



Citation: *SM v Minister of Employment and Social Development*, 2023 SST 1942

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: S. M.
Representative: C. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 5, 2023 (issued by
Service Canada)

Tribunal member: Antoinette Cardillo

Type of hearing: Videoconference

Hearing date: December 12, 2023

Hearing participants: Appellant
Appellant's representative

Decision date: December 22, 2022

File number: GP-23-1068

Decision

[1] The appeal is dismissed.

[2] The Appellant, S. M., cannot cancel his Canada Pension Plan (CPP) retirement pension in favour of a CPP disability pension.

[3] The Appellant also does not meet the contributory requirements to qualify for the CPP post-retirement disability benefit (PRDB).

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

Overview

[5] The Appellant started receiving a CPP retirement pension in June 2021.¹

[6] The Appellant applied for a CPP disability pension on September 23, 2022.²

[7] The Minister of Employment and Social Development (Minister) refused his CPP disability pension application. The Minister said because the Appellant applied for the CPP disability pension more than 15 months after he started receiving a CPP retirement pension, the Minister could not change the retirement pension to a CPP disability benefit. The information in his file showed that he had been receiving a retirement pension since June 2021 and he applied for a disability benefit more than 15 months after that date.

[8] The Minister added that the Government of Canada introduced the PRDB to give disability protection to CPP retirement pensioners. This change came into effect January 1, 2019. However, the Appellant did not meet the requirements and therefore, he was not eligible for the PRDB because his qualifying period ended before January 2019.³

¹ See GD2-75.

² See CPP disability application at GD2-23.

³ See section 44(2) of the CPP.

[9] The Minister also considered the Appellant's eligibility after the PRDB legislation was amended on May 5, 2023, which adjusted the calculation of the PRDB minimum qualifying period. The Appellant still did not meet the eligibility requirements.

[10] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[11] The Appellant said that he could not apply earlier for the CPP disability pension because he was in and out of the hospital. He was not physically well. He was waiting to get better. He also questioned why the Minister kept asking him for medical records since they knew he had applied late, and he did not meet the requirements to cancel his CPP retirement pension in favour of the CPP disability pension.

Issues

[12] The first issue in this appeal is whether the Appellant can cancel his CPP retirement pension in favour of a CPP disability pension.

[13] The second issue in this appeal arises if I determine the Appellant cannot cancel his CPP retirement pension in favour of a disability benefit. I have to then determine whether the Appellant meets the contributory requirements to qualify for the PRDB.

What the Canada Pension Plan says

- CPP disability pension

[14] The CPP states that once a person starts to receive a CPP retirement pension, they cannot apply or re-apply for a disability pension.

[15] The only way a CPP retirement pension can be cancelled in favour of a CPP disability pension is if the claimant is deemed to be disabled before the month the retirement pension first became payable.

[16] However, no person may be deemed to be disabled more than 15 months prior to the date an application for the CPP disability benefits is received.

[17] The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favour of the disability pension where the disability application is made 15 months or more after the retirement pension started to be paid.

- CPP Post-retirement disability benefit

[18] To qualify for the PRDB, a person must, as of January 1st, 2019:

- have paid into the CPP for at least four of the last six years or have made valid CPP contributions for at least 25 years of which at least three are in the last six years:
- be in receipt of a CPP retirement pension;
- be under age 65; and
- have a qualifying period of January 2019 or later.⁴

[19] The PRDB legislation was amended on May 5, 2023, which adjusted the calculation of the PRDB minimum qualifying period.⁵ An applicant needs to have made valid contributions for at least four of the last six years included either wholly or partly in its contributory period; or for at least 25 years with three in the last six years included either wholly or partly in its contributory period. Prior to the amendment, the provisions of the CPP on the PRDB minimum qualifying period did not reference whole or partial years.

Reasons for my decision

- CPP disability pension

⁴ See Subsection 44(4) of the CPP and subparagraph 44(1)(h)(i) of the CPP.

⁵ See Subsection 44(4).

[20] The Appellant started receiving his CPP retirement pension on June 1st, 2021.⁶

[21] He applied for the CPP disability pension on September 23, 2022.⁷

[22] Given that he applied for the CPP disability pension more than 15 months after he started receiving his CPP retirement pension, he cannot be found disabled prior to the start of his retirement pension. Therefore, the Appellant's retirement pension cannot be cancelled in favour of a disability pension.

- CPP Post-retirement disability benefit

[23] The Appellant was 63 years old when he applied for the CPP disability pension on September 23, 2022.

[24] Prior to the amendments to the CPP PRDB legislation, the Appellant needed to have made contributions in four of the last six years prior to the date of the application; or made contributions for 25 years of which at least three were in the last six years.

[25] This means that the Appellant had to have made valid contributions for the years 2016 to 2021.

[26] According to the Appellant's record of earnings, he had one year of valid contributions during the period of 2016 to 2021.⁸ Therefore, the Appellant did not meet the contributions eligibility for the PRDB when he applied.

[27] As the Appellant was receiving a CPP retirement pension in 2021, this year was also considered. The previous six years were 2015 to 2020. The Appellant had two years of valid contributions. Therefore, contributions eligibility for PRDB considering the legislation in place from January 1, 2019, to May 4, 2023, were not meet.

[28] The Appellant also did not have valid contributions for at least four of the last six years included either wholly or partly in its contributory period; or 25 years of valid

⁶ See GD2-75.

⁷ See CPP disability application at GD2-23.

⁸ See record of earnings at GD2-77 to 80.

contributions in the last six years wholly or partly, which would allow him to meet the contributory eligibility requirements after the amendments to the PRBD provisions that came into force on May 5, 2023.

Conclusion

[29] I find that the Appellant cannot cancel his CPP retirement pension in favour of a CPP disability pension.

[30] I also find that the Appellant does not meet the contributory requirements to qualify for the PRDB.

[31] This means the appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section