



**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: [REDACTED]
Representative: Dana Reyes

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development decision dated August 10, 2022 (issued by Service Canada)

Tribunal member: [REDACTED]

Type of hearing: Videoconference

Hearing date: April 28, 2023

Hearing participants: Appellant
Appellant's representative
Observer [REDACTED]

Decision date: May 3, 2023

File number: [REDACTED]

Decision

[1] The appeal is allowed.

[2] The Appellant, [REDACTED], is allowed a longer period to request a reconsideration of the Minister's initial decision dated June 30, 2020. This decision explains why I'm allowing the appeal.

Overview

[3] The Minister denied the Appellant's application for a Canada Pension Plan (CPP) disability pension on June 30, 2020. The deadline to request a reconsideration of the Minister's decision was 90-days from the date of the initial decision. The Minister received the Appellant's reconsideration request on June 24, 2022.

[4] The Minister says there was no evidence of a reasonable explanation for the delay, no evidence of a continuing intention to request a reconsideration, and no reasonable chance of success regarding the disability benefit.

[5] The Appellant's counsel says the Appellant had significant impairments and extenuating circumstances that precluded her from requesting a reconsideration. The Appellant's counsel further says the Appellant thought she had no other recourse when denied disability benefits. Finally, the Appellant's counsel submits the Appellant would meet the test for a severe and prolonged by the MQP date of December 31, 2019.

What I need to decide

[6] I have to decide if the Minister exercised their discretion judicially in finding the Appellant did not have a reasonable explanation for requesting a longer period of time. I also have to decide if the Minister exercised their discretion judicially in finding the Appellant did not demonstrate a continuing intention to request a reconsideration.

[7] I further have to decide if the Minister exercised their discretion judicially in finding the Appellant's appeal did not have a reasonable chance of success. Finally, I have to decide if the Minister exercised their discretion judicially in finding there was no

prejudice to them or a party by allowing a longer period to make the request for reconsideration.

[8] If I decide the Minister did not exercise their discretion judicially, I must then decide if the Appellant had a reasonable explanation, a continuing intention, a reasonable chance of success, and whether there was no prejudice to the Minister or a party to allow me to grant a longer period for reconsideration.

Reasons for my decision

[9] When the Appellant received the Minister's decision to deny her application, she had 90-days to request reconsideration.¹ Since the Appellant made her request outside of the 90-days, the Minister had the discretion to allow a longer period for her to request a reconsideration.

[10] To allow a longer period, the Minister must be satisfied there was a reasonable explanation for the delay in requesting a reconsideration and that the Appellant demonstrated a continuing intention to request a reconsideration.²

[11] Since the Appellant's request for reconsideration was outside the 365-day period, the Minister must be further satisfied the Appellant's appeal had a reasonable chance of success and there was no prejudice to them or a party in allowing a longer period for reconsideration.³

[12] The Minister's decision to grant or refuse a late reconsideration request is discretionary and must be exercised judicially.⁴ A discretionary power is not exercised "judicially" if the decision-maker:

- a) Acted in bad faith;
- b) Acted for an improper purpose or motive;

¹ Section 81 of the *Canada Pension Plan*

² Section 74.1(3) of the *Canada Pension Plan Regulations*

³ Section 74.1(4) of the *Canada Pension Plan Regulations*

⁴ *Canada (A.G.) v. Uppal* 2008 FCA 388

- c) Took into account an irrelevant factor;
- d) Ignored a relevant factor; or
- e) Acted in a discriminatory manner.⁵

[13] My role is not to determine whether the Minister made the correct determination, but whether the Minister exercised their discretion in a judicial manner.

Did the Minister exercise their discretion judicially in deciding whether the Appellant had a reasonable explanation for requesting a longer period of time?

[14] I find the Minister didn't exercise their discretion judicially when they decided the Appellant didn't have a reasonable explanation for requesting a longer period time. I make this finding for the following reasons:

[15] First: The Appellant testified during the hearing that she had numerous extenuating circumstances that prevented her from making a request for reconsideration in June 2020. For example, the Appellant explained that her husband left her in March 2020 and her physical health was deteriorating. Furthermore, the Appellant testified that her son died in 2019 and she was suffering from depression.

[16] Second: The Appellant's life in June 2020 was in total disarray and she didn't have anyone to assist her with personal matters. I realize the Minister submitted there was no indication of extenuating circumstances that prevented the Appellant from submitting a timely request. However, I find the Minister didn't fully recognize relevant factors such as the Appellant's separation from her spouse and her deteriorating health at the time she was sent her initial decision in June 2020.

⁵ *Canada (A.G.) v. Purcell*, 1995 CanLii 3558 (FCA), [1996] 1 FCR 644

Did the Minister exercise their discretion judicially in deciding whether the Appellant had a continuing intention to request a reconsideration?

[17] I find the Minister didn't exercise their discretion judicially in deciding whether the Appellant had a continuing intention to request a reconsideration. I make this finding, because the Appellant testified she wasn't aware of the initial decision and her health was deteriorating during this time. In short, I find there were extenuating circumstances that weren't fully considered by the Minister. I realize the Minister submitted there were 714 days that elapsed before they received the request for reconsideration. Nevertheless, I find there were extenuating circumstances in the Appellant's life that should have been fully considered.

Did the Minister exercise their discretion judicially in deciding whether the Appellant's request for reconsideration had a reasonable chance of success?

[18] I find the Minister didn't exercise their discretion judicially in deciding whether the Appellant's request for reconsideration had a reasonable chance of success. I make this finding for the following reasons:

[19] First: There were medical reports on the record which haven't been fully considered by the Minister. For example, ██████ reported in October 2021 that the Appellant's functional impairments were related to a Motor Vehicle Accident (MVA) in **October 2016**. Furthermore, ██████ wrote that the Appellant was unlikely to return to pre-collision employment or an other employment ██████.

[20] Second: ██████ reported in November 2017 that the Appellant's right-sided shoulder tear was likely unrepairable ██████. I realize the Minister submitted that the additional information provided by the Appellant was dated well beyond her qualifying period. However, there were medical reports on file that were dated prior to the Appellant's MQP which were relevant. Furthermore, ██████ emphasized that the Appellant's functional impairments were related to her MVA in **October 2016**.

Did the Minister exercise their discretion judicially in deciding there was no prejudice to them or a party by allowing the longer period to make the request for reconsideration?

[21] I find the Minister exercised their discretion judicially in deciding there was no prejudice to them or a party by allowing the longer period to make the request for reconsideration. Specifically, the Minister submitted that the file was available for review in its entirety and there was no prejudice to them. On this matter, I agree with the Minister.

Did the Appellant have a reasonable explanation, a continuing intention, and a reasonable chance of success to allow me to grant a longer period of reconsideration?

[22] I find the Appellant did have a reasonable explanation, a continuing intention, and a reasonable chance of success to allow me to grant a longer period of reconsideration. I make this finding for the following reasons:

[23] First: I accept as credible the Appellant's testimony that she was suffering from physical and mental impairments during the time when her initial decision was sent. Furthermore, I'm persuaded by the Appellant's counsel that the Appellant had significant impairments in her activities of daily living that precluded her from being capable of requesting reconsideration.

[24] Second: I'm persuaded by the Appellant's counsel that the Appellant's deteriorating health, dependency on drugs and alcohol, separation from her husband, and lack of assistance to manage her daily activities were reasonable factors to assume her mind wasn't focused on administrative tasks. The Appellant was eventually helped by her former husband. The Appellant and her former husband then sought legal assistance from the "Reyes Tam Law Professional Corporation" on or about June 15, 2022.

The Appellant's request for reconsideration was submitted on June 24, 2022.

[25] Third: I'm persuaded the Appellant's appeal has a reasonable chance of success. Specifically, the Appellant's counsel has referred to several medical reports

that would be relevant in showing the Appellant had physical and mental impairments by her MQP date. For example, [REDACTED] reported the Appellant was unlikely to return to pre-collision employment or an other employment [REDACTED]

Conclusion

[26] I find the Minister did not exercise their discretion judicially when they determined the Appellant did not have a reasonable explanation, a continuing intention, and a reasonable chance of success to request a reconsideration.

[27] I further find the Claimant had a reasonable explanation, a continuing intention, and a reasonable chance of success to allow me to grant a longer period of reconsideration.

[28] This means the appeal is allowed.

[REDACTED]
Member, General Division – Income Security Section