



Citation: *MY v Minister of Employment and Social Development*, 2025 SST 302

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: M. Y.

Respondent: Minister of Employment and Social Development
Representative: Ian McRobbie

Decision under appeal: General Division decision dated September 9, 2024
(GP-24-840)

Tribunal member: Pierre Vanderhout

Type of hearing: Videoconference

Hearing date: March 20, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: March 31, 2025

File number: AD-24-674

Decision

[1] The appeal is dismissed. The Appellant is not entitled to receive Canada Pension Plan (CPP) disability payments before June 2022.

Overview

[2] I will refer to the Appellant, M. Y., as the “Claimant” in this decision. I will refer to the Respondent, the Minister of Employment and Social Development, as the “Minister.”

[3] The Claimant applied for a CPP disability pension on May 31, 2023.¹ Dr. Tewfik (psychiatrist) said his main medical condition was major depressive disorder with symptoms of anxiety.² The Minister approved the Claimant’s application. The Claimant was granted benefits starting June 2022, which was the earliest possible start date under the CPP’s retroactivity provisions.³

[4] The Claimant asked the Minister to reconsider that decision, so that his benefits could start in 2018. The Minister upheld the initial decision, stating that the Claimant had already received the earliest possible start date for his disability pension.⁴

[5] The Claimant appealed the Minister’s decision to the General Division of the Social Security Tribunal (Tribunal). He said he was not aware of the CPP disability pension until just before he applied in May 2023.⁵

[6] In October 2024, the General Division dismissed the Claimant’s appeal. The General Division found that he did not meet the CPP’s incapacity requirements, which would be the only way he could receive more retroactive payments.⁶ He then filed a Leave to Appeal application with the Tribunal’s Appeal Division. One of my Appeal

¹ See GD2-61.

² See GD2-218.

³ See GD2-12 to GD2-16.

⁴ See GD2-8.

⁵ See GD1-1.

⁶ This decision is at AD1A-1.

Division colleagues granted leave to appeal. This decision follows a hearing on the merits of the Claimant's appeal.

[7] The parties agree that the Claimant was entitled to a CPP disability pension. They only disagree on whether the CPP incapacity provisions allow him to receive pension payments before June 2022.

[8] I must decide whether the Claimant met the CPP incapacity requirements before he applied for the CPP disability pension on May 31, 2023.

[9] For the reasons set out below, I find that that the Claimant did not meet the CPP incapacity requirements before he applied for the CPP disability pension in May 2023.

Issue

[10] The only issue in this appeal is whether the CPP incapacity provisions allow the Claimant to receive pension payments before June 2022.

Analysis

[11] Before addressing the legal issue, I will provide some additional information about the Claimant.

[12] The Claimant appeared to have a successful career as an engineer up to 2018. He worked in English, even though it was not his native language. However, he said his religious and cultural community persuaded him to become a priest. He says this was a mistake. His initial posting as a priest was in Florida, but he said he failed.

[13] The Claimant said his church asked him to return from Florida to Canada. He said his family, church, and community called him a failure. His mental health suffered. While he tried to return to his engineering career, that did not succeed either. Eventually, his marriage collapsed. He said other people turned his wife, children, and close friends against him. He appears to have led an isolated life since then.

[14] The general rule is that a person cannot be deemed disabled more than 15 months before making their application for a CPP disability pension.⁷ A mandatory four-month waiting period must also pass before payments can start.⁸ As the Claimant applied in May 2023, his earliest pension start date is June 2022. That was the payment date granted by the Minister.

[15] The only exception to that general rule is when the CPP incapacity provisions apply. Those provisions could create an earlier “deemed” application date. In turn, that could make the pension payments start earlier.⁹

Do the CPP incapacity provisions allow the Claimant to receive pension payments before June 2022?

[16] The CPP incapacity provisions do not allow the Claimant to receive earlier pension payments. I will now explain why.

[17] The Claimant's May 31, 2023, CPP application date is not in dispute. He said he had help with the application. However, his signature appears three times on the application form. One of those signatures gave the Minister consent to obtain personal information about him. The Claimant also declined to name an authorized representative to act on his behalf.¹⁰

[18] As a result, I find that the Claimant applied for the CPP disability pension on his own behalf. This means s. 60(9) of the *Canada Pension Plan* (which I will call the “Incapacity Provisions”) could apply to him.

[19] The Incapacity Provisions say incapacity means being, “incapable of forming or expressing an intention to make an application before the day on which the application was actually made.”¹¹

⁷ See section 42(2)(b) of the *Canada Pension Plan*.

⁸ See section 69 of the *Canada Pension Plan*.

⁹ See sections 60(8) and 60(9) of the *Canada Pension Plan*.

¹⁰ See GD2-63, GD2-77, GD2-78, and GD2-79. The application starts at GD2-61.

¹¹ See section 60(9)(a) of the *Canada Pension Plan*.

[20] This means I must decide whether the Claimant met the requirements of the Incapacity Provisions before May 31, 2023. If he did, I must then determine if the timing of his incapacity and application would allow an earlier “deemed” application date.

[21] My focus is on the Claimant’s capacity in 2022 and up to May 31, 2023. This is because an applicant can only benefit from the Incapacity Provisions if he applies within one year of regaining capacity.¹²

[22] In other words: if the Claimant continuously had capacity for at least a year before May 31, 2023, the Incapacity Provisions cannot help him. It would not be relevant if he had a period of incapacity before then. If he did have a period of incapacity in that one-year period before May 31, 2023, then I would need to look at the exact dates involved to see if the Incapacity Provisions help him.

– **Was the Claimant incapable at any time in 2022 or up to May 31, 2023?**

[23] I find that the Claimant had capacity throughout the relevant period leading up to May 31, 2023.

[24] The Claimant was disabled at the relevant times. But that is not the question in this appeal. The question is whether he had the capacity to form or express an intention to apply for the CPP disability pension before May 31, 2023.¹³

[25] A finding of incapacity under the CPP applies only in a very narrow set of circumstances. The test for incapacity is not whether the Claimant can make, prepare, process, or complete an application for disability benefits. The focus is not on his physical capacity to complete the application. The key is whether he had the mental capacity to form or express an intention to do other things.¹⁴

[26] To help answer this, the Federal Court of Appeal has explained how to apply the Incapacity Provisions. The Tribunal must, at a minimum, consider the following:¹⁵

¹² See section 60(9) of the *Canada Pension Plan*.

¹³ See *Walls v Canada (Attorney General)*, 2022 FCA 47, at paragraph 31.

¹⁴ See *Walls v Canada (Attorney General)*, 2022 FCA 47, at paragraphs 31 and 36.

¹⁵ See *Blue v Canada (Attorney General)*, 2021 FCA 211, at paragraph 42, and *Walls v Canada (Attorney General)*, 2022 FCA 47, at paragraph 37.

- (a) The applicant's evidence about the nature and extent of their physical and/or mental limitations.
- (b) Any medical, psychological, or other evidence produced by an applicant in support of their incapacity claim.
- (c) Evidence of other activities in which an applicant may have been engaged during the relevant period.
- (d) The extent to which these other activities cast light on the capacity of the applicant to form or express an intention to apply for disability benefits during that period.

[27] I will now consider each of these factors. I will then make my conclusions about whether the Claimant meets the Incapacity Provisions.

(a) *The Claimant's evidence about his physical and/or mental limitations*

[28] The Claimant's evidence at the Appeal Division hearing about his limitations after June 2018 was very different from his evidence at the General Division hearing and the documentary evidence.

[29] At the August 2024 General Division hearing, the Claimant said he was fully responsible for paying all the household bills from 2018 to the hearing date. This included the groceries and the children's expenses. Because of a lack of funds, he had to resort to using his Visa card and his home equity line of credit (HELOC).¹⁶

[30] At the General Division hearing, the Claimant also said that he took it upon himself to follow up with both his psychiatrist and his psychologist. He went to those appointments alone.¹⁷

[31] In April 2024, the Claimant said he was not aware of the CPP disability pension for a long time after his December 2018 diagnosis. He apologized for not being aware of the benefit, "as it could have helped my family and saved us several hurtful situations."¹⁸

¹⁶ See the General Division hearing recording, at 0:38:00 to 0:40:00.

¹⁷ See the General Division hearing recording, at 0:42:00 to 0:44:00.

¹⁸ See GD1-1.

Around the same time, he said he only had access to his children 40% of the time after the marital split (although he remained responsible for 100% of their expenses).¹⁹

[32] In May 2023, when he applied for the CPP disability pension, the Claimant said his ability to drive a car was “good.” He also said his ability to add and subtract numbers, read a short message, write an e-mail, and understand what people say in everyday conversations was “good.” Finally, his ability to take medication as directed, answer the telephone, and open and sort mail was also “good.”²⁰

[33] At the Appeal Division hearing, however, the Claimant’s evidence was quite different. He said he could not do simple tasks, take care of himself, or make decisions. He said his behaviour was abnormal and reckless. He said he could not form proper sentences, in English or his native language, when he tried to return to his previous job. He could not complete forms. He could not plan what to do, or even form a train of thought. He could not even read the requirements to apply for the Disability Tax Credit.

[34] The Claimant described other significant limitations at the Appeal Division. He insisted that he never drove from 2018 to 2025. He said the police warned him about poor driving in 2018. He stopped driving because this warning scared him, and he did not want to put people in danger. He said he only started driving again in 2025, and only around his neighbourhood. He had relied on an unnamed friend to drive him for the past seven years. However, he had to drive again because this friend now has a new job.

[35] The Claimant repeatedly said at the Appeal Division hearing that he would not be alive today if this unnamed friend had not done so much for him. However, he did not give consistent evidence about the timing and extent of this friendship.

[36] As the Claimant said this unnamed friend was a chef, I will call him the “Chef Friend.” I did not see any specific mention of the Chef Friend before the Appeal Division hearing. When asked about this, the Claimant said he had been embarrassed until then to say that the Chef Friend was helping him. He said receiving such help was

¹⁹ See GD2-28.

²⁰ See GD2-67, GD2-69, and GD2-70.

humiliating. He said this despite getting reassurances at the General Division hearing that his oral evidence at that hearing would remain confidential.²¹

[37] The Claimant said that the Chef Friend was actually a “friend of a friend”. The Chef Friend started helping the Claimant with food around 2020 or 2021. In 2023, after about a year-and-a-half, he became “really good friends” with the Chef Friend. However, he then said the Chef Friend took him to his doctor’s appointments starting in 2020 and told him to open his letters. Later, he said the Chef Friend made his medical appointments for him and sometimes even made the call for telephone appointments.

[38] The Claimant said the Chef Friend completed the CPP disability application in May 2023. The Chef Friend explained it to him verbally, and asked for his consent to complete the form. The Claimant agreed. The Claimant then signed the completed form.

[39] The Claimant also said he had not lived in the matrimonial home since 2020, when he got to know the Chef Friend. He said he was not even allowed to step inside the matrimonial home since about 2020. Later, he said the Chef Friend arranged for him to move out of the matrimonial home in 2020 or 2021.

[40] The Claimant said he had to rent different places, and only received mail addressed to the matrimonial home several months after it was sent. He got his mail in a batch once every 3-4 months. Some mail went missing for a year or more. He only applied for the CPP disability pension after seeing a CPP letter in one of those batches.

[41] However, in August 2022, the Claimant told Carlton Brown (psychotherapist) that he was still living alone in the matrimonial home.²²

[42] I cannot rely on the Claimant’s evidence at the Appeal Division hearing. It contradicts his previous evidence. But it is also internally inconsistent. For example, he said the Chef Friend had driven him around for the past seven years. However, he also said he only met the Chef Friend in 2020 or 2021, and only became very good friends in

²¹ See the General Division hearing recording at, for example, 0:20:05 to 0:21:35.

²² See GD2-208.

2023. He also affirmed using his Visa card and HELOC to cover household expenses from 2018 through at least August 2024. That would require having a “train of thought.”

[43] The Claimant has also commented on his memory issues. He mentioned having a poor memory in January 2022 and February 2022. Dr. Tewfik also noted poor memory in July 2022, December 2022, and May 2023.²³ In September 2023, the Claimant said he had stayed at home to look after his children for the past five years.²⁴ That does not align with his other statements at all. It also suggests that his memory has not been accurate for some time.

[44] Because of the Claimant’s memory problems and conflicting statements, I am inclined to prefer earlier evidence, especially objective evidence that was produced “in the moment.” I also have concerns about the Claimant’s failure to mention the Chef Friend and the full extent of his alleged help before.

(b) Medical, psychological, or other evidence produced by the Claimant to support his claim of incapacity

[45] The Claimant relies primarily on Dr. Tewfik’s recent letters. Dr. Tewfik has written five of them since April 2024. He wrote all five in support of the Claimant’s appeal.

[46] The two letters written shortly before the August 2024 hearing focused on saying the Claimant’s symptoms were “severe and disabling” but did not address incapacity.²⁵

[47] Even after the August 2024 hearing, Dr. Tewfik’s letters suggest that he did not fully appreciate the basis for the decisions about the Claimant’s alleged incapacity. In September 2024, Dr. Tewfik said he did not agree with the decision about retroactive benefits because the Claimant was “**currently** substantially disabled” because of “the severity of his **current** symptoms.”²⁶ [emphasis added] But the only issue at the time, and now, is whether the Claimant lacked capacity before his May 2023 application.

²³ See GD2-175, GD2-180, GD2-192, GD2-210, GD2-218.

²⁴ See GD2-43. Around March 2024, the Claimant implied something similar: see GD2-28.

²⁵ See GD1-2 and GD4-2.

²⁶ See AD1-9.

[48] In October 2024, Dr. Tewfik again focused on the Claimant's **current** symptoms. He then said the Claimant's conditions affected his ability to make decisions, his capacity to apply for a disability pension, and his ability to return to work in any capacity. As a result, Dr. Tewfik said that Claimant had been incapacitated since 2018.²⁷

[49] Finally, after the Minister filed its detailed submissions at the Appeal Division, Dr. Tewfik submitted another letter dated January 29, 2025.

[50] In the January 2025 letter, Dr. Tewfik said the Claimant's psychiatric conditions left him incapable of forming or expressing the intent to apply for a CPP disability pension at an earlier date. This language mirrors the wording of the Incapacity Provisions. Dr. Tewfik did not provide a specific start date for the incapacity. However, he said he had been treating the Claimant since 2018.²⁸

[51] In that same letter, Dr. Tewfik said:²⁹

“[The Claimant's] major depression has been affecting his memory, ability to concentrate, energy, motivation, and thinking. His condition renders him substantially incapacitated, and unable to function, both in the community and at a personal level. He struggles to manage his finances and manage important matters, such as doctor's appointments and taking medications.”

[52] Dr. Tewfik concluded his letter with the following:³⁰

“Accordingly, in my professional opinion, I believe [the Claimant] is a person with substantial and incapacitating disability as a result of his current psychiatric condition. I continue to support this application for CPP disability benefits.”

[53] Once again, Dr. Tewfik focuses on the Claimant's **current** condition. It is also unclear that Dr. Tewfik properly considered the distinction between disability and incapacity. He also treats the period since 2018 as one unrelenting period of incapacity.

²⁷ See AD1B-2.

²⁸ See AD7-2.

²⁹ See AD7-2 to AD7-3.

³⁰ See AD7-3.

These points are critical, because the Claimant personally applied for the CPP disability pension in 2023. That act significantly exceeds the very low threshold for capacity under the CPP. He not only formed the intention to apply, he did apply.

[54] Dr. Tewfik's recent letters also contradict his earlier statements about the Claimant's capacity after 2018. More than once, Dr. Tewfik suggested that the Claimant could work. This is clearly inconsistent with incapacity under the CPP.

[55] For example, in September 2019, Dr. Tewfik said the Claimant's depression had improved significantly with treatment and he could return to work with no restrictions. In August 2020, Dr. Tewfik again said the Claimant could return to work. Dr. Tewfik suggested two weeks of half-time work, after which he could return to full-time work.³¹

[56] In September 2020, Dr. Tewfik noted further improvement and suggested an even more aggressive return-to-work timetable. The only suggested accommodations were a smaller case load, shorter reports, and less complicated issues.³² While the Claimant never did return successfully to that work, Dr. Tewfik clearly believed that he had significant capacity on at least two distinct occasions after 2018.

[57] For these reasons, I assign very little weight to Dr. Tewfik's recent letters. I am not bound to follow a statement that matches the Incapacity Provisions, especially when that statement's accuracy is in question.³³ As with the Claimant's own evidence, I much prefer objective documents prepared during the alleged incapacity. They are more likely to present an accurate picture of the Claimant's actual capacity at the time.

(c) *Evidence about the Claimant's other activities during the relevant period*

[58] As noted, I cannot rely on the Claimant's Appeal Division hearing evidence about his true activity level. The objective medical documents provide a more reliable account

³¹ See GD2-115 and GD2-129.

³² See GD2-130 and GD2-132.

³³ See, for example, *Flaig v Canada (Attorney General)*, 2017 FC 531, at paragraph 20.

of what actually happened during the relevant period. I will now highlight some of the Claimant's activities that appear in those documents.

[59] In January 2022, the Claimant contacted his employer to ask for an early retirement package. He did this because he believed he could not work as an engineer anymore. However, he was disappointed with the pension amount he would receive.³⁴

[60] In February 2022, the Claimant told Mr. Brown that he was engaged in his treatment, seeing a psychiatrist, and seeing a dietician for weight loss. He was also trying to exercise at home. Moreover, he was still doing volunteer liturgical work on the weekend. He was financially motivated to return to work, but was afraid to go back again until he was assured of doing well. He wanted to return to his previous occupation with the same employer. Mr. Brown noted that he was still able to function as a priest.³⁵

[61] In March 2022, Mr. Brown said the Claimant continued to volunteer at his church. He was afraid to return to work because he thought he might get fired. However, he could drive, take himself to appointments, and be on time for those appointments.³⁶

[62] In April 2022, Mr. Brown said the Claimant continued to attend all sessions and participate well. He was still seeking ways to reconnect with his engineering career. He expressed a desire to return to work.³⁷ That same month, the Claimant sent Dr. Tewfik a form to complete for his Disability Tax Credit.³⁸

[63] In May 2022, the Claimant said he had been trying to contact some priests in his area to discuss his options. He learned that the church had appointed a new bishop, and hoped the new bishop could help him.³⁹ By July 2022, he said the new bishop might be able to help with two problems: his priesthood and his marriage. He also asked Dr. Tewfik to fax a prescription to a new pharmacy.⁴⁰

³⁴ See GD2-174.

³⁵ See GD2-179 and GD2-181.

³⁶ See GD2-184 and GD2-185.

³⁷ See GD2-187 to GD2-188.

³⁸ See GD2-199.

³⁹ See GD2-201 and GD2-204.

⁴⁰ See GD2-206 and GD2-207.

[64] In August 2022, Mr. Brown reported that the Claimant could drive and to host visits from his children. The Claimant still hoped that the new bishop would be able to help him find a paid position in Canada.⁴¹

[65] After Mr. Brown's August 2022 report, I see only one other document before the Claimant applied for the CPP disability pension in May 2023. That report was a December 2022 questionnaire completed by Dr. Tewfik. The December 2022 report describes severe depressive conditions, but does not shed much light on his ability to form or express intent.⁴² While this report is inconclusive on the issue of capacity, I note that the burden of proof in this appeal is on the Claimant.

[66] The Claimant's participation in medical treatment is also significant. He attended many medical treatments with Dr. Tewfik and others in the period leading up to May 2023. None of those treatment records suggest that anybody else was with him or gave instructions on his behalf. In fact, he brought himself to those treatments.

[67] The Claimant had regularly scheduled appointments with Dr. Tewfik. But the Claimant also called Dr. Tewfik to set up urgent appointments on many occasions. He did this at least ten times between April 2019 and December 2021. He also did this in April 2022, May 2022, June 2022, and July 2022. That is the key period in this appeal.⁴³

[68] In 2022, Dr. Tewfik frequently noted that the Claimant was compliant with his medications. Mr. Brown reported the same thing.⁴⁴

[69] I also note that the Claimant has never been under the care of a Public Guardian or a similarly appointed trustee.⁴⁵ This suggests that he retained the capacity to manage his daily affairs with only minimal intervention from others.

⁴¹ See GD2-208.

⁴² See GD2-210 to GD2-213.

⁴³ See GD2-119, GD2-128, GD2-151, GD2-152, GD2-154, GD2-155, GD2-156, GD2-162, GD2-163, GD2-164, GD2-165, GD2-177, GD2-198, GD2-204, GD2-205, GD2-207.

⁴⁴ See GD2-174, GD2-175, GD2-179, GD2-193, GD2-198, GD2-199, GD2-201, and GD2-207.

⁴⁵ See the General Division hearing recording, at 0:36:20 to 0:36:58.

[70] The Claimant's ability to form an intention before 2022 is of little importance if he had that capacity in 2022 and the first half of 2023. But, as an example, I note that he appeared able to form and express an intention in January 2021 when Dr. Wolf (psychiatrist) examined him.

[71] At that time, Dr. Wolf said the Claimant fully understood the parameters of the exam and gave consent to be interviewed. I see no indication that anybody else was present to speak or consent on his behalf. He told Dr. Wolf that he worked as an engineer remotely from his home. He had been off work for the previous three weeks. He even understood the purpose of the assessment. He said it was "to help me stand on my feet since my life has collapsed."⁴⁶

[72] Another 2021 example would be the August 2021 appointments with Dr. Tewfik. The Claimant said he had some recent meetings with a church elder about his marital problems and where he should practise as a priest. He also wondered if he should seek early retirement from his engineering job or await the church's decision. He even gave Dr. Tewfik consent to talk to that church elder on his behalf. He also said he used some connections to practise as a priest in some unserved nearby communities. He had sent a letter to the church leader about opening a new church in that area.⁴⁷

[73] Another example of forming and expressing an intention is from September 2019. The Claimant asked Dr. Tewfik to complete a return-to-work note at that time.⁴⁸

(d) How do these activities cast light on the Claimant's capacity to form or express an intention to apply for disability benefits during that period?

[74] As noted, being able to form or express an intention to apply for disability benefits is a very low threshold. I need to decide whether the Claimant had the mental capacity to form or express an intention to do other things.

⁴⁶ See GD2-137 and GD2-138.

⁴⁷ See GD2-163 to GD2-165.

⁴⁸ See GD2-122.

[75] The Claimant's activities show that he could form or express an intention to apply for disability benefits throughout the period before he applied. I will now explain this finding in more detail.

[76] While the Claimant denied any significant activity during this period, the objective documents reveal that he was engaged in many tasks. He drove to and attended scheduled medical appointments. He took his medications. He sought additional care when he felt it was urgent. He volunteered and was trying hard to find a role in his church. He looked into retirement options from his engineering job. He sought help for his marriage. He was seeing a dietician. He tried to exercise.

[77] All these activities required forming an intent to do something. They could not happen automatically. I acknowledge that the Claimant did not succeed with all of them. His exercise program seemed to struggle, for example. But successful completion is not the point. The point is that he still formed (and expressed) the intent to exercise, even if he was objectively not successful with it at the time.

[78] The cognitive ability needed to drive is important too. Mr. Brown noted that the Claimant could drive in both March 2022 and August 2022. The Federal Court has said that activities such as driving can show a "specific intent to accomplish specific actions." Such activities are therefore relevant when deciding whether someone meets the Incapacity Provisions.⁴⁹

[79] Notably, the Claimant sent Dr. Tewfik a form to complete for a disability-related tax credit. This is just like taking steps to apply for the CPP disability pension. By doing so, he not only expressed or formed the intent to apply, he acted on that intent. This is wholly inconsistent with incapacity under the CPP.

[80] The Claimant's 2022 tax credit application shows that he wanted a disability-related benefit to which he was entitled. This suggests that he did not apply for the CPP

⁴⁹ See *Grosvenor v Canada (Attorney General)*, 2018 FC 36, at paragraph 33.

disability pension until May 2023 only because he was not aware of it. As noted, he said as much in April 2024.⁵⁰ But a lack of knowledge is not the same as incapacity.⁵¹

Considering these factors, does the Claimant meet the Incapacity Provisions?

[81] The Claimant has not met the requirements of the Incapacity Provisions.

[82] I considered the Claimant's evidence about his limitations and why he felt he was incapable. Although I found that his limitations were far less than what he described at the Appeal Division hearing, I accept that he likely had some impairments. I also accept that he could not work. However, that is more relevant to disability than to capacity.

[83] Similarly, I cannot rely on Dr. Tewfik's retrospective statements of incapacity. They either contradicted his earlier statements or were not focused on the relevant period. The objective evidence, in particular, shows that the Claimant could form or express an intention for a CPP disability pension throughout the relevant period.

[84] I examined this capacity in particular detail for the period from January 2022 to May 2023. That period extended for more than a year before the Claimant's May 2023 application. This means that, if he had capacity during that period, it was impossible for him to benefit from the Incapacity Provisions even if he had periods of incapacity before 2022. But my review for the period before 2022 revealed evidence of capacity then too.

[85] I note that some of the Claimant's evidence about his alleged incapacity also fails because it tends to show an inability to **complete** an application, rather than an inability to **form an intention** to apply. That distinction is key. Poor memory interferes with completion, not forming an intention. Needing help to **complete** a benefit form is different from needing help to **form an intention** to apply for a benefit.

[86] An example of this is the Claimant's (new) evidence that the Chef Friend completed the CPP disability pension application form. But the Claimant admitted that he consented to the completion of the application form. He also showed that consent by

⁵⁰ See GD1-1.

⁵¹ See *Canada (Attorney General) v Hines*, 2016 FC 112, at paragraph 47.

signing the form. This shows that he could both form and express the intention to apply, even if he had needed help to complete the form.

[87] I conclude that the Claimant could form or express an intention to apply for disability benefits at all relevant times up to May 31, 2023. Specifically, he had that capacity for more than the final year of the period that ended on May 31, 2023.

[88] As I found that the Claimant did not have any relevant periods of incapacity leading up to May 31, 2023, I cannot change his pension payment date.

[89] Despite this decision, I acknowledge the Claimant's many difficulties since he became a priest in 2018. The impact on him was evident in the documents and through both of his Tribunal hearings. However, I cannot disregard the applicable law.⁵² While I cannot add more retroactive benefits, he remains entitled to the CPP disability pension that he is already receiving.

Conclusion

[90] The appeal is dismissed. The Claimant did not meet the CPP incapacity requirements. This means that his application date remains May 31, 2023. The start date of his CPP disability pension remains June 2022.

Pierre Vanderhout
Member, Appeal Division

⁵² See *Miter v Canada (Attorney General)*, 2017 FC 262, at paragraph 35.