



Citation: *SM v Minister of Employment and Social Development*, 2024 SST 138

## **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 December 22, 2023  
(GP-23-1068)

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**Tribunal member:** Kate Sellar

**Decision date:** February 14, 2024

**File number:** AD-24-100

## Decision

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

## Overview

[2] S. M. (Claimant) started receiving a CPP retirement pension in June 2021. He applied for a CPP disability pension on September 23, 2022. The Minister of Employment and Social Development (Minister) refused his CPP disability pension application because he applied more than 15 months after he started receiving a CPP retirement pension.<sup>1</sup>

[3] The Claimant also didn't qualify for the post-retirement disability benefit (PRDB) because his qualifying period ended before January 2019 when the benefit came into effect. The rules about coverage periods for the PRDB changed in May 2023, but the Claimant still wasn't eligible.

[4] The Claimant appealed to this Tribunal. The General Division dismissed his appeal, finding that the Claimant wasn't eligible for either:

- cancelling his CPP retirement pension in favor of a disability pension; or
- qualifying for the PRDB.

## Issues

[5] The issues in this appeal are as follows:

- a) Can it be argued that the General Division failed to provide the Claimant with a fair process?

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<sup>1</sup> See paragraphs 14 to 16 in the General Division decision, which explain how sections 42(2)(b), 44(b), and 66.1 of the CPP apply together to allow claimants to cancel a retirement pension in favour of a disability pension, but only when the claimant is deemed disabled before the month the retirement pension became payable, and no one can be deemed disabled more than 15 months before the application date.

- b) Can it be argued that the General Division made an error of fact by ignoring the evidence about the reasons why the Claimant applied for the disability pension more than 15 months after he started receiving the CPP retirement pension?
- c) Does the application set out evidence that wasn't presented to the General Division?

## **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>2</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>3</sup>

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

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

[9] The Claimant argues that the decision from the General Division was unfair.<sup>4</sup>

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<sup>2</sup> See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

<sup>3</sup> See section 58.1(c) of the Act.

<sup>4</sup> See AD1-5.

[10] In my view, the issues he raises are about the fairness of the result when the requirements for the CPP disability pension and the PRDB are applied to his situation. He points to a series of barriers in accessing the CPP disability pension when the criteria for that pension is based on coverage periods (and those coverage periods are based on contributions to the plan).

[11] I can grant permission to appeal if the Claimant raises an arguable case that the General Division has failed to provide him with a fair process, but the Claimant hasn't raised an arguable case that the General Division made this kind of error. The fairness issue the Claimant raises isn't about the process.

**There's no arguable case that the General Division made an error of fact by ignoring the reasons why the Claimant didn't apply for the disability pension sooner**

[12] The Claimant argues that he experienced real barriers to applying any sooner for the disability pension. He explains that he applied quickly once his diagnosis became clear and he realized that he wouldn't be able to work because of disability.

[13] The Claimant hasn't raised an arguable case for an error of fact by the General Division. The General Division decision mentions the reasons why the Claimant took longer to apply for the disability pension. The General Division noted his concern about the Minister asking him for medical information despite knowing he didn't qualify based on the timing of the application.<sup>5</sup>

[14] There's no arguable case that the General Division ignored or misunderstood the reasons the Claimant gave for applying more than 15 months after he started receiving the retirement pension. The General Division mentioned these reasons but explained that the law still applied to the Claimant: he applied too late to cancel his retirement pension in favour of the disability pension. The General Division confirmed that the Claimant started receiving his retirement pension on June 1, 2021. He applied for the

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<sup>5</sup> See paragraph 11 in the General Division decision.

disability pension on September 23, 2022. He applied more than 15 months after he started receiving the retirement pension.<sup>6</sup>

[15] The Claimant isn't arguing that he applied earlier than September 23, 2022. The General Division found that the Claimant applied too late, and the Claimant hasn't raised an arguable case that there is any error in the reasoning or the conclusion. I can see no possible error in the General Division's decision about the fact that the Claimant applied too late for the disability pension.

### **The Claimant hasn't set out new evidence**

[16] The Claimant hasn't set out any new evidence that wasn't already presented to the General Division, so new evidence cannot form the basis for a decision to give the Claimant permission to appeal.

[17] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand the evidence about when the Claimant applied for the disability pension, or about his coverage period for the PRDB.<sup>7</sup>

[18] Although the Claimant didn't argue that the General Division made any specific error about his eligibility for the PRDB, I'm satisfied that there's no arguable case for an error in that part of the General Division's decision. The General Division considered both the Claimant's contributions when he applied for the CPP disability pension in 2022, and when he was receiving a CPP retirement pension in 2021. The General Division explained that he didn't have enough contributions to qualify either in 2021 or 2022.<sup>8</sup>

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<sup>6</sup> See section 66.1(1.1) of the CPP, and section 46.2(1) of the *Canada Pension Plan Regulations*.

<sup>7</sup> The Federal Court set the expectation for this type of review by the Appeal Division in a case called *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

<sup>8</sup> See paragraphs 23 to 28 in the General Division decision.

## **Conclusion**

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

Kate Sellar  
Member, Appeal Division