



Citation: *DH v Minister of Employment and Social Development*, 2023 SST 580

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

<b>Appellant:</b>	D. H.
<b>Representative:</b>	J. L.
<b>Respondent:</b>	Minister of Employment and Social Development
<b>Representative:</b>	Viola Herbert

---

<b>Decision under appeal:</b>	General Division decision dated January 9, 2023 (GP-21-415)
-------------------------------	--

---

<b>Tribunal member:</b>	Kate Sellar
<b>Type of hearing:</b>	In Writing
<b>Decision date:</b>	<b>May 5, 2023</b>
<b>File number:</b>	AD-23-344

## Decision

[1] I'm allowing the appeal. The Claimant is entitled to a *Canada Pension Plan* (CPP) disability pension. Payments start September 2018. These are the reasons for my decision.

## Background

[2] D. H. (Claimant) applied for a CPP disability pension in August 2019. The Minister refused his application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed his appeal. The General Division found that although his disability was severe within in the meaning of the CPP, it was not prolonged.

[3] I gave the Claimant permission to appeal because it was arguable that the General Division interpreted or applied the law incorrectly when it decided that the Claimant did not have a prolonged disability within the meaning of the CPP.

## The parties agree on the outcome of the appeal

[4] The parties have asked for a decision based on an agreement they reached during a settlement conference on May 4, 2023.<sup>1</sup>

[5] The parties agree on the following:

- The Appeal Division should allow the Claimant's appeal.
- The Claimant proved he had a severe and prolonged disability within the meaning of section 42(2)(a) of the CPP in September 2016, when he stopped working as a station attendant at the airport.
- This means that the Claimant became disabled during his coverage period, because the last day of his coverage period was December 31, 2019.

---

<sup>1</sup> See section 39(2) of the *Social Security Tribunal Rules of Procedure*.

- The Claimant applied for the disability pension in August 2019. Section 42(2)(b) of the CPP says that the earliest a person can be considered disabled for the purpose of the disability pension is 15 months before they applied.
- So, the earliest the Claimant can be considered disabled, based on his application date, is May 2018.
- In accordance with section 69 of the CPP, payments start four months later in September 2018.

## **I accept the parties' agreement**

[6] I accept the parties' agreement. I allow the Claimant's appeal.

[7] When the Claimant stopped working in 2016, he was incapable regularly of pursuing any substantially gainful occupation. His functional limitations as well as his personal circumstances meant that he did not even have some capacity for work. He took reasonable steps to manage his medical conditions, and he did not refuse treatment unreasonably.

[8] The Claimant's condition is long continued and of indefinite duration, so it meets the definition of prolonged in the CPP. The Claimant's doctor stated that his condition was likely to remain the same, was expected to last more and a year, and was continuous.<sup>2</sup>

[9] Although the Claimant was disabled in 2016, the earliest he can be considered disabled in accordance with the CPP is May 2018. Payments start four months later in September 2018.

---

<sup>2</sup> See GD2-109.

## Conclusion

[10] I allow the appeal. The Claimant is entitled to a *Canada Pension Plan* disability pension. Payments start September 2018.

Kate Sellar  
Member, Appeal Division