



Citation: *TM v Minister of Employment and Social Development*, 2023 SST 1345

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 24, 2023
(GP-21-2308)

Tribunal member: Kate Sellar

Decision date: **October 6, 2023**

File number: AD-23-882

Decision

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

Overview

[2] T. M. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension on September 28, 2020. The Minister of Employment and Social Development (Minister) allowed the application, with payments starting from June 2019. The Claimant asked the Minister to reconsider its decision about when the payments started. The Minister didn't change the decision. The Claimant appealed to this Tribunal.

[3] The General Division dismissed the Claimant's appeal. The General Division found that the Claimant's benefit couldn't start any sooner based on:

- The fact that he applied for the benefit on September 28, 2020; and
- He didn't show that he was incapable of forming or expressing the intention to apply earlier.

[4] The Claimant asks for permission to appeal the General Division's decision. He wants his payments to start sooner.

Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error by misunderstanding or ignoring the Claimant's evidence about relying on bad advice from Service Canada?
- b) Does the application 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 law;
- made an error of fact; or
- 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.

There's no arguable case that the General Division made an error of fact about the advice the Claimant says he received from Service Canada

[9] The Claimant argues that he relied on bad advice from Service Canada about the impact that applying for the disability pension would have on his workers' compensation benefits.³ This advice delayed his decision to apply for the disability pension.

[10] There's no arguable case that the General Division made an error of fact by ignoring or misunderstanding the evidence about Service Canada's advice.

[11] The Minister investigated the question about the bad advice, issued a decision when it finished the investigation, and shared it with the Claimant.⁴ The letter explained

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

² See section 58.1(c) of the Act.

³ See AD1-2 to 3, and 9 to 12.

⁴ See GD8.

that if the Claimant disagreed with the results of the investigation, he could ask the Federal Court for judicial review.

[12] The General Division explained in writing before the hearing and in its decision that it doesn't have jurisdiction over these investigations about bad advice.⁵

[13] There's no support in the law for the idea that the General Division could change the Claimant's payment date based on the bad advice he said he got from Service Canada.

[14] The General Division applied the law about when CPP disability pensions start: the earliest a person can be considered disabled for the purpose of payment is 15 months before they applied, and then there is a mandatory four month waiting period in all cases for the payments to start.⁶ The Claimant applied in September 2020, 15 months before he applied is June 2019, and four months later is October 2019.

[15] The Claimant's evidence about the advice he says he received from Service Canada doesn't have the potential to change the outcome of the appeal for the Claimant at this Tribunal. I cannot grant the Claimant permission to appeal based on the idea that the General Division ignored or misunderstood what the Claimant had to say about Service Canada's advice.

No new evidence

[16] The Claimant hasn't provided any new evidence, so I cannot give permission to appeal on that basis either.

[17] I've reviewed the Claimant's written materials and I'm satisfied that the General Division didn't ignore or misunderstand the evidence.⁷

⁵⁵ See section 66 of the *Canada Pension Plan* (CPP), GD6, and paragraphs 7 and 8 in the General Division decision.

⁶ See sections 42(2) and 69 of the CPP.

⁷ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615 for the need to complete this kind of review on the Appeal Division.

Conclusion

[18] I've refused the Claimant permission to appeal. This means that the appeal will not go ahead.

Kate Sellar
Member, Appeal Division