



Citation: *MW v Minister of Employment and Social Development*, 2024 SST 1480

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. W.

Respondent: Minister of Employment and Social Development
Representative: Sandra Doucette

Decision under appeal: General Division decision dated April 25, 2024
(GP-22-1970)

Tribunal member: Neil Nawaz

Type of hearing: In Writing

Decision date: November 28, 2024

File number: AD-24-447

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to either a regular the Canada Pension Plan (CPP) disability pension or a post-retirement disability pension (PRDB).

Overview

[2] The Appellant is a 64-year-old former sheet metal worker. In November 2016, he lost his job after his employer ceased operations. He hasn't worked since.

[3] The Appellant started receiving an early CPP retirement pension in September 2020. In August 2021, he injured his left eye, and in October 2021, he applied for CPP disability benefits.¹ In his application, he said that he could no longer work because his vision was impaired.

[4] The Minister of Employment and Social Development (Minister) refused the application. It found that the Appellant was not entitled to the CPP disability pension because he did not have a severe and prolonged disability during his regular coverage period, which ended on December 31, 2019. The Minister also found that the Appellant was not eligible for the PRDB, a relatively new benefit for persons who become disabled after they have started receiving an early CPP retirement pension.

[5] The Appellant appealed the Minister's refusals to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal for the following reasons:

- It found that the Appellant's eye injury did not occur until after December 31, 2019, when his coverage for the regular CPP disability pension ended.

¹ See Appellant's Application for CPP Disability Benefits dated October 12, 2021, GD2-29.

- It also found that the Appellant's eye injury was not severe as of May 5, 2023, when his coverage for the PRDB ended.²

[6] The Appellant then applied for permission to appeal to the Appeal Division. Earlier this year, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. At the Appellant's request, I conducted a hearing by reviewing the documents on file.

Issues

[7] Claimants for the regular disability pension or the PRDB must show that, more likely than not, they developed a **severe** and **prolonged** disability during a specific coverage period called a "minimum qualifying period" or MQP.

- 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.

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

- Is the Appellant entitled to the regular CPP disability pension? In other words, did he develop a severe and prolonged disability during his regular MQP, which ended on December 31, 2019?⁵

² May 5, 2023 is the date on which the rules governing the PRDB were changed to make it easier to establish a coverage period.

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*, a minimum qualifying period is established by making threshold contributions to the CPP. The Appellant's most recent earnings and contributions are listed on his updated record of earnings at GD17-17.

- If the Appellant isn't entitled to the regular CPP disability pension, is he entitled to the PRDB instead? Did he have an MQP for the PRDB and, if so, when did it end? If he had an MQP for the PRDB, did he develop a severe and prolonged disability before it ended?

Analysis

[9] I have applied the law to the available evidence and concluded that the Appellant is not entitled to either the regular CPP disability pension or the PRDB. He did not have a severe and prolonged disability during the regular MQP, which ended on December 31, 2019. Nor did he have sufficient earnings and contributions to establish an MQP for the PRDB.

The regular disability pension and the PRDB can have different MQPs

[10] The regular disability pension and the PRDB don't necessarily have the same MQPs. That's because they are calculated using different methods:

- For the regular disability pension, claimants with at least 25 years of threshold earnings and contributions need to show that at least three of them occurred within a six-year window at some time **before the date of disability**.⁶
- For the PRDB, claimants with at least 25 years of threshold earnings and contributions need to show that at least three of them over occurred within a six-year window immediately **before the date of application**.⁷

[11] As mentioned, the rules for calculating the PRDB MQP changed on May 5, 2023. I will discuss the implications of that change later in this decision.

⁶ See *Canada Pension Plan*, section 44(2)(i.1).

⁷ See *Canada Pension Plan*, section 44(4), as it read prior to May 5, 2023.

The Appellant is not entitled to the regular CPP disability pension

[12] While the Appellant may have a significant vision impairment now, there isn't enough evidence to show that it prevented him from regularly pursuing a substantially gainful occupation during his regular MQP.

– The Appellant's regular MQP ended on December 31, 2019

[13] The Appellant has more than 25 years of valid contributions to the CPP, the last three of them in 2014, 2015, and 2016.

[14] The *Canada Pension Plan* says that a person shall be deemed to have become disabled no earlier than fifteen months before the date of application.⁸ For years, that meant that a person could lose entitlement to a disability pension by submitting their application more than 15 months after becoming disabled.

[15] The so-called "late applicant provision," which came into effect in 1992, addressed this problem.⁹ It was designed to protect late applicants — disabled persons who delayed applying even though they satisfied the CPP's contributory requirements — from losing their entitlement to the disability pension. It required the Minister to determine whether an applicant would have qualified for a disability pension if they had submitted it sooner.

[16] Applying the contributory requirements and the late applicant provision, the Appellant last had three years of valid contributions during the six years that ended on December 31, 2019.

– The Appellant didn't have severe disability during his regular MQP

[17] Claimants for disability benefits bear the burden of proving that they have a severe and prolonged disability.¹⁰ I have reviewed the record, and I have concluded that the Appellant did not meet that burden according to the test set out in the *Canada Pension Plan*. While the Appellant may have an impairment now, I couldn't find enough

⁸ See *Canada Pension Plan*, section 42(2)(b).

⁹ See *Canada Pension Plan*, section 44(1)(b)(ii).

¹⁰ See *Canada Pension Plan*, section 44(1).

evidence to show that it prevented him from working in the period leading up to December 31, 2019.

[18] In his application for benefits, the Appellant declared that he was left unable to work after suffering a laceration to his left eye in August 2021.¹¹ He later said that he had received a corneal transplant, which, despite steroid treatment, was slow to heal because of an underlying condition, glaucoma. He also said that, although he was starting to see improvement, he required additional treatment, including a surgical lens insertion, which he hoped would correct his vision. For the time being, he was avoiding computer screens and dusty environments.¹²

[19] It matters not just **whether**, but **when**, the Appellant became disabled.¹³ In this case, the medical evidence indicates that the Appellant's potentially disabling injury didn't occur until **after** his coverage ended.

– **All the Appellant's medical reports are dated after his regular MQP**

[20] A CPP disability claimant has to provide a report of any physical or mental disability, including its nature, extent and prognosis; the findings upon which the diagnosis and prognosis were made; any limitation resulting from the disability, and any other pertinent information.¹⁴

[21] The problem for the Appellant is that none of the available medical information dates from before December 31, 2019. Instead, it all relates to his eye injury, which, although it may be serious, occurred more than 18 months after the end of his regular coverage period:

¹¹ See the Appellant's application for CPP disability benefits, GD2-30.

¹² Refer to the Appellant's testimony before the General Division and his application for leave to appeal to the Appeal Division, AD1-4.

¹³ A CPP disability claimant has to provide a report of any physical or mental disability, including its nature, extent and prognosis; the findings upon which the diagnosis and prognosis were made; any limitation resulting from the disability, and any other pertinent information. See section 68(1) of the *Canada Pension Plan Regulations*.

¹⁴ In *Warren v Canada (Attorney General)*, 2008 FCA 377, the Federal Court of Appeal said there must be some objective medical evidence of a disability. See also *Canada (Attorney General) v Dean*, 2020 FC 206.

- On August 24, 2021, Dr. Michael Curtis, attending ER physician, reported that the Appellant injured his left eye while stripping the plastic coating from an electrical cable with a utility knife.¹⁵ Dr. Curtis declared that the Appellant would need immediate surgery.
- On August 25, 2021, Dr. Aftab Zafar, ophthalmologist, reported that the Appellant underwent urgent surgery following his injury.¹⁶ Dr. Zafar described as “guarded” the Appellant’s prognosis for regaining useful vision in his left eye. He added that the Appellant would likely require additional surgery for a corneal transplant.
- On February 29, 2022, Dr. Mee Sandor, family physician, wrote that the Appellant’s left eye had been “blind” since a penetrating trauma the previous August.¹⁷ However, despite the injury, Dr. Mee thought the Appellant would be able to return to modified work with 12 to 24 months, provided he avoided dusty environments.

[22] In short, there is nothing on file predating December 31, 2019, nor is there anything that comments on the Appellant’s condition before that date. Given this complete lack of relevant evidence from the relevant period, I find that the Appellant is not entitled to the regular CPP disability pension.

– **The Appellant didn’t have a prolonged disability during his coverage period**

[23] A disability must be severe **and** prolonged.¹⁸ The Appellant hasn’t proved that he had a severe disability as of December 31, 2019 so, strictly speaking, I don’t have to assess whether it was also prolonged.

¹⁵ See emergency report dated August 24, 2021 by Dr. Michael Curtis, GD2-69.

¹⁶ See report dated August 25, 2021 by Dr. Aftab Zafar, ophthalmologist, GD2-70.

¹⁷ See the CPP medical report dated February 29, 2022 by Dr. Mee Sandor, family physician, GD2-60.

¹⁸ See *Canada Pension Plan*, section 42(2)(a).

[24] Still, even though I don't have to do so, I find that the Appellant's condition is not "long continued" or of "indefinite duration." That's because the Appellant hasn't yet explored all treatment options; there is still scope for further improvement.

[25] The Appellant testified that he underwent a corneal transplant, which started to fail in August 2023. He has had to take eye drops several times a day, which make it difficult for him to carry out routine activities. He is now taking steroids and starting to see some improvement. However, he requires additional treatment, including an artificial lens transplant.

[26] The Appellant hopes that the transplant, which he expects will happen in a few months, will correct his vision. He said that, if his left eye heals and his vision improves, then he would be able to do "anything." He added that, when he applied for CPP disability benefits, he did not mean them to be permanent.

[27] I appreciate the Appellant's candor, but CPP disability benefits are for individuals with impairments that have no foreseeable end; they are not designed for persons with a treatable condition that has put them off work temporarily.

– The Appellant applied for regular disability too late to receive retroactive payment

[28] The Appellant faces another obstacle to his regular disability claim. Even if I were to find him disabled before December 31, 2019, he wouldn't actually receive any regular disability pension payments. That's because he is already receiving the retirement pension, and there is a limit to how many months of retroactive pension payments a successful claimant can receive:

- A person cannot collect a disability pension and a retirement pension at the same time.¹⁹

¹⁹ See *Canada Pension Plan*, section 41(1)(b).

- The earliest a person can be deemed disabled is 15 months before the date of application.²⁰
- Payment of an approved disability pension starts four months after the date of disability.²¹

[29] In this case, the Appellant applied for the regular disability pension in October 2021. That means the earliest he could be “deemed” disabled is July 2020, and the earliest he could received a first payment date is November 2020. But by then the Appellant was already receiving his early retirement pension, which effectively precluded him from receiving regular disability.

The Appellant is not entitled to the PRDB

[30] 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 an MQP by making minimum contributions to the CPP.

– The *Canada Pension Plan* was amended to extend coverage for the PRDB

[31] There are two ways of calculating the MQP for the PRDB. That’s because the rules changed on May 5, 2023.

[32] Section 44 of the *Canada Pension Plan* used to say that PRDB claimants with 25 or more years of valid contributions, like the Appellant, needed at least three years of contributions “in the last six years.”²² In a case called *N.L.*, the Appeal Division interpreted this wording to mean that valid contributions had to be made during the six **full** years preceding the date of application.²³ 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

²⁰ See *Canada Pension Plan*, section 42(2)(b)

²¹ See *Canada Pension Plan* section 69.

²² See section 44(4) of the *Canada Pension Plan* as it read before May 5, 2023.

²³ 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.

written, the old rules effectively excluded partial years in calculating an MQP for the PRDB.

[33] Under the new section 44, a claimant still needs at least three years of valid contributions. However, those years can now be included either “wholly or partly” within a contributory period, which starts when the claimant turns 18 and ends in the month they become disabled.²⁴ That means the MQP is no longer limited to the six full calendar years before the application date. Instead, the MQP ends in the period up to and including the partial year in which the claimant might have become disabled.

– The new rules can’t be applied retrospectively

[34] Do the new rules apply to the Appellant’s claim? In my view, they do not.

[35] 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.²⁵

[36] The federal *Interpretation Act* codifies this presumption. It says that the repeal of an enactment does not affect any acquired right or privilege, but the procedures established by the new enactment are to be followed as far as possible.²⁶

[37] 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.

[38] In this case, the Appellant submitted his disability application on October 12, 2021 — nearly two years before the rules changed. His 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

²⁴ See sections 44(4) and 44(5) of the *Canada Pension Plan*, amended as of May 5, 2023.

²⁵ 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.

²⁶ 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.

substantive rights accrued by the Appellant and the Minister at the time of application were preserved despite the amendments to section 44. The new rules do not apply to him.

– **The Appellant does not have an MQP for the PRDB**

[39] Whether his application is subject to the old or new rules, the Appellant does not have an MQP for the purposes of the PRDB.

[40] As noted, the Appellant applied for the CPP disability pension in October 2021, and his most recent valid contributions came in 2014, 2015, and 2016. Under the old rules, he does not have an MQP for the PRDB, because the last full six years before his application — 2015 to 2020 inclusive — contain only two years in which he made valid contributions. Under the new rules, the six full or partial years in the Appellant's contributory period — 2017 to 2022 inclusive — don't include any years of valid contributions.

– **The Appellant is ineligible for the PRDB's late applicant provision**

[41] Both the General Division and the Minister determined that the Appellant, for the purposes of the PRDB, had an MQP ending May 5, 2023. I disagree with this determination for a number of reasons.

[42] The General Division found that, since the Appellant “was in receipt of the CPP retirement pension in 2020, his date of application is deemed to be 2020.”²⁷ It then allowed itself to consider earnings between 2014 and 2019. However, there is nothing in any version of the *Canada Pension Plan* tying the PRDB MQP to the effective date of the retirement pension. As noted, the old version of section 44(4) suggests that the PRDB MQP ends on December 31 of the calendar year immediately before the PRDB application.

²⁷ See the General Division decision at paragraph 11.

[43] The Minister took a slightly different approach, deciding that the Appellant could benefit from the late applicant provision specific to the PRDB.²⁸ However, I don't see how that provision applies to the Appellant's case. Section 44(1)(h)(ii) allows the PRDB to be payable to a contributor to whom a PRDB would have been payable at the time they were "deemed to have become disabled if an application for a [PRDB] had been received before the application was actually received."²⁹ But since the Appellant's date of onset was August 2021, and his date of application October 2021, the benefit can't be payable at an earlier date, given the absence of evidence that Appellant was not yet disabled. A person can be deemed disabled at an earlier date than their application date, but their date of onset must be earlier than the deemed date.

[44] The late applicant provisions appear to operate differently for the two disability benefits. For the regular disability pension, the date of onset marks a firm end to the MQP. But for the PRDB, the MQP has no theoretical end-date. If a claimant with 25 years of valid earnings registers three years of contributions in the six years immediately prior to the application date, then they qualify if they become disabled while in receipt of the early retirement benefit.

[45] However, the late applicant provision can't be used as an open door to unlimited retrospective eligibility. If I adopt the Minister's interpretation of the late applicant provision, it would make anyone potentially eligible for a PRDB who had a minimum number of years of valid contributions — no matter when they had made them. In my view, that would defeat the purpose of the benefit, which is for individuals who become disabled while they are retired **and still working**.

Conclusion

[46] The PRDB was designed for contributors who, having taken early CPP retirement, keep on working but then become disabled between the ages of 60 and 65.

²⁸ See Submissions of the Minister — Contributory Eligibility for the *Canada Pension Plan* Disability and Post-Retirement Disability Benefit dated August 2, 2023 (GD7). See also the Minister's letter dated November 19, 2024, AD9.

²⁹ The Appeal Division considered the PRDB's late applicant provision in a case called *S.S. v Minister of Employment and Social Development*, 2021 SST 42.

To get coverage for the PRDB, a claimant must have made valid contributions that occur within that five-year range or just before it. In this case, the Appellant's last valid contributions occurred too long ago to qualify him for a benefit whose primary objective is to supplement the CPP retirement pension.

[47] The appeal is dismissed.



Member, Appeal Division