



Citation: *SN v Minister of Employment and Social Development*, 2024 SST 46

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** S. N.  
**Representative:** K. R.

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

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**Decision under appeal:** General Division decision dated September 18, 2023  
(GP-23-691)

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**Tribunal member:** Kate Sellar

**Decision date:** **January 12, 2024**

**File number:** AD-23-1106

## Decision

[1] I'm refusing the Claimant leave (permission) to appeal. This means that the Claimant's appeal about when his Canada Pension Plan (CPP) disability pension payments should start will not go ahead to the next step. These are the reasons for my decision.

## Overview

[2] S. N. (Claimant) was severely injured in the spring of 2015. He applied for a CPP disability pension on March 7, 2017. The Minister refused his application. The Claimant didn't ask for reconsideration.

[3] On February 28, 2022, the Claimant applied for the disability pension again. This time, the Minister allowed the application, finding that he was eligible. However, the Claimant asked the Minister to reconsider because he wanted his payments to start earlier. The Minister did not change the decision.

[4] The Claimant appealed to this Tribunal. The General Division dismissed his appeal, finding that the Claimant's payments start in March 2021.

## Issues

[5] The issues in this appeal are:

- a) Could the General Division have made an error of law in its decision about the start date for the Claimant's disability pension?
- b) Does the application set out evidence that wasn't presented to the General Division that could justify giving the Claimant permission to appeal?

## **I'm not giving the Claimant permission to appeal.**

[6] I can give the Claimant permission to appeal if the 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.<sup>1</sup>

[7] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>2</sup>

[8] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence that could justify granting permission to appeal, I must refuse permission to appeal.

**The Claimant hasn't raised an arguable case that the General Division made an error of law about when the disability pension payments start.**

- **The Claimant hasn't raised an arguable case that the General Division made an error of law by failing to provide him with payments starting when he first applied.**

[9] The Claimant argues that the General Division made an error about when his disability pension should have started. He argues that for the purpose of paying the disability pension, what matters is the following:

- He has been disabled since 2015 when he was injured.

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<sup>1</sup> See sections 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

<sup>2</sup> See section 58.1(c) of the Act.

- He was also disabled in 2017 when he first applied for the disability pension, but the Minister made a mistake by refusing his application. He didn't have the means to appeal.<sup>3</sup>

[10] The Claimant hasn't raised an arguable case that the General Division made an error of law by failing to focus on the correct dates to calculate when his disability payments should start. It's not when the Claimant became disabled or when he first applied that matters when calculating the start date of his disability payments.

[11] What matters is the date the Claimant applied the second time. The second application is the one that the Claimant asked the Minister to reconsider, and then the Minister issued a reconsideration letter for that application. Therefore, that is the only application that the General Division had the power to consider when deciding when payments start.<sup>4</sup>

[12] The General Division explained that the earliest claimants can be considered disabled for the purpose of payment is 15 months before they applied. Then there is a four-month waiting period before payments start. The Claimant applied in February 2022, 15 months before that application is November 2020. The waiting period ended four months later, so payments start March 2021.<sup>5</sup>

[13] I can understand the Claimant's logic about receiving payments that would start back when he first applied for the disability pension. However, there's no arguable case that General Division had the power to start his disability pension payments that early. The General Division had to follow the law by considering the application that was properly before it (the second one). The General Division considered the date he made

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<sup>3</sup> See AD1C-2 and 3 for that reconsideration decision. At AD1C-1, the Claimant argues that he didn't have the means to appeal that decision.

<sup>4</sup> See section 82 in the CPP, which means that the General Division considers appeals from decisions the Minister makes on reconsideration. It is the Claimant's second application that has a reconsideration decision, so it is the Claimant's second application date that matters for calculating when the disability pension starts.

<sup>5</sup> See paragraphs 9 and 10 in the General Division decision about when the disability pension starts based on section 42(2)(b) and section 69 of the *Canada Pension Plan* (CPP).

the second application, and then found that his payments would start as early as the law allows, which is March 2021.

- **The Claimant hasn't raised an arguable case that the General Division made any error about the Claimant's capacity to apply.**

[14] Disability pension payments can start sooner when claimants can show that they were incapable of forming or expressing the intention to apply earlier than they did.<sup>6</sup> In that case, for the purpose of payment, the General Division can consider the Claimant's application filed when he became incapable.

[15] The Claimant hasn't raised an arguable case that the General Division made any error in its analysis about incapacity. He states only that he didn't have the means to appeal the first refusal from the Minister. The General Division relied on the available evidence and decided that while the Claimant's cognitive abilities did change after his May 2021 seizure, he was not incapable of forming or expressing an intention to apply.<sup>7</sup>

[16] The Claimant hasn't raised an arguable case for an error of law so I cannot give him permission to appeal on that basis.

### **The new evidence isn't relevant to the issue on appeal.**

[17] In support of his application to the Appeal Division, the Claimant provided a new doctor's note dated December 19, 2023.<sup>8</sup> The note states that the Claimant is a good candidate for the disability pension, and that he is very limited in the amount of walking or standing he can do which makes him unable to get any jobs. It explains that the date of his accident was April 15, 2015.

[18] The Claimant is already eligible for the CPP disability pension. The doctor's letter confirms when he became disabled. But nothing in that letter provides a basis for reaching a different conclusion about when the disability pension should start, according

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<sup>6</sup> See section 60(8) and (9) of the CPP and paragraphs 11 to 24 in the General Division decision.

<sup>7</sup> See paragraphs 23 and 24 in the General Division decision.

<sup>8</sup> See AD1D-2.

to the CPP. Since the new evidence isn't relevant to the issue on appeal about the start date for payments, it cannot form the basis for giving permission to appeal.

## **Conclusion**

[19] I've refused the Claimant permission to appeal. This means that the appeal about when the Claimant's disability pension starts will not go ahead.

Kate Sellar  
Member, Appeal Division