



Citation: *MH v Minister of Employment and Social Development*, 2023 SST 2132

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. H.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated March 30, 2023
(GP-22-2059)

Tribunal member: Kate Sellar

Decision date: **June 23, 2023**

File number: AD-23-604

Decision

[1] I gave the Claimant permission to appeal on June 15, 2023. I'm now providing reasons for my decision, as requested by the Minister of Employment and Social Development (Minister).

Overview

[2] M. H. (Claimant) applied for a Canada Pension Plan (CPP) disability pension on February 6, 2019. The Minister refused her application on July 5, 2019. The Appellant asked the Minister to reconsider its decision on November 4, 2021. The Minister refused to reconsider because she had asked more than 90 days after she was notified of the decision in writing.

[3] The Claimant appealed to this Tribunal. The General Division decided that the Minister didn't act judicially when it denied the Claimant's request for an extension of time to request reconsideration. Ultimately, the General Division also denied the Claimant's request for an extension of time to request reconsideration.

Issue

[4] Why did I give the Claimant permission to appeal?

Analysis

– **The test for getting permission to appeal is easy to meet.**

[5] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division made an error in the way it applied the law to the facts.¹ This is an easy test to meet.

¹ See section 58.1(b) of the *Department of Employment and Social Development Act*.

- **There’s an arguable case that the General Division made an error in applying the law to the facts.**

[6] To decide whether to grant the Claimant an extension of time, the first question the General Division needed to decide was whether the Claimant had a reasonable explanation for being late.

[7] The General Division found that it was unreasonable for the Claimant to await the outcome of a mediation regarding her private benefits before making her reconsideration request. She “also didn’t need to wait to get more information from her healthcare providers before making her request.”²

[8] In my view, it is at least arguable that while the Claimant’s assumption that she could or should wait for the outcome of the mediation was incorrect, it may well have been reasonable. The General Division gives no explanation about how or why the Claimant’s explanation wasn’t reasonable other than to state its conclusion. The Claimant’s explanation her actions before she got legal assistance may have belonged to a category of reasonable actions, even if those actions were inadvisable.

[9] The General Division made have made an error applying the law about a reasonable explanation to the Claimant’s circumstance. As a result, I gave the Claimant permission to appeal.

Next steps

[10] The appeal now goes ahead as a new proceeding. This means that the Claimant doesn’t have to prove that the General Division made a mistake. Instead, the parties should focus on whether the Claimant is entitled to an extension of time for requesting reconsideration from the Minister.

Kate Sellar
Member, Appeal Division

² See paragraph 27 of the General Division decision.