



Citation: *Minister of Employment and Social Development v LG*, 2024 SST 1315

Social Security Tribunal of Canada Appeal Division

Decision

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

Respondent: L. G.

Decision under appeal: General Division decision dated March 14, 2024
(GP-23-1076)

Tribunal member: Neil Nawaz

Type of hearing: Teleconference

Hearing date: October 10, 2024

Hearing participants: Appellant's representative
Respondent

Decision date: October 30, 2024

File number: AD-24-405

Decision

[1] I am allowing this appeal. I agree with the Minister that the Respondent is not entitled to either a regular disability pension or a post-retirement disability pension (PRDB) under the Canada Pension Plan (CPP).

Overview

[2] The Respondent is a 63-year-old former personal support worker with chronic back pain. In January 2021, she began receiving an early CPP retirement pension. In October 2021, she applied for the regular CPP disability pension.¹

[3] The Minister refused the application after determining that the Respondent's back pain did not prevent her from working during her two coverage periods.² The Minister specifically found that she did not develop a severe and prolonged disability

- (i) before December 31, 2017 (I will refer to this as the “minimum qualifying period” or MQP); or
- (ii) between January 1, 2021 and August 31, 2021 (I will refer to this as the “prorated period.”)

[4] The Minister also found that the Respondent was not eligible for the PRDB, a relatively new benefit that is designed for people who become disabled after they have started receiving the CPP retirement pension.

[5] The Respondent appealed the Minister's refusals to the Social Security Tribunal's General Division. It held a hearing by teleconference and allowed the appeal in part. While it found that the Respondent wasn't disabled during her MQP, it found that she became disabled during her prorated period. Since the Respondent was already receiving her retirement pension, the General Division granted her a PRDB.

¹ See the Respondent's application for CPP disability benefits dated October 5, 2021, GD2-51.

² See the Minister's initial refusal letter dated April 26, 2022 (GD2-35) and reconsideration decision letter dated February 2, 2023 (GD2-11).

[6] The Minister disagreed with the General Division's decision to grant the Respondent a PRDB. The Minister argued that, although the CPP had been recently amended to permit PRDB eligibility during a prorated period, that amendment didn't become effective until after the Respondent submitted her application.

[7] In June, one of my colleagues on the Appeal Division granted the Respondent permission to appeal. Earlier this month, I scheduled a hearing to discuss the Respondent's disability claim in full.

Issues

[8] All CPP disability claimants must show that, more likely than not, they had a **severe** and **prolonged** disability during one of their coverage periods:

- A disability is **severe** if it makes a claimant incapable regularly of pursuing any substantially gainful occupation.³ A claimant isn't entitled to a disability pension if they are regularly able to do some kind of work that allows them to earn a living.
- A disability is **prolonged** if it is likely to be long continued and of indefinite duration or is likely to result in death.⁴ The disability must be expected to keep the claimant out of the workforce for a long time.

[9] In this appeal, I had to decide the following questions:

- Is the Respondent entitled to the regular CPP disability pension? In other words, did she develop a severe and prolonged disability before December 31, 2017 or between January 1, 2021 and August 31, 2021?⁵

³ See *Canada Pension Plan*, section 42(2)(a)(i).

⁴ See *Canada Pension Plan*, section 42(2)(a)(ii).

⁵ Under section 44(2) of the *Canada Pension Plan*, an MQP is established by making threshold contributions to the CPP. The Respondent's most recent earnings and contributions are listed on her updated record of earnings at GD2-104.

- If the Respondent isn't entitled to the regular CPP disability pension, is she entitled to the PRDB instead? To be more specific, can she be found disabled, for the purpose of the PRDB, during the prorated period?
- Can the Respondent benefit from recent amendments to the *Canada Pension Plan* that make it easier to establish a coverage for the PRDB?

Analysis

[10] I have applied the law to the available evidence and concluded that the Respondent qualifies for neither the regular disability pension nor the PRDB. The evidence shows that, although the Respondent may have a severe and prolonged disability, its onset didn't occur within either of her coverage periods.

The Respondent didn't have a severe disability during her MQP

[11] Claimants for a regular CPP disability pension usually have to show that they became disabled during an MQP. For individuals, like the Respondent, who have at least 25 years of qualified earnings, an MQP is established by making threshold contributions to the CPP in a minimum of three years over a six-year window. In the Respondent's case, because she registered contributions in 2012, 2013, and 2014, her MQP was December 31, 2017.

[12] When the Minister appealed to the Appeal Division, it reopened all the issues that the General Division considered. At the hearing, I offered the Respondent an opportunity to argue that she became disabled before December 31, 2017. She declined, insisting, as she had before the General Division, that she was able to work at that time.

The Respondent wasn't eligible for a regular disability pension during her prorated period

[13] The Respondent's prorated period doesn't help her qualify for the regular disability pension either.

[14] The *Canada Pension Plan* contains provisions designed to ensure that a claimant is not disadvantaged by insufficient earnings and contributions in the year they become disabled.⁶ Under proration, a claimant's required earnings and contributions are reduced in proportion to the number of months that they were able to work in the final year of their contributory period. In this case, the Respondent had additional above-threshold earnings in 2019 and 2020, as well as below-threshold earnings in 2021. Her contributions in that last year were enough to give her disability coverage up to August 31, 2021—provided she could show that she became disabled during the first eight months of the year.

[15] However, there is a rule that says you can't get a CPP retirement pension and a regular CPP disability pension at the same time.⁷ The Respondent had been receiving the retirement pension for nine months by the time she applied for the regular disability pension in October 2021. By then, it was too late to cancel the first in favour of the second.⁸

The Respondent wasn't eligible for the PRDB during her prorated period

[16] The PRDB was created in January 2019 to protect and compensate CPP retirement pensioners who become disabled before the age of 65. Like the regular CPP disability pension, it requires claimants to establish coverage periods by making minimum contributions to the CPP.

[17] There are two ways of determining whether a claimant had enough years of CPP contributions to qualify for the PRDB. That's because the rules changed on May 5, 2023.

⁶ See *Canada Pension Plan*, sections 19 and 44(2.1).

⁷ See sections 44(1)(b) and 70(3) of the *Canada Pension Plan*.

⁸ Under section 66.1 of the *Canada Pension Plan*, CPP retirement recipients can cancel their pension—but only if they do so within six months of it starting.

– **The old rules excluded proration**

[18] Section 44 of the *Canada Pension Plan* used to say that PRDB claimants, like the Respondent, with 25 or more years of valid contributions needed at least three years of contributions “in the last six years.”⁹ In a case called *N.L.*, the Appeal Division interpreted this wording to mean that valid contributions had to be made during the **full** years preceding the date of application.¹⁰ This meant that claimants could not use prorated contributions—which are made in partial years—to establish coverage for the PRDB.

[19] Although I am not bound by other Appeal Division decisions, I find *N.L.*’s interpretation of the law to be compelling. I agree that, as written, the old rules effectively excluded a prorated period from the PRDB’s contributory period. I note that Parliament appears to have amended section 44 to include prorated periods in specific response to *N.L.*

– **The new rules include proration**

[20] Under the amended section 44, which came into effect on May 5, 2023, a claimant still needs at least three years of valid contributions. However, those years can now be included either “wholly or partly” within the contributory period.¹¹ That means the contributory period no longer has to end in the calendar year before the application date. Now it can end in the month the claimant became disabled.¹²

[21] As noted, the Respondent has valid contributions in the full years of 2019 and 2021, as well as in the partial year of 2021. If the new rules apply to the Respondent’s claim, it would be open to me to determine whether she became disabled in the prorated period from January 1, 2021 to August 31, 2021.

⁹ See section 44(4) of the *Canada Pension Plan* as it read before May 5, 2023.

¹⁰ See *N.L. v Minister of Employment and Social Development*, 2020 SST 742. This Tribunal followed *N.L.* in *G.D. v Minister of Employment and Social Development*, 2024 SST 135; *G.C. v Minister of Employment and Social Development*, 2023 SST 350; and *S.M. v Minister of Employment and Social Development*, 2023 SST 1942.

¹¹ See section 44(4) of the *Canada Pension Plan*, amended as of May 5, 2023.

¹² See section 44(5) of the *Canada Pension Plan*.

– **The new rules can't be applied retrospectively**

[22] Do the new rules apply to the Respondent's claim? In my view, they do not.

[23] There is a general rule of statutory interpretation that new legislation affecting substantive rights is not to be interpreted as having retrospective application unless the wording of the legislation explicitly or implicitly says otherwise.¹³

[24] The federal *Interpretation Act* codifies this presumption. It says that the repeal of an enactment does not affect any acquired right or privilege, although the procedures established by the new enactment are to be followed as far as possible.¹⁴

[25] The amendments to section 44 are substantive. They expand the rights of PRDB claimants while limiting the government's scope to deny such claims. They do not affect any of the procedural processes governing PRDB applications. They contain no transitional provisions specifying how existing claims would be treated going forward.

[26] In this case, the Respondent submitted her disability application on October 5, 2021—nearly two years before the rules changed. Her claim for disability benefits was commenced under the old rules, and it was still active when the new rules came into effect on May 5, 2023. According to the *Interpretation Act* and related case law, the substantive rights acquired by the Respondent and the Minister at the time of application were preserved despite the amendments to section 44. That meant the new rules did not apply to the Respondent.

Conclusion

[27] The Respondent suffers from back pain, but she isn't entitled to either of the disability benefits available under the *Canada Pension Plan*.

[28] The Respondent is not entitled to the regular disability pension, because she didn't have a severe and prolonged disability before December 31, 2017. Even if she

¹³ See *Gustavson Drilling (1964) Ltd. v Minister of National Revenue*, [1977] 1 SCR 271 and *British Columbia v Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 SCR 473.

¹⁴ See sections 43 and 44 of the *Interpretation Act*, as interpreted by *R. v Puskas*, 1998, [1998] 1 SCR 1207; *Archambault c R.*, 2022 QCCA 1170, *R. v J.G.*, 2019 ONCJ 703, *R. v Persaud*, 2020 ONSC 341.

had become disabled during her prorated period from January 1, 2021 to August 31, 2021, she would still not have been entitled to the regular disability pension because, by then, she was already receiving the retirement pension.

[29] Nor is she entitled to the PRDB. She made her application under the CPP's old section 44, which excluded prorated periods from the contributory period. She can't benefit from the new section 44 which, under basic rules of statutory interpretation, can't retrospectively affect a party's acquired substantive rights.

[30] The appeal is allowed.



Member, Appeal Division