



[TRANSLATION]

Citation: *WN v Minister of Employment and Social Development*, 2024 SST 1450

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: W. N.
Representative: S. G.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 30, 2023 (issued
by Service Canada)

Tribunal member: Antoinette Cardillo
Type of hearing: Videoconference
Hearing date: January 23, 2024
Hearing participants: Appellant
Appellant's representative
Support person
Decision date: February 2, 2024
File number: GP-23-1063

Decision

[1] The appeal is dismissed.

[2] The Appellant, W. N., isn't eligible for more than 15 months of retroactivity for the start of benefits after his Canada Pension Plan (CPP) disability pension application was approved. This decision explains why I am dismissing the appeal.

Overview

[3] The Minister of Employment and Social Development (Minister) received the Appellant's first application for CPP disability benefits on June 18, 2010.¹

[4] The Minister denied the application on January 10, 2011.² The Minister was of the view that the Appellant didn't meet the criteria to be eligible for a disability pension and that his file was missing information.

[5] The Appellant didn't ask for the Minister's decision to be reconsidered.

[6] The Minister received the Appellant's second application for CPP disability benefits on January 22, 2021.³ The Minister approved the application on May 26, 2022, with a payment start date in July 2020. This date turned out to be wrong, and the Minister fixed this mistake. The start of the Appellant's disability was set in October 2019, so 15 months before the application date—which is the maximum period of retroactivity the CPP allows.⁴

[7] The Appellant asked for the effective date of his disability pension to be reconsidered. On May 30, 2023, the Minister upheld its original decision that the Appellant had received the maximum period of retroactivity of 15 months before the date of his application, received on January 22, 2021.⁵

¹ See application at GD2R-132 and GD2-131.

² See letter at GD2-120.

³ See second application at GD2R-65 and GD2R-227.

⁴ See paragraph 42(2)(b) of the *Canada Pension Plan* (CPP) and the correction at GD15-7.

⁵ See reconsideration decision at GD1-9.

[8] The Appellant appealed this decision to the Social Security Tribunal's General Division.

[9] I had a case management conference with the Appellant and his representative on October 4, 2023.⁶ I explained to the Appellant and his representative that I didn't have the jurisdiction or the power to grant more than 15 months of retroactivity to an application for CPP disability benefits. I also said that the appeal before me was about the start date of disability benefit payments after the approval of the application the Minister received in January 2021—and not the one it received in June 2010.

[10] The Appellant also argued that there had been an abuse of rights. I said that I also didn't have the jurisdiction to make a decision about the abuse of rights.

[11] The Appellant asked to be heard and wanted to go ahead with a hearing.

What the Appellant has to prove

[12] There is no need to cite the criteria to qualify for a CPP disability benefit because the Minister found that the Appellant had a disability and was eligible for those benefits.

[13] Regarding the incapacity test under the CPP that the Appellant's representative raised at the hearing, a person was incapacitated if they were incapable of forming or expressing an intention to apply before the day on which the application was actually made.⁷ The period of incapacity has to also be continuous.⁸

[14] The legal test for incapacity is clearly defined. It isn't about whether a person:

- a) knows what benefits they are eligible for
- b) can make, prepare, process or complete an application

⁶ See case management conference summary at GD12.

⁷ See section 60(9) of the CPP.

⁸ See section 60(10) of the CPP.

c) is able to deal with the consequences of applying⁹

[15] Instead, a person has to show that they were incapable of forming or expressing an intention to apply for a benefit.

Reasons for my decision

[16] I find that the Appellant isn't eligible for more than 15 months of retroactivity for the start of CPP disability benefits. I reached this decision by looking at the following issues.

– The facts

[17] The Minister approved the Appellant's disability pension application, received on January 22, 2021. This is the application that I have to address.

[18] The issue is the date when disability benefits started being paid.

[19] The Appellant says that he didn't know that his first disability pension application—dating back to June 18, 2010—had been denied because his partner was hiding his mail from him, and he didn't have access to the P.O. box key. So, he could not ask for a reconsideration. He is asking that his disability benefits start in 2010.

– Analysis

[20] The CPP specifies when a person is considered to have a disability. The CPP says that in no case is a person, including a late applicant, deemed to have had a disability more than 15 months before the application date.

[21] The legislative provisions allow for a maximum period of retroactivity of 15 months from the date of application, which in this case starts in October 2019.¹⁰

⁹ See *Canada (Attorney General) v Hines*, 2016 FC 112; *Canada (Attorney General) v Danielson*, 2008 FCA 78; and *Canada (Attorney General) v Poon*, 2009 FC 654.

¹⁰ See section 42(2)(b) of the CPP.

[22] The Appellant submitted a lot of medical evidence. His representative argued about the Appellant's incapacity and reported his physical and psychological conditions in 2010 and beyond. The Appellant and his representative were using the words disability and incapacity interchangeably.

[23] Like I said to the Appellant and his representative at the hearing, not only is disability different from incapacity, but the burden of proving an incapacity is high.

[24] The CPP is clear that a person has to show that they were incapable of forming or expressing an intention to apply for a benefit. In the Appellant's circumstances, he applied for CPP disability benefits in 2010 and 2021. The one from 2021 was approved.

[25] Case law says that incapacity is the incapacity to form an intention to apply for benefits, not for appeals from the rejection of applications.¹¹

[26] Not only is the Appellant asking for more than 15 months of retroactivity for the start of his disability benefits—contrary to what the CPP allows—but he is also asking that the retroactivity be based on his first application from June 2010 because he says he was unable to apply. But he applied, and he didn't ask for a reconsideration because he wasn't aware that it had been denied.

[27] I would like to clarify a few points. First, although the Appellant says that he didn't have access to the mail and that he didn't know that his first application received by the Minister in June 2010 had been denied, the appeal before me is about the second application from January 2021 and not the first one—like I said at the case management conference and again at the hearing. There is no reconsideration decision from the Minister that has been appealed before me about the Appellant's first application. I don't have the power to decide on an appeal without a reconsideration decision being issued.¹² So, this appeal is about the Minister's reconsideration decision dated May 30,

¹¹ See *Baines v Canada (Human Resources and Skills Development)*, 2011 FCA 158.

¹² See paragraph 1(2)(a) of the *Social Security Tribunal Rules of Procedure*.

2023, regarding the Appellant's second disability pension application dated January 22, 2021.¹³

[28] The CPP sets limits for disability pension payments. The Appellant received the maximum period of retroactivity under the CPP.

[29] Second, the CPP also sets specific criteria for a person's incapacity. The CPP and case law say that incapacity can't be applied to a reconsideration request but rather to a benefit application. This means that the Appellant can't claim incapacity in 2010, since an application was made and denied. It was a reconsideration that the Appellant wasn't able to ask for—not benefits.

[30] So, I find that the Appellant isn't eligible for more than 15 months of retroactivity for the start of CPP disability benefits. Also, incapacity under CPP can't apply to the Appellant's circumstances.

[31] Despite any sympathy I may have for the Appellant, I have to interpret and apply the provisions as they are set out in the CPP. I can't use the principles of equity or consider specific situations to override the retroactivity or incapacity requirements set out in the law.

Conclusion

[32] I find that the Appellant isn't eligible for more than 15 months of retroactivity for the start of benefits after his CPP disability pension application, received on January 22, 2021, was approved.

[33] This means that the appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section

¹³ See reconsideration decision at GD1-9.