



Citation: *SM v Minister of Employment and Social Development*, 2024 SST 161

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

# **Leave to Appeal Decision**

**Applicant:** S. M.

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

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**Decision under appeal:** General Division decision dated November 21, 2023  
(GP-23-999)

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**Tribunal member:** Kate Sellar

**Decision date:** **February 21, 2024**

**File number:** AD-24-82

## Decision

[1] I'm refusing to give the Claimant (S. M.) leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

## Overview

[2] The Claimant applied for a Canada Pension Plan (CPP) disability pension in February 2022. The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter. The Claimant appealed the Minister's decision to this Tribunal.

[3] The General Division dismissed the Claimant's appeal, finding that she didn't show that her disability became severe within the meaning of the CPP by December 31, 1996, or anytime in 1997 up to October 31.

## Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error by failing to provide the Claimant with a fair process?
- b) Is there an arguable case that the General Division made an error applying the law to the facts?
- c) Does the application set out evidence that wasn't presented to the General Division that would justify granting permission to appeal?

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

[5] 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;
- made an error applying the law to the facts.<sup>1</sup>

[6] 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>

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

### **There's no arguable case that the General Division failed to provide the Claimant with a fair process**

[8] The Claimant argues that she wasn't really prepared for her hearing at the General Division, that there is a lot more she could have said during the hearing.<sup>3</sup>

[9] What a fairness requires will vary depending on the circumstances.<sup>4</sup> At the heart of the question about fairness is whether, considering all the circumstances, the people impacted by the process had a meaningful opportunity to present their case fully and fairly.

[10] Part of the duty to act fairly is allowing people the right to be heard. The right to be heard is also about giving people the chance to make arguments on every fact or factor likely to affect the decision.<sup>5</sup>

[11] The Claimant hasn't raised an arguable case that the General Division failed to provide her with a fair process. The General Division started the hearing by explaining what the legal test was that the Claimant needed to meet. Then the Claimant gave her

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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.

<sup>3</sup> See AD1-3.

<sup>4</sup> See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

<sup>5</sup> The Federal Court explains this in a case called *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

testimony.<sup>6</sup> She didn't raise any concern at the hearing about being unprepared in any way that might have triggered the General Division to proceed differently.

[12] I cannot conclude that the General Division may have made an error about fair process. The Claimant hasn't provided any evidence of unfair process. My review of the record also doesn't suggest that the General Division might have failed to provide a fair process.

### **There's no arguable case that the General Division made an error applying the law to the facts**

[13] The Claimant argues that she has medical conditions (two types of arthritis) and that she cannot work as a result. She says that considering her medical conditions, the General Division must have made an error by concluding that she wasn't eligible for the disability pension.<sup>7</sup>

[14] The Claimant hasn't raised an arguable case that the General Division made an error applying the law to the facts. The question before the General Division was more specific than simply whether the Claimant has any medical conditions that keep her from working currently.

[15] The General Division explained that she had to show that her disability was severe and prolonged within the meaning of the CPP starting sometime during her coverage period and continuously since then.<sup>8</sup> Her coverage period is based on her contributions to the CPP.

[16] Based on her contributions, the General Division explained that the Claimant's coverage period ended on December 31, 1996. She had some additional contributions to the CPP that were below the minimum that the CPP accepts, but those contributions

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<sup>6</sup> The recording of the General Division hearing starts with the General Division member providing this information.

<sup>7</sup> See AD1-3.

<sup>8</sup> See paragraphs 7 and 8 in the General Division decision.

meant that she could also show that her disability became severe and prolonged in 1997, sometime between January 1 and October 31.

[17] I cannot conclude that the General Division made any error applying the CPP to facts about the Claimant's medical conditions.

[18] The General Division clearly stated that the Claimant had lots of evidence that shows significant impairments at the time of the General Division hearing.<sup>9</sup> But the Claimant needed some medical evidence about what her medical conditions were like during the coverage period.<sup>10</sup> The documents about the Claimant's medical situation in 2014 and following didn't help her to show she was eligible for the disability pension because they focused on a much later period.

### **The Claimant provided new evidence, but it can't justify giving her permission to appeal**

[19] The Claimant provided new evidence that wasn't already presented to the General Division. The document the Claimant provided is a diagnostic imaging report of her spine dated February 12, 2024.<sup>11</sup>

[20] The report isn't relevant to the question of whether the Claimant had a disability that was severe and prolonged on or before December 31, 1996, or in 1997 by the end of October. The report describes the outcome of imaging from February 6, 2024 as compared to multiple prior studies, including August 17, 2021.

[21] This report doesn't shed any light on the period the Appeal Division needs to consider, so providing it as new evidence cannot form the basis for granting the Claimant permission to appeal.

[22] I've reviewed the record.<sup>12</sup> I'm satisfied that the General Division didn't ignore or misunderstand the evidence in the appeal. The Claimant has lots of medical diagnoses

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<sup>9</sup> See paragraph 22 in the General Division decision.

<sup>10</sup> See paragraphs 22 to 30 in the General Division decision.

<sup>11</sup> See AD1H-2.

<sup>12</sup> This Federal Court set out its expectation for that kind of review by the Appeal Division in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

that affect her ability to work now, so the result here is difficult. But I don't have the ability to change how the law about contributions and coverage periods in the CPP apply to the Claimant.

## **Conclusion**

[23] I've refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division