



Citation: *SS v Minister of Employment and Social Development*, 2023 SST 1749

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

Decision

Appellant: S. S.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 28, 2022
(issued by Service Canada)

Tribunal member: Sharon Buchanan
Type of hearing: In Writing
Decision date: December 1, 2023
File number: GP-23-8

Decision

[1] The appeal is dismissed.

[2] The Appellant, S. S., cannot cancel her Canada Pension Plan (CPP) retirement pension for a CPP disability pension. Also, the Appellant isn't eligible for a post-retirement disability benefit (PRDB). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a CPP retirement pension. The Minister of Employment and Social Development (Minister) approved her application. Her retirement pension began in December 2020. On March 4, 2022, the Appellant applied for a CPP disability pension. The Minister refused the Appellant's application. The Appellant appealed to the Social Security Tribunal's General Division (Tribunal).

[4] The Appellant says she could no longer work in 2015 because of her medical conditions. Impairments from spinal stenosis and degenerative disc disease require her to use a cane and walker to move safely. She is unable to do any lifting. She has chronic daily pain in her lower back, radiating down her legs, as well as leg weakness. Multiple pulmonary embolisms in 2022 mean she is short of breath with minimal exertion and unable to participate in any form of physical activity.¹ She says the resulting breathing issues means her life has changed dramatically for the worse. She can't work, nor would anyone hire her in this condition.²

[5] The Minister says the Appellant is not eligible for a CPP disability pension because she made her application for disability benefits more than 15 months after her retirement pension began. The Minister also says the Appellant doesn't meet the contributory requirements for a PRDB.

¹ See GD2-59 and GD2-112, 113

² See GD7-1

What I have to decide

[6] I have to decide if the Appellant is eligible for a CPP disability pension.

[7] I also have to decide if the Appellant meets the criteria for a PRDB.

Reasons for my decision

- **The Appellant applied for a CPP disability pension more than 15 months after her retirement pension began**

[8] The law says a person can't get a CPP retirement pension and a CPP disability pension at the same time.³

[9] An appellant can only request the cancellation of a retirement pension in favour of a disability pension if the appellant is "deemed" disabled before the retirement pension was payable.⁴ The earliest an appellant can be "deemed" disabled is fifteen months before the date the Minister received the disability application.⁵ The effect of these two provisions is that when a person applies for the disability benefit fifteen months or more after retirement pension payments began the CPP does not allow the person to cancel the retirement pension in favour of a disability pension.

[10] The Appellant's retirement pension began in December 2020. She would have to be deemed disabled by November 30, 2020. The Minister received the Appellant's application for a CPP disability pension in March 2022. This means that she could not be deemed disabled earlier than December 2020. That means she cannot cancel her retirement pension in favour of a disability pension.

[11] The only exception to the rule would be if the Appellant was not able to form or express an intention to apply for the benefit before the date she applied.⁶

³ See the Supreme Court of Canada's discussion in *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28, at para. 9

⁴ See *CPP* sections 44(1)(b) and 70(3)

⁵ Para 42(2)(b) *CPP*

⁶ Subsections 60(8) and (9) *CPP*

[12] The Appellant said the pandemic interfered with her ability to get a diagnosis and proper treatment for her chest and lung issues.⁷ She does not however claim that she was unable to form or express an intention to apply for the disability pension before March 2022. The medical evidence on file doesn't indicate there was a time when the Appellant could meet the incapacity criteria.

– **Post Retirement Disability Benefit (PRDB)**

[13] The PRDB was created to give disability protection to retired pensioners who are disabled and between the ages of 60 and 65. The PRDB is a monthly benefit available to people who receive an early CPP retirement pension. It is payable in combination with a retirement pension until an appellant turns 65 years old.⁸

[14] Not all disabled recipients of an early retirement pension are eligible for a PRDB. To be eligible, a person must have contributed to the CPP for a minimum number of years. For people with at least 25 years of contributions (like the Appellant) they must contribute in three of six full calendar years before they applied.⁹

[15] The Appellant applied for a disability pension in 2022. So she had to contribute to the CPP for at least three years between 2016 and 2021. The Appellant has no contributions during this period.¹⁰

[16] The Appellant said she could not work or contribute to the CPP in those years because she was disabled. That may be. However, the law is clear that to qualify for the PRDB the Appellant had to contribute for at least three years between 2016 and 2021.

[17] The Tribunal is created by legislation. It only has the powers granted to it by its governing law. This means I have to interpret and apply the provisions as they appear in the CPP and its regulations. I cannot change or waive them, even if they seem unfair in a particular situation.¹¹

⁷ See GD1-9

⁸ See section 44(1)(h) of the *Canada Pension Plan*

⁹ See section 44(4) of the *Canada Pension Plan*.

¹⁰ See GD2-7

¹¹ See the Supreme Court of Canada's decision in *R v Conway*, 2010 SCC 22.

Conclusion

[18] I find that the Appellant isn't eligible for a CPP disability pension or a PRDB.

[19] This means the appeal is dismissed.

Sharon Buchanan
Member, General Division – Income Security Section