



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 679

Tribunal File Number: AD-17-132

BETWEEN:

A. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: November 24, 2017

DECISION AND REASONS

DECISION

The appeal is allowed.

OVERVIEW

[1] The Appellant, A. M., is an Old Age Security pension recipient. On December 31, 2010, he applied for the Guaranteed Income Supplement (GIS) for the 2009/2010 payment period. The Respondent, the Minister of Employment and Social Development (Minister), advised him that his application was missing information, but he did not provide it. Instead, on July 20, 2011, he submitted a second GIS application for 2009/2010. On March 7, 2012,¹ he submitted a third GIS application for 2010/2011.²

[2] The Minister again requested additional information and, having not received it, ultimately denied each of Mr. A. M.'s GIS applications at the initial stage. There is no record of him requesting reconsideration within 90 days of any of the initial denials. On March 27, 2013, Mr. A. M. requested an extension of the 90-day time limit to apply for reconsideration. The Minister advised him that it would review his file but eventually refused the request in a letter dated October 14, 2014. Mr. A. M. then appealed this refusal to the General Division of the Social Security Tribunal of Canada (Tribunal).

[3] In a decision dated November 7, 2016, the General Division found that the Minister had exercised its discretion judicially in refusing to consider Mr. A. M.'s request for an extension of time. Mr. A. M. then requested leave to appeal to the Tribunal's Appeal Division. In my decision of October 6, 2017, I granted leave to appeal, finding at least an arguable case that the General Division had breached a rule of procedural fairness in the way it managed Mr. A. M.'s appeal.

¹ The General Division's decision indicates that this application was received on May 22, 2012, but this appears to refer to a duplicate application with that date stamp (see GD2-63 and GD2-64).

² On the same date, Mr. A. M. also submitted a GIS application for 2011/2012. Since the Minister approved this application on February 12, 2013, it is not a subject of the current appeal.

[4] In a letter dated November 15, 2017, the Minister conceded that the appeal should be allowed and the matter referred back to the General Division for redetermination. In view of the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit, I have decided to dispense with an oral hearing and consider this appeal on the basis of the existing documentary record. For the reasons that follow, I have concluded that the General Division's decision cannot stand.

ISSUE

[5] Did the General Division fail to observe a principle of natural justice by deciding Mr. A. M.'s appeal in advance of its own submission deadline, thereby denying him an opportunity to present his full case?

ANALYSIS

[6] In its notice of hearing dated September 16, 2016, the General Division advised the parties of the following timelines:

FILING PERIOD

If parties have additional documents or submissions to file, they must be received by the Tribunal no later than **October 19, 2016**. A copy of any new documents received by the Tribunal will be provided to the other parties and they will be given an opportunity to respond.

RESPONSE PERIOD

The Filing Period is followed by a Response Period. If a party wishes to respond to any documents filed during the Filing Period, the response must be received by the Tribunal no later than **November 18, 2016**.

DOCUMENTS FILED AFTER THE RESPONSE PERIOD

The Tribunal Member will issue a decision to either allow or dismiss the appeal after the end of the Response Period, or possibly sooner if no documents or submissions are filed during the Filing Period. Accordingly, any documents not filed within the appropriate timelines indicated, may not be considered by the Tribunal Member in making the decision. If documents are filed late, but before a decision is issued, they will be considered **only** at the Tribunal Member's discretion.

[7] The record indicates that on August 5, 2016, Mr. A. M. sent a 17-page package of documents³ to the Minister, which then forwarded it to the Tribunal in late September 2016. On October 6, 2016, the Minister filed with the Tribunal a document entitled “Additional Information on Appeal to the Social Security Tribunal,” dated September 20, 2016.⁴ It restated the Minister’s position and addressed various items of evidence that Mr. A. M. had previously submitted, such as certificates of incapacity. It also addressed clinical records that the Minister had solicited directly from Dr. Khai Phan, Mr. A. M.’s family physician. It did not appear, at that point, that the Minister had filed the clinical notes with the Tribunal or forwarded them to Mr. A. M.

[8] The clinical notes were not submitted until October 12, 2016, when the Tribunal received a 115-page package of documents.⁵ It included correspondence indicating that the Minister, using a previously signed consent form, had directly asked Dr. Phan to provide a copy of his complete records. Dr. Phan complied with this request on September 9, 2016.

[9] The General Division specified in its notice of hearing that the submission period would end on October 19, 2016, at which point would commence a one-month response period. However, it does not appear that Mr. A. M. was allowed the benefit of the full month, as the General Division proceeded to issue its decision on November 7, 2016, having considered the evidence submitted up to that date. The record indicates that Mr. A. M. attempted to make a post-decision submission in late November but was advised that the General Division’s decision was final. It appears that this post-decision submission was the same written argument, dated November 14, 2016, that Mr. A. M. had submitted to the Appeal Division in June 2017. The contents of that document are irrelevant to this issue, but its existence does indicate that Mr. A. M. had prepared a “response” of some kind to Dr. Phan’s clinical notes, and the Minister’s commentary on them, prior to the expiration of the response period on November 18, 2016. In my view, the General Division, having established filing deadlines, precipitously issued its decision without affording Mr. A. M. a full opportunity to be heard. In doing so, it violated a principle of natural justice.

³ Marked as GD5.

⁴ See GD6.

⁵ See GD7.

[10] Since the appeal succeeds on this ground, I will not address the other grounds that Mr. A. M. has put forward, nor do I see a need to consider the larger question of whether the General Division appropriately found that the Minister exercised its discretion judicially in refusing an extension of time.

CONCLUSION

[11] Section 59 of the *Department of Employment and Social Development Act* sets out the remedies that the Appeal Division can give on appeal. To avoid any apprehension of bias, it is appropriate, in this case, that the matter be referred back to the General Division for a *de novo* hearing before a different General Division member.



Member, Appeal Division