



Citation: *BH v Minister of Employment and Social Development*, 2024 SST 1286

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** B. H.  
**Representative:** M. R.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Daniel Crolla

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**Decision under appeal:** General Division decision dated April 28, 2024  
(GP-24-68)

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**Tribunal member:** Kate Sellar

**Type of hearing:** In Writing

**Decision date:** **October 23, 2024**

**File number:** AD-24-342

## Decision

[1] I'm dismissing the appeal. The Claimant's appeal to the General Division was too late to go ahead.

## Overview

[2] B. H., the Claimant, survived abuse when he was a child. He has anti-social personality disorder. He might have post-traumatic stress disorder (that's called PTSD). He maybe has a learning disability or attention deficit disorder (that's called ADHD).

[3] The Claimant has been homeless. He has been to jail. It's not easy for him to read and write. He goes to emergency sometimes when he is thinking about killing himself. Sometimes, he feels like he must beg the government for help. That doesn't feel good. He doesn't want to do that anymore.

[4] The Claimant doesn't have a lawyer. The Claimant's sister was helping him. She has little kids. She is busy. It's not easy for the Claimant to ask for help. The Claimant applied for a Canada Pension Plan (CPP) disability pension. He gave the Minister his uncle's address. The Minister wrote the Claimant a letter. They sent the letter to his uncle's house. The letter said he couldn't have the pension.

[5] The Claimant asked the Minister to re-think that decision. The Minister wrote a letter. The letter is called a reconsideration decision. The reconsideration decision said the same thing: the Claimant cannot have the disability pension. The date on the letter is January 15, 2021. The Claimant appealed to this Tribunal on January 9, 2023.

[6] The General Division had a phone meeting with the Claimant. The General Division member asked the Claimant when he saw the reconsideration letter from the Minister. The Claimant wasn't sure. He wasn't sure when he got his mail at his uncle's house. He's not sure when he was in jail and when he was homeless.

[7] The General Division decided to assume that the Claimant got the letter 10 days after the date on the letter. So, he was more than a year late. The General Division said the appeal could not go ahead.

[8] I gave the Claimant the ok to appeal (that's called permission to appeal). I said that maybe the General Division made a mistake about the law. I said that maybe the Claimant raised enough of a question about when he saw the reconsideration letter that the General Division couldn't just assume the Minister communicated its decision within 10 days of mailing it.

[9] I held a phone meeting with the Claimant. I asked him about when he got the letter from the Minister. I also gave him more time after the phone call to give information about when he got the letter from the Minister. Then I would decide about whether his appeal is too late to go ahead. If it's too late, the appeal is over. If it's in time, he has a hearing about whether he can have the CPP disability pension.

## **Issue**

[10] The question I must answer is this:

- a) Was the Claimant's appeal to the General Division more than a year late?

## **Analysis**

**The Claimant's appeal to the General Division was more than a year late.**

- **The Claimant appealed because he wants a CPP disability pension.**

[11] The Claimant appealed to the Appeal Division because he wants the CPP disability pension. He didn't like the General Division decision because that decision said the appeal wouldn't go any further because he was too late.

- **The law says you can't take more than a year after the Minister communicates the reconsideration letter to appeal to the General Division.**

[12] The law about appeals says two important things about time.

[13] First, you must appeal no later than 90 days after the Minister communicates that reconsideration letter to the claimant.<sup>1</sup>

[14] Second, the Tribunal can't go ahead with an appeal **no matter what** if you appeal more than a year after the Minister communicates the reconsideration letter to the claimant.<sup>2</sup>

- **I need to decide whether the Claimant's appeal was too late to go ahead.**

[15] To decide if the Claimant's appeal was too late to go ahead, I must decide when the Minister communicated the reconsideration letter to him.

- **There's no rule that says I must assume that the Minister communicated the letter 10 days after they mailed it.**

[16] The Minister wants me to assume that they communicated the reconsideration letter to the Claimant within 10 days of when they mailed it. The Minister wanted me to think about and follow the *Federal Court Rules* and the *Social Security Tribunal Rules of Procedure* that talk about serving people with documents by mail. The rules talk about assuming that people receive documents 10 days after they go in the mail.<sup>3</sup>

[17] I didn't consider those rules because they don't apply to reconsideration letters from the Minister. The *Federal Court Rules* are about what happens in cases at the Federal Court of Appeal and Federal Court.<sup>4</sup> The Tribunal's rule is about when the Tribunal sends documents during an appeal, not when the Minister sends documents to claimants before there's any appeal.<sup>5</sup>

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<sup>1</sup> See section 52(1) of the *Department of Employment and Social Development Act* (the Act).

<sup>2</sup> See section 52(2) of the Act.

<sup>3</sup> See paragraphs 9 and 10 in AD4-6. The Rules the Minister is talking about are Rule 143(2) of the *Federal Court Rules* and Rule 22(1) of the *Social Security Tribunal Rules of Procedure*.

<sup>4</sup> See section 1.1(1) of the *Federal Court Rules*.

<sup>5</sup> Rule 22 of the *Social Security Tribunal Rules* starts with the words "When the Tribunal sends a document."

[18] Even though the rules don't apply requiring me to assume that the letter was communicated within 10 days of the Minister sending it, I can decide (based on all the evidence I have) that the Minister communicated the letter shortly after the date on the letter.<sup>6</sup>

– **I will decide when the Minister communicated the letter by looking at the facts I have.**

[19] I must decide, as a matter of fact, when the Minister communicated the decision to the Claimant. It is the Minister that needs to show that they communicated the letter to the Claimant. These are the facts that I have:

- The Claimant applied for the disability pension in September 2019.
- The Minister refused the application in July 2020, and the Claimant asked for reconsideration in September 2020. It didn't take the Claimant long to ask for reconsideration.<sup>7</sup>
- The Claimant doesn't know when he got the reconsideration letter from his uncle's house.
- The Claimant says that he has been homeless and in jail, but he doesn't remember when exactly. I gave the Claimant the chance during a case conference (and then later in writing) to tell me more about where he was from January 15, 2021 (the date on the letter) until he appealed in January 2023. He wasn't able to provide me that information.
- The Claimant says that he doesn't read well. He needs help to read important letters.

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<sup>6</sup> This approach is set out in paragraphs 33 and 34 in *WM v Minister of Employment and Social Development*, 2022 SST 29.

<sup>7</sup> See GD2-4.

- The address the Claimant gave in his application, his letter asking for reconsideration, and the appeal he sent to the General Division were all the same: his uncle's address.<sup>8</sup>
  - The Minister argues that they sent the letter by regular mail to the uncle's address on the date of the letter: January 15, 2021.
  - The General Division received the Claimant's appeal on January 9, 2023. This was almost two full years after the date on the reconsideration letter.
- **Based on the facts and the law, the Minister communicated its decision to the Claimant in January 2021.**

[20] Based on those facts and the law, I find it likely that the letter arrived at the uncle's house in January 2021. The Claimant received other letters from the Minister (like the original decision) in a timely way to his uncle's house. The Minister had no record of the mail being returned to them. They had no record of the Claimant reaching out to ask where the reconsideration letter was.

[21] I find that the Minister communicated the decision once it arrived at the uncle's house in January 2021. I say that in this case because the Claimant hasn't really challenged this idea. He hasn't been able to narrow down, even a little, when he might have seen the letter at his uncle's house.

[22] If he was homeless but not in jail, he gave his uncle's address for important mail. In that case, it makes sense that sending mail there counts as communicating with the Claimant. It is the Claimant's responsibility to check in with his uncle about the mail since that's the address he gave Service Canada.

[23] The Minister says that if the Claimant was homeless when they sent the letter, it was reasonable for them to send the letter to the uncle's address, since that's the address the Claimant gave them. I agree.

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<sup>8</sup> See GD2-30, GD2-15, and GD1-2.

[24] If he was in jail, he couldn't check the mail at his uncle's house. But I can't just assume he was in jail from sometime between January 2021 and January 2023. The Claimant doesn't know when he was in jail, and he hasn't given me any other evidence to help me figure that out.

[25] The Claimant has given me some reason to wonder how long it was before he saw the letter. But without any more detail and based on all the information I have; the Minister communicated the decision in January 2021.

[26] The Minister says that it's their job to send the Claimant the reconsideration letter, and they did their job.<sup>9</sup> The Claimant gave them his uncle's address and they sent the reconsideration letter to the uncle's address by mail.

[27] The Minister says the deadlines for asking for permission to appeal are important and I agree.

[28] I think it's important to give people every chance to show that they weren't too late. There's lots of reasons why it's hard for the Claimant to prove what he needed to prove.

[29] But once I considered all the evidence I had, and how important the deadlines are in the law, I decided the Claimant was past the one-year deadline to appeal. The law doesn't let me give more time when a claimant is that late.

– **The Claimant is more than a year late, and the appeal is over.**

[30] My decision doesn't change the fact that the Claimant can apply for a CPP disability pension again.

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<sup>9</sup> See AD4-5.

## **Conclusion**

[31] I dismissed the Claimant's appeal. This appeal cannot go ahead because the Claimant appealed to the General Division too late.

Kate Sellar  
Member, Appeal Division