



Citation: *TP v Minister of Employment and Social Development*, 2023 SST 689

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

# Decision

**Appellant:** T. P.  
**Representative:** C. P.

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

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**Decision under appeal:** Minister of Employment and Social Development decision dated November 18, 2022 (issued by Service Canada)

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**Tribunal member:** Brianne Shalland-Bennett

**Type of hearing:** Videoconference

**Hearing date:** June 9, 2023

**Hearing participants:** Appellant  
Appellant's representative, witness, and support person

**Decision date:** June 12, 2023

**File number:** GP-22-1974

## Decision

[1] The appeal is allowed.

[2] The Appellant, T. P., can have more time to ask the Minister of Employment and Social Development (the Minister) to reconsider its decision.

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

## Overview

[4] The Minister approved the Appellant's Canada Pension Plan (CPP) disability benefit application in December 2017. It sent her a letter about her entitlement in January 2018.<sup>1</sup>

[5] The Appellant sent a letter to Service Canada in May 2022. She asked for the incapacity rule to apply to her CPP disability benefits. She made a request for reconsideration for the same reason on November 22, 2022.<sup>2</sup>

[6] The Minister refused the Appellant's request. It says she made her request for reconsideration too late.<sup>3</sup>

## What I have to decide

[7] This appeal **isn't** about whether the Appellant should get retroactive payments. It is about whether she made her request for reconsideration late. If her request was late, I have to consider if the Minister should have given more time to ask for reconsideration.

[8] First, I have to decide if the request for reconsideration was late.

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<sup>1</sup> See GD2-38 to 40 and GD2-43.

<sup>2</sup> See GD2-7 to 10. The Appellant has post-traumatic stress disorder (PTSD).

<sup>3</sup> See GD1-10 to 15 and GD2-73 to 85.

[9] If the request was late, I have to decide if the Minister acted judicially (made its decision properly) when it refused the Appellant more time to ask for a reconsideration.<sup>4</sup>

[10] If I find the Minister didn't make its decision properly, then I have to do an assessment of whether the Appellant's request for a late reconsideration should have been granted. There are two outcomes of this assessment:

- If I find the request should be granted, I must refer the matter back to the Minister with a direction to grant an extension of time to the request.
- If I find the request should not be granted, then I must dismiss the appeal.

## What I considered first

### The incapacity argument doesn't apply to requests for reconsideration

[11] The incapacity argument doesn't apply to requests for reconsideration. The Minister and I explained that the CPP incapacity rule applies to the **making of an application**. It does not apply to those **requesting a reconsideration**.<sup>5</sup>

[12] The Appellant said she understood. So, I will not be addressing this argument.

## Reasons for my decision

[13] The Appellant's request for reconsideration was late. The Minister didn't act judicially. The Appellant should have more time to ask for a reconsideration.

[14] I explain my reasons below.

### The Appellant's request for reconsideration was late

[15] If a person disagrees with a decision of the Minister, they can ask the Minister to reconsider. They have to do this within 90 days of being told of the decision in writing. If

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<sup>4</sup> The Minister's decision to grant or refuse a late reconsideration request is considered a discretionary decision. See *Canada (Attorney General) v. Uppal*, 2008 FCA 388.

<sup>5</sup> See GD8-1 and subsection 60(8) and (9) of the *Canada Pension Plan*.

they wait over 90 days before asking the Minister to reconsider its decision, then the reconsideration request is late.<sup>6</sup>

[16] The Minister approved the Appellant's CPP disability application in December 2017. It mailed her a letter with information about her entitlement in January 2018.<sup>7</sup>

[17] The Appellant's first contact with the Minister about her retroactive benefits was in May 2022. She requested a reconsideration online on November 4, 2022.<sup>8</sup>

[18] The parties both agree that the Appellant made her request over 365 days after she got her approval for CPP disability benefits.

[19] Next, I will consider if the Minister made its decision to deny the Appellant more time to make her request judicially.

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

[20] The Minister didn't act judicially when it decided not to give the Appellant more time to ask for a reconsideration.

[21] The Minister can reconsider a decision even if the reconsideration is late. But the Minister can only do that if:<sup>9</sup>

- there is a reasonable explanation for asking for a longer period,
- the person has shown a continuing intention to request a reconsideration

[22] If an appellant asks for a reconsideration over a year after getting the initial decision (which is the case here), then the Minister must also find:<sup>10</sup>

- the request for reconsideration has a reasonable chance of success
- a longer period to request a reconsideration would not prejudice the Minister

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<sup>6</sup> See s.8 (1) of the *Canada Pension Plan*.

<sup>7</sup> See GD2-38 to 40 and GD2-43.

<sup>8</sup> See GD2-7 to 10.

<sup>9</sup> See s.74.1 (2) of the *Canada Pension Plan Regulations*.

<sup>10</sup> See s.74.1 (3) of the *Canada Pension Plan Regulations*.

[23] The Appellant can't get more time for her request for reconsideration if she doesn't meet **all** of these factors.

[24] When the Minister is considering these factors, the Minister must act judicially. This means they must not:<sup>11</sup>

- 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 Appellant

– **The Minister considered an irrelevant factor**

[25] The Minister considered an irrelevant factor. It used the wrong test when it found the Appellant didn't have a reasonable explanation for being late.

[26] The Appellant told the Minister she was late because of her mental health.

[27] The Minister didn't accept the Appellant's explanation as reasonable. It said she didn't show an "extenuating circumstance" that was unusual, unexpected, or beyond her control.<sup>12</sup>

[28] The law doesn't say that the Appellant's explanation must be an extenuating circumstance that was unusual, unexpected, or beyond her control. The law only says that her explanation must be **reasonable**. The Minister's test wasn't based on the law. So, I find it considered an irrelevant factor.

**The Appellant should have more time to ask for a reconsideration**

[29] Because the Minister didn't act judicially, I must now decide whether the Appellant should have more time to ask for a reconsideration. When I do this, I must

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<sup>11</sup> See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

<sup>12</sup> See GD1-12.

consider the same factors the Minister had to consider. In other words, the Appellant must show that on a balance of probabilities (more likely than not):

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

[30] The Minister agrees that the Appellant's request for reconsideration would not prejudice the Minister.<sup>13</sup> So, I will focus on the other factors below.

– **The Appellant has a reasonable explanation for the delay**

[31] The Appellant says her mental health was the reason for the delay. She says she experienced trauma and abuse while in the military. For those reasons, she doesn't have the mental ability to question people or organizations in positions of authority. She does what she is told and nothing more. She struggles with defying an order from anyone in a position of authority or the government. She feared the consequences of asking about the calculation of her benefits. So, she didn't.

[32] I believe what the Appellant says. I found her testimony sincere. It was also consistent with what her doctors have said since the January 2018 decision.

[33] The medical evidence shows the Appellant's work in the military is linked to her PTSD. Her PTSD causes significant anxiety, hostility, and suspiciousness in her relationships with others and systems and authorities. These are barriers that affect her ability to engage with them. The medical evidence also shows:<sup>14</sup>

- She has significant difficulties with trusting others.
- She may use avoidance to control her anxiety.
- She has intense fear, like being judged negatively.

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<sup>13</sup> See GD2-14.

<sup>14</sup> See GD1-19 to 27.

[34] I find the evidence shows the Appellant had significant limitations that delayed her ability to request a reconsideration. I find her explanations reasonable.

– **The Appellant has shown a continuing intention to request a reconsideration**

[35] The Appellant says she always questioned the Minister's calculation. She explained that if she questioned the calculation, she thought they would take away her benefits, "because that's what authority does." She explained, she is "very much robotic" and did what she was told when she was told.

[36] The Minister says the Appellant has contacted them to discuss different issues unrelated to her request for reconsideration since 2017. It only got her request for reconsideration in November 2022.<sup>15</sup>

[37] The Appellant says she spoke to military personnel about getting CPP disability benefits in 2008. She says they "flat out ordered" her not to apply. So, she did what she was told. Her insurer eventually told her she had to apply for benefits in 2017. So, she did. She described this direction as an "order."

[38] The Appellant explained that the times she contacted Service Canada were because people in authority directed her to do so. This includes her case manager, Veterans Affairs, and her insurer. If they didn't give her specific instructions on what she needed to do or that she had to do it, she would not have done it.

[39] The Appellant's friend instructed the Appellant to request a reconsideration in 2022. This person is also former military personnel and has PTSD. The Appellant says this person had to **convince** her she was **actually allowed** to request a reconsideration. Only then did she request for reconsideration. And still, she describes feeling terrified that the Minister would take her benefits away.

[40] I find it more than likely the Appellant always had the intention to ask. Her mental health stopped her from doing so.

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<sup>15</sup> See GD2-73 to 85.

– **The Appellant’s request for reconsideration has a reasonable chance of success**

[41] An application doesn’t have a reasonable chance of success if it is clearly going to fail, no matter what evidence an appellant may show.<sup>16</sup>

[42] The Appellant understands the legal tests related to the incapacity rule. She submitted medical documents that may be relevant in supporting her arguments. These documents provide some indication of incapacity. So, I find there is a reasonable chance of success.

## **Conclusion**

[43] I find the Appellant has shown she should have more time to ask the Minister to reconsider its decision. This means the appeal is allowed.

[44] The matter is sent back to the Minister to make the reconsideration decision.

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

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<sup>16</sup> See *The Estate of JB v Minister of Employment and Social Development*, 2018 SST 564.