



Citation: *SV v Minister of Employment and Social Development*, 2024 SST 422

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: S. V.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 27, 2023 (issued by
Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Teleconference

Hearing date: February 1, 2024

Hearing participants: Appellant

Decision date: February 16, 2024

File number: GP-23-1815

Decision

[1] The appeal is dismissed.

[2] The Appellant, S. E., can't have more time to ask for reconsideration of the decision about her application for a Canada Pension Plan (CPP) disability pension.

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

Overview

[4] The Appellant applied for a CPP disability pension in April 2018. The Minister of Employment and Social Development (Minister) denied her application on December 10, 2018.

[5] On May 9, 2023, the Appellant asked the Minister to reconsider its decision. The Minister refused to reconsider because the Appellant asked more than 90 days after she was notified of the decision.¹

[6] The Appellant appealed to the Social Security Tribunal's General Division.

[7] This appeal isn't about whether the Appellant should get a CPP disability pension. It is about whether her request for reconsideration was late and, if it was, whether the Minister should have given her more time to ask for reconsideration.

What I have to decide

[8] First, I have to decide if the Appellant's request for reconsideration was late.

[9] If the Appellant's request was late, then I have to decide whether the Minister acted judicially when it refused to give her more time to ask for reconsideration.

[10] If I decide that the Minister didn't act judicially, then I have to decide whether the Appellant should have more time to ask for reconsideration.

¹ See GD2-8.

Matters I have to consider first

I didn't consider the Minister's late submission (GD6)

[11] The Tribunal set a filing deadline of January 10, 2024. Both parties had until that date to file documents to support their position in this appeal.²

[12] The Appellant filed a doctor's letter two days before the deadline.³ The Minister filed an argument in response one week after the deadline.⁴ The Minister's document was late. I decided not to consider it.

[13] Under section 42 of the *Social Security Tribunal Rules of Procedure* (Rules), late evidence isn't automatically accepted. In deciding whether to consider late evidence, I must consider any relevant factor. For example, I must consider whether:

- the evidence is relevant
- the evidence is new
- the party could have filed the evidence earlier
- accepting the evidence would be unfair to a party
- accepting the evidence would cause delays

[14] The Rules don't say what happens when, as in this case, a party submits late arguments or other late documents that aren't evidence.⁵ But section 8 of the Rules lets me decide the procedure for anything that the Rules don't cover. Section 8 also lets me adapt the Rules if it is in the interest of justice.

[15] It makes sense and is in the interest of justice to apply the same factors to all types of documents, not just evidence. So, I considered these factors in deciding whether to accept the Minister's late submission (GD6).

² See GD3. Section 47(2) of the *Social Security Tribunal Rules of Procedure* (Rules) requires parties to file any evidence, arguments, and other documents by the filing deadlines that the Tribunal sets.

³ See GD5.

⁴ See GD6.

⁵ Section 5 of the Rules defines evidence as "something that a party presents to the Tribunal to prove a fact."

[16] The late submission couldn't have been filed earlier because it was in response to a new document. Accepting it would not delay the appeal or be unfair to the Appellant.

[17] However, I decided not to consider the late submission because it wasn't new. It was relevant, but only because it was about this appeal. It added nothing of value to the Minister's position. Although it addressed the Appellant's new evidence, it simply repeated arguments the Minister had already made about other evidence. There was nothing in the Appellant's new evidence that required the Minister to respond. The Minister was simply reinforcing its previous arguments.

Reasons for my decision

[18] The Appellant's request for reconsideration was late. The Minister didn't act judicially. But the Appellant still should not have more time to ask for reconsideration.

The Appellant's request for reconsideration was late

[19] If a person disagrees with the Minister's decision to deny them a CPP disability pension, they can ask the Minister to reconsider. They have to ask within 90 days after they have been notified of the decision. If they wait more than 90 days before asking, their request is considered to be late.⁶

[20] The Minister's decision was dated December 10, 2018.⁷ The Appellant doesn't remember when she received it. But she agreed that it would have been around the end of 2018 or in early 2019, because that is when her Ontario Disability Support Program (ODSP) payments started. The payments couldn't start until she had been turned down for CPP disability.⁸

[21] I find that the Appellant was notified of the decision by January 31, 2019. This means the Minister had to receive her request for reconsideration by May 1, 2019.

⁶ See section 81(1) of the *Canada Pension Plan* and section 74.2 of the *Canada Pension Plan Regulations*.

⁷ See GD2-12.

⁸ The Appellant said this at the hearing.

[22] The Minister received the Appellant's request for reconsideration on May 9, 2023.⁹ It was four years late.

The Minister didn't act judicially

[23] The Minister didn't act judicially when it refused to give the Appellant more time to ask for reconsideration.

– What the Minister must consider when a request for reconsideration is late

[24] If a request for reconsideration is late, the Minister can give a person more time to ask. To do this, the Minister has to be satisfied that:

- there is a reasonable explanation for why the request was late
- the person showed a continuing intention to ask for reconsideration¹⁰

[25] If the request for reconsideration is more than 365 days late, the Minister must also be satisfied that:

- the request for reconsideration has a reasonable chance of success
- allowing the request would not prejudice (unfairly disadvantage) the Minister¹¹

[26] The Appellant's request was more than 365 days late. So, the Minister had to be satisfied that **all four** of these factors were met.¹²

– The Minister must act judicially when it considers these factors

[27] The Minister's decision to give a person more time is discretionary. This means the Minister uses its own judgment to decide whether to do something. But the Minister has to act judicially when it decides.¹³ This means the Minister must not do **any** of the following:

- act in bad faith

⁹ See GD2-16.

¹⁰ See s. 81(1) of the *Canada Pension Plan* and s.74.1(3) *Canada Pension Plan Regulations*.

¹¹ See section 74.1(4) of the *Canada Pension Plan Regulations*.

¹² See *Lazure v Attorney General of Canada*, 2018 FC 467.

¹³ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

- act for an improper purpose or motive (the wrong reason)
- consider an irrelevant factor
- ignore a relevant factor
- discriminate against the Appellant¹⁴

– **Why the Minister didn't act judicially**

[28] The Minister said the Appellant didn't have a reasonable explanation for asking after the 90-day time limit had ended because there was no evidence that she was incapable of managing her own affairs or that she was "continuously impeded" from asking for reconsideration.¹⁵

[29] But that isn't the test. The law doesn't say the person has to be incapable of managing their own affairs or continuously impeded. It only requires them to have a reasonable explanation for the delay. The common definition of "reasonable" is something that is fair or acceptable.¹⁶

[30] In her request for reconsideration, the Appellant told the Minister that she was under psychological duress. She listed many conditions which she said caused cognitive impairment. She said she often needed help with administrative things.¹⁷

[31] The Minister didn't consider whether these issues might have affected the Appellant's ability to ask for reconsideration, and whether that was reasonable. The Minister's test was too strict and wasn't based on the law. In applying this test, the Minister ignored relevant factors that it should have considered.

– **What happens when the Minister doesn't act judicially?**

[32] Because the Minister didn't act judicially in considering whether the Appellant gave a reasonable explanation, I didn't have to decide whether it acted judicially in

¹⁴ See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

¹⁵ See GD2-85-86.

¹⁶ See <https://dictionary.cambridge.org>.

¹⁷ See GD2-16.

considering the other three factors. I now have to decide whether the Appellant should have more time to ask for reconsideration.

The Appellant should not have more time to ask for reconsideration

[33] When I decide if the Appellant should have more time to ask for reconsideration, I must consider the same factors that the Minister had to consider. In other words, the Appellant must show on a balance of probabilities that:

- she has a reasonable explanation for being late
- she demonstrated (showed) that she had a continuing intention to ask for reconsideration
- her request for reconsideration has a reasonable chance of success
- allowing her more time would not prejudice the Minister

[34] The Appellant must prove **all four** of these things. If she doesn't prove one of them, it doesn't matter whether she proves the other three.¹⁸

– The Appellant didn't show that she had a continuing intention

[35] The Appellant didn't show that she had a continuing intention to ask for reconsideration. This means I don't need to consider the other three factors.

[36] The Minister denied the Appellant's disability application in December 2018 because she was receiving treatment and it was reasonable to expect that she would improve.¹⁹ The Appellant told me that she thought that she might ask for reconsideration later if her prognosis turned out to be wrong. By November 2022, it became apparent to her and to her doctor that she wasn't going to get better. She contacted Service Canada and asked for a copy of her disability file.²⁰ She asked for reconsideration in May 2023.

[37] This is not a continuing intention to ask for reconsideration. The Appellant had a vague notion that she might ask for reconsideration if her circumstances changed. That

¹⁸ See *Lazure v Attorney General of Canada*, 2018 FC 467.

¹⁹ See GD2-13.

²⁰ See GD2-58.

isn't the same thing as an intention to ask. More significantly, it isn't a continuing intention that she demonstrated in any way until four years had passed.

[38] After December 2018, the Appellant was in contact with Legal Aid. She had an ODSP case worker. She went to Service Canada to deal with other matters. Her health problems didn't prevent her from dealing with these agencies. I find that if she had intended to ask for reconsideration, she would have discussed this with at least one of them, if only to ask for help with the request. But there is no evidence that she did, until November 2022.

[39] I find that, in December 2018 or January 2019, the Appellant made a conscious decision not to ask for reconsideration. She changed her mind four years later. Therefore, she didn't have a continuing intention.

Conclusion

[40] The Appellant can't have more time to ask for reconsideration of the December 10, 2018, decision about her CPP disability pension.

[41] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section