



Citation: *MH v Minister of Employment and Social Development*, 2023 SST 497

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

Decision

Appellant: M. H.
Representative: L. W.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 3, 2022 (issued by
Service Canada)

Tribunal member: James Beaton
Type of hearing: Teleconference
Hearing date: May 2, 2023
Hearing participants: Appellant
Appellant's representative
Decision date: May 4, 2023
File number: GP-22-1836

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. H., can't have more time to ask the Minister of Employment and Social Development (Minister) to reconsider its decision to stop paying him a Canada Pension Plan (CPP) disability pension.

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

Overview

[4] The Appellant was getting a CPP disability pension. On January 4, 2017, the Minister determined that the Appellant stopped being disabled as of April 30, 2011. This resulted in an overpayment (debt) of \$63,329.70.¹ The Appellant asked the Minister to reconsider its decision on April 22, 2022.² The Minister refused to reconsider because he had asked more than 90 days after he was notified of the decision in writing.³

[5] The Appellant appealed to the Social Security Tribunal's General Division.

[6] This appeal isn't about whether the Appellant is entitled to a CPP disability pension. It is about whether his request for reconsideration was late and, if it was, whether the Minister should have given him more time to ask for reconsideration.

What I have to decide

[7] First, I have to decide if the Appellant's request for reconsideration was late.

[8] If the Appellant's request was late, then I have to decide whether the Minister acted judicially when it refused to give the Appellant more time to ask for reconsideration.

¹ See GD1-6 and 7.

² See GD2-9.

³ See GD1-8 and 9.

[9] If I decide that the Minister didn't act judicially, then I have to decide whether the Appellant should have more time to ask for reconsideration.

Reasons for my decision

[10] The Appellant's request for reconsideration was late. The Minister didn't act judicially. But the Appellant still should not have more time to ask for reconsideration.

The Appellant's request for reconsideration was late

[11] If a person disagrees with the Minister's decision to deny them a CPP disability pension, they can ask the Minister to reconsider. They have to do this within 90 days after they were notified of the decision in writing. If a person waits more than 90 days after they were notified before asking for reconsideration, their request is late.⁴

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

[13] The Appellant doesn't remember getting the Minister's decision letter dated January 4, 2017. But he attached this letter to the appeal paperwork that he sent to the Tribunal.⁵ So he did get it at some point. The question is when.

[14] I believe the Appellant got the letter no later than February 10, 2017, for two reasons.

[15] First, Service Canada phoned the Appellant on December 29, 2016, to explain that it would be sending a decision letter to the Appellant in the next two weeks.⁶

[16] Second, on February 10, 2017, someone from the office of the Appellant's Member of Parliament called Service Canada on the Appellant's behalf. That individual

⁴ See section 81(1) of the *Canada Pension Plan* and section 74.2 of the *Canada Pension Plan Regulations*.

⁵ See GD1.

⁶ See GD2-119 and 120.

asked Service Canada about the Minister's decision, the overpayment, and what the Appellant could do if he disagreed with the decision.⁷

[17] Taken together, these facts support that the Appellant got the decision letter by February 10, 2017. I believe that is what prompted him to contact his Member of Parliament's office. I also believe that, if he hadn't gotten the decision letter, he would have followed up with Service Canada—he was told to expect a letter.

[18] The Appellant says he didn't get the letter until early 2022 because his mail was forwarded to his bookkeepers, both of whom died, and he didn't get his current bookkeeper until early 2022.⁸

[19] However, the letter was addressed to the Appellant's home address, where he has lived since 2013.⁹ He acknowledges that he got mail at his house but he forwarded it to his bookkeepers before he opened it. The fact remains that he got the letter. It was successfully delivered to him at his house. What he chose to do with it after doesn't change that fact.

[20] The Appellant didn't ask for reconsideration until April 22, 2022. That was 1,897 days after February 10, 2017—many days past the 90-day deadline.

The Minister didn't act judicially

– What the Minister must consider when a request for reconsideration is late

[21] If a request for reconsideration is late, the Minister can give a person more time to ask. To do this, the Minister must be satisfied that:

- there is a reasonable explanation for why the request was late

⁷ This is mentioned in the Minister's "Late Reconsideration Request: Extension of the 90-Day Time Limit Decision Document" (GD1-10 to 12). It would have been preferable for the Minister to provide the record of the phone call itself. However, the Appellant confirmed at the hearing that he remembered asking his Member of Parliament's office to call Service Canada. So I accept the Minister's description of the call as accurate.

⁸ See the hearing recording.

⁹ The Appellant confirmed this at the hearing.

- the person showed a continuing intention to ask for reconsideration¹⁰

[22] If an appellant asked for reconsideration more than 365 days after they were notified of the decision in writing (as in this case), the Minister must also be satisfied that:

- the request for reconsideration has a reasonable chance of success
- allowing the request would not prejudice (unfairly disadvantage) the Minister¹¹

– **The Minister must act judicially when it considers these factors**

[23] The Minister must act judicially when it considers these factors. This means the Minister must not:

- act in bad faith
- act for an improper purpose or motive (the wrong reason)
- consider an irrelevant factor
- ignore a relevant factor
- discriminate against the Appellant¹²

– **The Minister didn't act judicially**

[24] The Minister didn't act judicially when it decided not to give the Appellant more time to ask for reconsideration. The Minister considered an irrelevant factor. Specifically, the Minister applied the wrong test when it determined that the Appellant didn't have a reasonable explanation for being late.

[25] The Appellant told the Minister he was late because he never got a decision letter.¹³

¹⁰ See section 81(1) of the *Canada Pension Plan* and section 74.1(3) of the *Canada Pension Plan Regulations*. See also *Lazure v Canada (Attorney General)*, 2018 FC 467.

¹¹ See section 74.1(4) of the *Canada Pension Plan Regulations*.

¹² See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

¹³ See GD2-9.

[26] It appears that the Minister didn't accept the Appellant's explanation as reasonable because it wasn't an "extenuating circumstance" that was unusual, unexpected, or beyond his control.¹⁴

[27] The law doesn't say that the Appellant's explanation must involve an extenuating circumstance that was unusual, unexpected, or beyond his control. The law only says that his explanation must be **reasonable**. The Minister's test was too strict and wasn't based on the law. So it was an irrelevant factor.

The Appellant should not have more time to ask for reconsideration

[28] Because the Minister didn't act judicially, I must now decide whether the Appellant should have more time to ask for reconsideration. When I do this, I must consider the same factors that the Minister had to consider. In other words, the Appellant must show on a balance of probabilities that:

- he has a reasonable explanation for being late
- he had a continuing intention to ask for reconsideration
- his request for reconsideration has a reasonable chance of success
- allowing him more time would not prejudice the Minister

[29] The Minister agrees that the Appellant's request for reconsideration has a reasonable chance of success. The Minister also agrees that allowing him more time would not prejudice the Minister.¹⁵ So I will focus on the first two parts of the test.

– The Appellant doesn't have a reasonable explanation for being late

[30] The Appellant says he was late because he forwarded his mail to his bookkeepers, and his bookkeepers passed away. The first one passed away around 2014—that was before the Minister even made its decision to stop paying the Appellant a disability pension. The second one passed away around 2017, although he didn't find out until the spring of 2018, and he didn't get his mail back until a few months after that.

¹⁴ See GD1-10 to 12.

¹⁵ See GD1-10 to 12.

He could not get a new bookkeeper that he trusted until 2022 because no one would accept new clients during the covid pandemic.¹⁶

[31] The Appellant's explanation is unreasonable. Service Canada called the Appellant on December 29, 2016, to explain that his disability pension payments would be stopped and that he could ask for reconsideration. He was told to expect a letter in a couple weeks. Service Canada then sent its January 4, 2017, letter, followed by two reminder letters on February 13, 2017, and March 13, 2017.¹⁷ I have no reason to doubt that these last two letters arrived at his house just like the first one did.

[32] It was unreasonable for the Appellant not to open his mail. He knew to expect a letter about his disability pension being stopped. Indeed, he got three letters from Service Canada within a short period of time. This alone suggests a sense of urgency or importance.

[33] I acknowledge that the Appellant might have thought that his bookkeepers would deal with this mail and tell him what to do. But once the Appellant's mail was returned to him in the spring of 2018, he should have opened it. By then, the mail would have been quite old. Instead, he chose to wait until 2022 to find a new bookkeeper before dealing with his mail. The Appellant didn't need a bookkeeper's help to open and read his mail, or to ask for reconsideration.

[34] The Appellant says he could not do anything in 2018 because he was in so much pain. However, the Appellant phoned Service Canada himself the following year, on June 13, 2019, to ask for a letter explaining the Minister's decision to stop his disability pension.¹⁸ He still didn't ask for reconsideration until April 2022, nearly three years later. He didn't give a reasonable explanation for this delay.

[35] Finally, the Appellant argued that he is in financial need, his disability has worsened, and he only ever worked for a short period of time.¹⁹ He thinks the decision

¹⁶ See the hearing recording.

¹⁷ See GD1-6 and 7, and GD2-21 to 24.

¹⁸ See GD2-20.

¹⁹ See GD1-3.

to stop paying him a disability pension was wrong. These arguments don't affect whether he has a reasonable explanation for being late.

[36] Because the Appellant doesn't have a reasonable explanation for being late, I don't need to consider whether he had a continuing intention to ask for reconsideration.

Other matters

[37] The Appellant said he sent "a shoebox" full of business receipts to the Canada Revenue Agency (CRA), which should have been added to his appeal file.

[38] At the hearing, I explained that the CRA is separate from the Minister, Service Canada, and the Tribunal. That is why his receipts weren't added to his appeal file. I also explained that his receipts aren't relevant to the issue I must decide, which is whether the Minister should have accepted the Appellant's reconsideration request.

Conclusion

[39] The Appellant can't have more time to ask the Minister to reconsider its decision to stop paying him a CPP disability pension.

[40] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section