[4] The Claimant had earnings that were high enough to make valid contributions to the CPP in 2016, 2017, and 2018. Also, the General Division noted that the Claimant earned substantially gainful amounts in 2016 and 2017. The General Division decided that the Claimant's work was productive and meaningful. Although she had some help with loading, she was able to complete the demands of the job on her own. The General Division dismissed the Claimant's appeal.

Issue

[5] The issues in this appeal are:

- a) Can it be argued that the General Division failed to provide the Claimant with a fair process during the hearing?

- b) Can it be argued that the General Division made an error that would justify giving the Claimant permission to appeal?
- c) Does the Claimant's application to the Appeal Division set out evidence that wasn't presented to the General Division?

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;
- made an error of fact;
- made an error of law;
- made an error applying the law to the facts.¹

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

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

The Claimant hasn't raised an arguable case that the General Division failed to provide a fair process.

[9] The Claimant's husband argues that he was asked to stay silent at the beginning of the hearing. The Claimant's husband says that this was particularly unfair because the Claimant gets stressed in situations like this and becomes a little inarticulate.

¹ See sections 58.1(a) and (b) of the *Department of Employment and Social Development Act (Act)*.

² See section 58.1(c) of the Act.

[10] I've reviewed the General Division hearing. The Claimant had a legal representative during the hearing. When the General Division member heard another voice on the teleconference hearing, the representative explained that this was the Claimant's husband. The General Division member asked what role the Claimant's husband would have at the hearing, and the representative stated, "no role". The General Division member confirmed whether that meant the husband would be a support person for the Claimant, and the representative agreed.³ The Claimant's husband once answered a question for her. The Claimant's representative directed the Claimant to just say she didn't remember if she didn't remember. This is an appropriate and reasonable request that her representative made during the Claimant's testimony.

[11] Based on what I heard, I cannot conclude that the General Division made an error by failing to provide the Claimant with a fair process by requiring the Claimant's husband to stay silent at the beginning of the hearing. If the Claimant's husband wanted to testify or assist the Claimant in any way other than simply as emotional support, either he or the Claimant's lawyer could let the General Division know.

[12] I cannot grant permission to appeal based on the idea that the General Division was unfair to the Claimant by asking her husband to stay silent at the beginning of the hearing.

The Claimant hasn't raised an arguable case that the General Division made an error.

[13] The Claimant argues that the General Division ignored the medical information from two doctors who stated that she was disabled. She has fibromyalgia that causes pain all over her body. She says the General Division failed to appreciate that she had no choice financially but to return to work. She got the work done but, but she received help from her husband and the other staff members.

³ This exchange started just after 7:00 in the recording of the General Division hearing.

[14] The Claimant hasn't raised an arguable case for an error by the General Division. The General Division discussed each aspect of the facts that the Claimant raises. The General Division concluded that:

- The medical evidence supported what the Claimant says about the fact that she has been too disabled to work.⁴
- One of the Claimant's conditions is fibromyalgia, and it causes pain⁵
- The Claimant had help to complete her work, and she worked because of financial need.⁶

[15] The Claimant appeals because she argues that the General Division should have found that her disability was severe and prolonged. A disability is severe when a person is incapable regularly of pursuing any substantially gainful work.⁷ The General Division didn't doubt whether the Claimant had limitations that made work difficult. But the General Division dismissed the appeal because she was able regularly to work until 2018, and in two of those years, she earned substantially gainful amounts.

[16] I cannot find that the General Division may have ignored or misunderstood the evidence. Analyzing that evidence led to a conclusion that the Claimant doesn't agree with, but there's no argument for an error on that issue.

No new evidence

[17] The Claimant provided no new evidence at the Appeal Division, so new evidence cannot form the basis for giving her permission to appeal.

[18] I've reviewed the appeal record. I'm satisfied that the General Division didn't ignore or misunderstand the evidence.⁸ I share the General Division's conclusion that the Claimant's medical conditions made her work extremely difficult. However, the

⁴ See paragraphs 21 to 29 in the General Division decision.

⁵ See paragraph 27 in the General Division decision.

⁶ See paragraph 47 in the General Division decision.

⁷ See section 42(2) of the *Canada Pension Plan*.

⁸ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Claimant had a capacity to work, and continued to work for years after the end of her coverage period.

Conclusion

[19] I am refusing to give the Claimant permission to appeal. This means that the appeal will not go ahead to the next step.

Kate Sellar
Member, Appeal Division