



[TRANSLATION]

Citation: *WN v Minister of Employment and Social Development*, 2024 SST 1449

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:
Representative:

W. N.
S. G.

Respondent:
Representative:

Minister of Employment and Social Development
Éréléгна Bernard

Decision under appeal:

General Division decision dated
February 2, 2024 (GP-23-1063)

Tribunal member:

Jude Samson

Type of hearing:

Videoconference

Hearing date:

September 20, 2024

Hearing participants:

Appellant
Appellant's representative
Respondent's representative

Decision date:

November 20, 2024

File number:

AD-24-250

Decision

[1] I am dismissing the appeal of the Applicant W.N. His disability pension payments can't start before February 2020.

Overview

[2] The Applicant first applied for the Canada Pension Plan (CPP) disability pension in June 2010. The Minister of Employment and Social Development (Minister) refused the application, and the Applicant didn't ask the Minister to reconsider its decision.

[3] The Applicant applied for the pension a second time in January 2021. The Minister approved that application and set the onset of disability to October 2019—15 months before the application date. The Minister says that the date of onset of disability allowed it to pay the pension from February 2020, which is the maximum period of retroactivity the CPP allows.

[4] The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division, but it dismissed his appeal. He asked that his disability pension payments start in 2010.

[5] The Applicant then appealed the General Division's decision to the Appeal Division, and I gave him permission to appeal. So, I treated the appeal as a new proceeding.¹

[6] While I have great sympathy for the Applicant's situation, I am dismissing his appeal.

¹ See section 58.3 of the *Department of Employment and Social Development Act*.

Issue

[7] The issue is the following: Was the Applicant incapable of forming or expressing an intention to apply for a pension before January 22, 2021, for a continuous period of time?

Analysis

[8] Generally, the CPP says that a person can't be considered disabled more than 15 months before they applied to the Minister for the pension.² Pension payments start four months after the onset of disability.³

[9] But there is an exception to this general rule. A person may be considered disabled earlier if they prove that they "had been incapable of forming or expressing an intention to make an application before the day on which the application was actually made."⁴ Also, the incapacity period has to be continuous.⁵

[10] This means that the legal test that the Applicant has to meet to show **incapacity** is much stricter than the test he has already met to establish his **disability**.

The Applicant hasn't established that he was continuously incapacitated before January 2021

– There are several factors to consider when assessing incapacity

[11] When assessing whether a person is incapacitated, it is necessary to look at whether the person was capable of forming or expressing an intention to apply for a pension. The analysis isn't about whether that person was capable of making, preparing, processing or completing the application form. The question is rather a simpler one: Was the person capable of forming or expressing an intention to apply?⁶

² See section 42(2)(b) of the *Canada Pension Plan* (CPP).

³ See section 69 of the CPP.

⁴ See section 60(9) of the CPP.

⁵ See section 60(10) of the CPP.

⁶ See *Canada (Attorney General) v Danielson*, 2008 FCA 78 at para 5.

[12] When assessing whether the Applicant was incapacitated, I have to consider the following factors:

- the evidence about the nature and extent of his physical or mental limitations
- the medical, psychological or other evidence supporting the application
- the evidence of other activities the Applicant may have been involved in during the relevant period
- the extent to which these other activities highlight the Applicant's capacity to form or express an intention to apply for a disability pension⁷

[13] The Applicant's ability to carry on ordinary life activities should normally show his capacity to formulate or express an intent to apply for a disability pension.⁸

– **The Applicant has significant functional limitations**

[14] The Applicant was at work in June 2003 when a client threw a chair at him. The chair hit his right shoulder, changing his life forever. He stopped working a few years later because of chronic pain. The Applicant emphasized his diagnosis of complex regional pain syndrome during his testimony.⁹ Also, his pain and post-traumatic stress disorder led to sleep problems and major depression.¹⁰

[15] To briefly summarize his situation, the Applicant testified that he suffered greatly after his work accident. He was in a lot of pain and taking so many medications—including opiates—that he could barely get out of his room, and his ability to make decisions was significantly compromised.

⁷ See *Blue v Canada (Attorney General)*, 2021 FCA 211 at para 42.

⁸ See *Sedrak v Canada (Human Resources and Social Development)*, 2008 FCA 86 at para 3; *Canada (Attorney General) v Danielson*, 2008 FCA 78 at para 7; and *Blue v Canada (Attorney General)*, 2021 FCA 211 at para 45.

⁹ See GD2R-253.

¹⁰ See GD2R-268.

[16] He says that he could not follow up on his first pension application because his ex-wife wasn't letting him access his mail.

[17] The Applicant testified how he had faced a series of major obstacles in his life, which he had only been able to overcome with a lot of help from others—often his ex-wife, his children, and his neighbour, who is a support person.

[18] Even though his family doctor and specialists tried many treatments, his symptoms stayed the same.¹¹

[19] The Minister acknowledges that the Applicant's disability has been severe and prolonged. So, it granted him a disability pension.

– **The medical evidence doesn't support incapacity**

[20] The medical evidence on file doesn't allow me to find that the Applicant was incapacitated for a continuous period before January 2021.

[21] The Applicant had several psychiatric assessments. But the psychiatrists didn't note any abnormalities in thinking and found that the Applicant's cognitive functions were within normal limits.¹² Psychiatrists often gave him a Global Assessment of Functioning score of 70. This score means that the Applicant had [translation] "some mild symptoms."¹³

[22] Also, it is clear that the Applicant participated in his treatment plans and consented to many evaluations.¹⁴ For example, he accepted some treatments and refused others.¹⁵ He was also able to go to medical appointments alone.¹⁶

¹¹ See GD2R-175 and GD6-32.

¹² See GD2R-271 to GD2R-279, GD4-24, GD4-25, GD14-184, GD14-188, and GD14-209.

¹³ See GD2R-273, GD14-200, and GD14-209.

¹⁴ See, for example, GD2R-260, GD2R-280, GD2R-285, GD14-184, GD14-188, GD14-240, and GD14-320.

¹⁵ See, for example, GD14-195, GD14-196, GD14-204, GD14-212, GD14-221, and GD14-317.

¹⁶ See, for example, GD2R-271 and GD2R-310.

[23] The Applicant heavily relies on Dr. Verma's letter dated April 25, 2023.¹⁷ But this letter is about the start of the Applicant's **disability**, not his **incapacity**. As I noted above, there is an important difference between these two terms that can't be ignored.

[24] Finally, I have to point out the lack of medical evidence from after 2015 that specifically addresses the Applicant's mental health and his ability to make decisions.

– **The Applicant's activities from 2010 to 2021 don't support incapacity**

[25] At the hearing, the Applicant and his neighbour testified about the many ways he needed help and support to manage his daily life. They described the many challenges and crises he regularly faced.

[26] I acknowledge the number of challenges the Applicant has faced and how serious they are. But I can't find that he was incapacitated during the period in question.

[27] In making this finding, I have placed significant weight on the following factors:

- Although there is conflicting evidence about how involved he was, the Applicant helped manage his pawnshop.¹⁸
- In 2009, the Applicant hired a lawyer to sue a private insurer and agreed to settle in 2016.¹⁹ Although the Applicant said that his lawyer made all the decisions, lawyers can only act on instructions from their clients. There is no evidence that anyone other than the Applicant directed that lawyer or any other person responsible for representing him.
- In 2013, the Applicant authorized his lawyer to submit an Access to Information and Privacy request on his behalf.²⁰

¹⁷ See GD2R-166 to GD2R-169.

¹⁸ See, for example, GD2R-268 (where a psychiatrist notes that in 2014, the Applicant was spending between 30 and 50 hours per week on his business); and GD2R-170 to GD24-174 (where the Applicant said in 2022 that he was still working around 15 hours per month on his business). See also GD2R-302; and GD4-22 to GD4-28.

¹⁹ See GD2R-263 and GD2R-315.

²⁰ See GD2R-119 and GD2R-120.

- In 2016, the Applicant and his spouse separated. The Applicant hired a lawyer and completed family law court proceedings.²¹ At the hearing, the Applicant explained how, during the divorce proceedings, he was able to buy his ex-partner's share of the family home. This involved getting a mortgage. Even though his neighbour—a support person—didn't agree with this purchase, she respected the Applicant's choice.
- In 2018, after calling Service Canada and going through his family doctor, the Applicant asked to reopen his disability pension application.²² This request shows an intention, even though the Applicant was unable to complete the next steps.

[28] Even after the Applicant's ex-wife left in 2016, he was able to cover his basic living expenses. I acknowledge that he has faced major challenges. But he was able to ask his daughter or neighbour for help when needed.

[29] All these activities highlight how the Applicant was capable of forming or expressing an intention to apply for a disability pension during the period in question.

[30] So, I can't find that the Applicant was incapable of forming or expressing an intention to apply for a pension before January 22, 2021, for a continuous period of time.

– **The Tribunal can't rewrite or circumvent the law**

[31] During the hearing, the Applicant asked me to be compassionate. He talked about many difficult situations that he has faced over many years.

[32] I have a lot of sympathy for the Applicant. But I can't base my decision on factors like sympathy, suffering, and financial need. Instead, I am required to interpret and apply the provisions as they are set out in the CPP. I can't use the principles of equity or

²¹ See GD4-4 to GD4-8; and AD4-2 and AD4-3.

²² See GD2R-112.

consider extenuating circumstances to rewrite or circumvent the law or to change the start date of a disability pension.

Conclusion

[33] I am dismissing the Applicant's appeal. He hasn't established that he was incapable of forming or expressing an intention to apply for pension before January 22, 2021. This means that his disability pension payment can't start before February 2020.

Jude Samson
Member, Appeal Division