



Citation: *SH v Minister of Employment and Social Development*, 2024 SST 373

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: S. H.

Respondent: Minister of Employment and Social Development
Representative: Érelégna Bernard

Decision under appeal: General Division decision dated November 20, 2023
(GP-23-1726)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **April 16, 2024**

File number: AD-23-1117

Decision

[1] I'm dismissing the Claimant's appeal. That means his appeal will not go ahead to the next step. These are the reasons for my decision.

Overview

– Background to the appeal

[2] S. H. (Claimant) applied for a Canada Pension Plan (CPP) disability pension in February 2022. The Minister of Employment and Social Development (Minister) refused his application. He asked the Minister to reconsider. On August 4, 2022, the Minister reconsidered its decision and refused the application again.¹

[3] The Claimant appealed the reconsideration decision to this Tribunal on October 11, 2023.² The General Division decided that the Claimant's appeal wouldn't go ahead because he appealed more than one year after the Minister communicated its decision to him.

[4] I gave the Claimant permission to appeal because there was an argument that the Claimant didn't have a fair chance to clarify when he says he received the August 2022 reconsideration letter. That's an important question to understand because the day the Claimant receives the reconsideration letter is the day that "starts the clock" on the one-year deadline for appeal to the General Division.

– The case conference

[5] In his appeal, the Claimant stated that he wanted a hearing on the phone. But the first issue I had to decide was about whether he was more than a year late in appealing to the General Division.

[6] Once I gave the Claimant permission to appeal, I decided to hold a case conference on the phone with the Claimant and the Minister's representative. I

¹ See GD2-9.

² See GD1.

explained to the Claimant that I thought it would be easier to understand each other on the phone, rather than writing letters to him. There was some information that I needed to gather from him before I decided whether he was more than a year late.

[7] The Minister's representative and the Claimant agreed that it would be ok for me to talk to the Claimant to gather that information. There's no specific rule about what process the Appeal Division should follow in this situation, but I'm satisfied that the Tribunal's rules are flexible enough for me to do it this way. Holding a case conference to clarify the missing information was simple, quick, and fair.³

Issue

[8] Did the Claimant appeal to the General Division more than a year after the Minister communicated its reconsideration decision to him?

Analysis

- **The Tribunal received the Claimant's appeal more than a year after the Minister communicated the reconsideration decision**

[9] The Claimant's appeal cannot go ahead because he filed it too late.

[10] During the case conference, the Claimant looked at his copy of the reconsideration letter dated August 4, 2022. He didn't have a specific memory of receiving it, but he also didn't say that he never received it or that he remembered it arriving late. He said that after he got it, he made efforts to get copies of his income statements (T4s and T5s). This makes sense, because the reconsideration letter says that he wasn't eligible for CPP disability pension because he didn't have earnings and contributions to the CPP. Once he received the reconsideration letter, the Claimant thought there was some missing information about earnings and contributions that he should collect.

[11] The Claimant also clarified for me that there is no problem with the mail where he lives. He had a temporary problem with his request to get copies of his T4s and T5s, but

³ See section 6 in the *Social Security Tribunal Rules of Procedure*.

that was about getting a person from Canada Revenue Agency to agree to send the documents by mail, not a problem with the mail delivery itself. Further, I have no evidence of a mail disruption that would have impacted the Tribunal's ability to receive mail from the Claimant within a year of the date of the reconsideration letter.

[12] I benefitted from the Claimant explaining and clarifying things for me. The Claimant doesn't deny receiving the August 4, 2022 reconsideration letter, and he has no memory of exactly when he received it.

[13] Accordingly, I find that the Claimant received the reconsideration letter by mail before the end of August 2022, given that it would take some time for the mail to reach the Claimant after the date on the letter. He appealed to the General Division more than a year later, on October 11, 2023.

[14] I understand that there are good reasons why the Claimant took more than a year to file his appeal at the General Division. However, he was more than a year late. In no case can the appeal go ahead in that situation.⁴ I must follow the law, and the law doesn't allow an extension of time if the Claimant files the appeal more than a year after the Minister communicates its decision.

A Final Note

[15] There can be lots of paperwork for people who have medical conditions receiving social assistance. The paperwork can involve different levels of government or different government departments.

[16] The Claimant explained to me that he had lots of paperwork. It was confusing and he did his best. I believe him. He worked on accessing some T4s and T5s first, and then he appealed to the General Division. The Claimant has been confused about what kind of problems there may have been with the mail. But the Tribunal doesn't have evidence of mail disruptions when his appeal was due. Unfortunately, the appeal at the General Division was too late to go ahead.

⁴ See section 52(2) of the *Department of Employment and Social Development Act* (Act).

[17] The CPP disability pension doesn't always help everyone who needs help with income. It's only available to people with disabilities who have coverage because of earnings and contributions to the CPP. There are also deadlines (like in this appeal) that can stop an appeal from continuing to the next step.

Conclusion

[18] I dismissed the Claimant's appeal. The appeal will not go ahead.

Kate Sellar

Member, Appeal Division