



Citation: *The Estate of GB v Minister of Employment and Social Development*, 2023 SST 432

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

**Decision**

**Appellant:** The Estate of G. B.  
**Representative:** Richard Fink

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated August 9, 2021 (issued by  
Service Canada)

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**Tribunal member:** Sarah Sheaves

**Type of hearing:** On the Record  
**Decision date:** April 21, 2023  
**File number:** GP-21-2017

## Decision

[1] The appeal is allowed.

[2] The Appellant, G. B., was eligible for a *Canada Pension Plan* (CPP) disability pension as of May 2016.<sup>1</sup> Payments start as of September 2016. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant was 60 years old when he passed away on May 31, 2021. The Appellant was diagnosed with a complex neurodegenerative disease, thought to be early onset Alzheimer disease and dementia with Lewy bodies in June 2014. He had been exhibiting symptoms of cognitive impairment since 2011. He was dismissed from his job as an investment banker in May 2016, due to his condition.

[4] The Appellant's wife and power of attorney applied for a CPP disability pension on behalf of the Appellant on March 4, 2021. The Minister of Employment and Social Development (Minister) approved the application on July 20, 2021.

[5] The Minister decided the date of disability onset was December 2019, which is the maximum retroactive timeframe allowed under the law. Payments began as of April 2020.<sup>2</sup>

[6] The Appellant's estate appealed the Minister's decision about the start date of his disability pension to the Social Security Tribunal's General Division. It argued that the payments should have begun earlier. It says the Appellant didn't have the capacity to apply for CPP disability benefits earlier than March 2021 because of his cognitive impairments.<sup>3</sup>

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<sup>1</sup> The appellant in this appeal is actually the Appellant's estate. Depending on the context, I will refer to the Appellant personally or to his estate throughout this decision.

<sup>2</sup> A person can't be considered disabled more than 15 months before they made the application that the Minister approved. After that, there is a 4-month waiting period before payments start. See section 42(2)(b) and section 69 of the *Canada Pension Plan*.

<sup>3</sup> See GD5-2. Also see *Canada Pension Plan* sections 60(8) to (10).

[7] The Appellant's estate says that his cognitive function had deteriorated to a point of incapacity by the time he was dismissed from his job in May 2016.

[8] The Minister has now agreed that the Appellant was incapacitated due to his condition when he stopped working in May 2016, and continuously after that.<sup>4</sup>

## **What the Appellant must prove**

[9] For the Appellant's estate to succeed, it must prove that the Appellant was incapable of forming or expressing an intention to make an application for CPP disability benefits before March 4, 2021. In other words, it needs to show that he could not apply before March 4, 2021, because he was incapacitated from applying earlier.

[10] The Appellant's estate must show that he was incapable of forming or expressing an intention continuously during the time that he claims to have been incapacitated.<sup>5</sup>

[11] It must prove this on a balance of probabilities. This means that it has to prove that it's more likely than not to be true.<sup>6</sup>

[12] If the Appellant was incapacitated, the application for CPP disability benefits would be considered received at an earlier date. This means that payments would start earlier.<sup>7</sup>

### **– The test for incapacity**

[13] A finding of disability under the *Canada Pension Plan* isn't the same as a finding of incapacity. A person can have the capacity to apply for benefits, even if they weren't able to complete the application form. This isn't different from having the capacity to form an intention to make other relevant life choices.<sup>8</sup>

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<sup>4</sup> See GD11-2.

<sup>5</sup> See *Canada Pension Plan* section 60(10) and *Flaig v Canada (Attorney General)*, 2017 FC 531.

<sup>6</sup> See *Grosvenor v Attorney General of Canada*, 2018 GC 36.

<sup>7</sup> See *Canada Pension Plan* sections 60(8) to (10).

<sup>8</sup> See *Canada Pension Plan* sections 60(8) to (10). See also *Sedrak v Canada (Social Development)*, 2008 FCA 86. There is a narrow exception to this set out in *Blue v Canada (Attorney General)*, 2021 FCA 211.

[14] In deciding whether the Appellant met the test for incapacity, I need to consider these factors:

- the evidence about the nature and extent of the Appellant's physical and mental limitations
- any medical, psychological, or other evidence in support of the incapacity claim
- evidence of activities the Appellant may have engaged in during the claimed period of incapacity
- the extent to which these activities cast light on the Appellant's capacity to form or express an intention to apply for disability benefits during that period<sup>9</sup>

## Reasons for my decision

[15] I find that the Appellant's estate has shown it's more likely than not that the Appellant lacked the capacity to form or express the intent to apply for CPP disability benefits during the period of May 2016 to March 2021.

[16] At first, the Minister argued that the Appellant's medical condition didn't result in incapacity.<sup>10</sup>

[17] The Minister has now changed its position. The Minister now agrees the Appellant lacked the capacity to form or express the intent to apply for CPP disability benefits since May 2016.<sup>11</sup>

[18] The Appellant's estate also confirmed its agreement that the date of incapacity was May 2016.<sup>12</sup>

[19] I agree with the Appellant's estate and the Minister.

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<sup>9</sup> See *Grosvenor v Attorney General of Canada*, 2018 GC 36, and *Blue v Canada (Attorney General)*, 2021 FCA 211

<sup>10</sup> See GD-3.

<sup>11</sup> See GD-11.

<sup>12</sup> See GD-13.

– **What the medical evidence says**

[20] The Appellant was first assessed for cognitive symptoms by Dr. Esmail, neurologist, on June 26, 2014.<sup>13</sup> He was noted to have “obvious abnormalities” in cognition and “significant abnormalities” for visuospatial functioning.

[21] Dr. Esmail diagnosed Alzheimer’s disease or frontal lobe dementia. He completed the paperwork for the termination of the Appellant’s driver’s licence the same day.

[22] In a further report dated August 26, 2014, Dr. Esmail said there were significant abnormalities on testing, and the Applicant’s wife reported he was having hallucinations. Dr. Esmail said the Appellant should not be working.<sup>14</sup>

[23] Dr. Freedman took over the Appellant’s care for dementia. In a report dated September 4, 2014, he said the Appellant’s cognitive problems were becoming increasingly worse. He showed impaired executive function, and impaired language ability.<sup>15</sup>

[24] The Appellant had a neuropsychological assessment on August 25, 2015.<sup>16</sup> It was recommended that he explore options for early retirement or long-term disability due to his deteriorating cognitive symptoms.

[25] A report of Dr. Freedman on December 23, 2015, said language function was compromised, and there was marked impairment of attention. It said the Appellant might have difficulties at work.<sup>17</sup>

[26] The Appellant was put on leave from his job and ultimately dismissed as of May 23, 2016. He never worked after that date.

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<sup>13</sup> See GD5-74.

<sup>14</sup> See GD5-78.

<sup>15</sup> See GD5-82.

<sup>16</sup> See GD2-143.

<sup>17</sup> See GD5-97.

[27] The Appellant had continued to work until May 2016 against the advice of his doctors. He didn't inform his employer of his condition or take steps to get accommodations for his condition. He took no steps to initiate a disability claim, as recommended. I find that this behaviour is also evidence of his incapacity.

[28] A letter from the employer dated June 8, 2016, cited several concerns about the Appellant's behaviour including being unresponsive, incoherent, confused, unclear, and unfocused. It mentioned many people both inside and outside of the organization coming forward with concerns about the Appellant.<sup>18</sup>

[29] The Appellant's estate retained Dr. Gladstone, a neurologist, to provide an expert opinion regarding incapacity. The reports of Dr. Gladstone are dated June 27, 2022, and August 30, 2022.<sup>19</sup>

[30] Dr. Gladstone said it was more likely than not that the Appellant became incapacitated around March or April 2016. The opinion was based on a review of the Appellant's medical records and the detailed letter from the employer.

[31] The evidence in the file shows that the Appellant had a severe and progressing cognitive condition, and that he wasn't able to form or express an intention to make an application for CPP disability benefits as of May 2016.

[32] This was also the date he was unable to continue working due to his condition.

[33] The Appellant's incapacity was continuous up until March 4, 2021. The medical evidence shows that his condition slowly declined and never improved.

## **When payments start**

[34] The Appellant's disability became severe and prolonged in May 2016.

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<sup>18</sup> See GD5-40.

<sup>19</sup> See GD5-32 and GD5-44.

[35] There is a four-month waiting period before payments start.<sup>20</sup> This means that payments start as of September 2016.

## **Conclusion**

[36] I find that the Appellant was eligible for a CPP disability benefit as of May 2016, with payments beginning in September. It is more likely than not that he lacked the capacity to form or express the intent to apply for a CPP disability benefit from May 2016 to March 2021.

[37] This means the appeal is allowed.

Sarah Sheaves  
Member, General Division – Income Security Section

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<sup>20</sup> Section 69 of the *Canada Pension Plan* sets out this rule.