

Focus PERSONAL INJURY

Delays and denials characterize flawed CPP system



Emily Casey

If anyone has the misfortune to find themselves unable to work due to a disability, they may turn to the Canada Pension Plan disability system (CPPD) for financial assistance. However, in doing so they are facing a system that forces applicants to endure a long and complicated application and appeal process that can leave them without the benefits owed to them for years.

One might rest assured in knowing that they have made sufficient contributions to the plan to be eligible under the CPPD contribution requirements, which set out the minimum an individual must have contributed in the years leading up to their application. What many do not realize, however, is that it is not that simple to collect back the funds that they have put into the system for their own benefit. Because of the lengthy and complicated process, applicants usually require support, resources and patience.

Many CPPD applicants are denied on their initial application, and the road only gets harder, both in terms of understanding what should be done and waiting out excessive delays in obtaining a hearing date. The first step in the appeal process is the request for reconsideration, which is done in writing



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and may be supported by additional medical evidence. If that results in another denial, the applicant can appeal to the Social Security Tribunal.

In our practice, we have seen

applicants wait several years from the filing of appeal documents to the actual hearing date. To be eligible for CPPD, the claimant must, in addition to having sufficient contributions, be suffering from a severe and prolonged disability. The disability must be severe enough to prevent the applicant from pursuing substantially gainful employment. It also must be long-term and of an indefinite duration, or likely to result in death.

The good news is that if you are still suffering from your disability by the time you have your appeal heard, you have a reasonably compelling argument under the “prolonged” portion of the test. The bad news is that you’ve likely been unemployed and not been receiving CPPD benefits for as long.

The Social Security Tribunal is generally informal, and appellants are theoretically able to rep-

resent themselves throughout the entire process. However, filing the appropriate documents for an appeal can be tricky, as well as understanding the legislation pertaining to eligibility, so the process is not easy for the average person to navigate. Many CPPD applicants will reach out to lawyers or other resources for assistance. The initial application they file for CPPD with the assistance of their doctor will be bolstered by further medical records and in some cases, expensive expert reports, including vocational assessments to comment on whether the applicant is disabled from pursuing a substantially gainful occupation.

In a recent CPPD appeal that I was handling, the claimant was simultaneously going through the appeal process with the Workplace Safety and Insurance Board (WSIB). The Workplace Safety and Insurance Appeals Tribunal (WSIAT) concluded that the appellant was “competitively unemployable.” The WSIAT decision was sent to the Social Security Tribunal. Shortly thereafter, we received an offer to settle the appeal from Service Canada.

The tribunal has a large backlog, largely made up of CPPD appeals. In addition to the large delay, the other effect of the backlog can be to deny the applicant a proper day in court. A large number of appeals proceed by teleconference or videoconference, and are heard by only one tribunal member (as opposed to a panel). We are also seeing an increased number of offers to settle on the eve of a tribunal hearing, whereby Service Canada offers to pay

benefits in accordance with maximum eligibility to the appellant. This is what happened with respect to my client with the WSIAT decision. We received a notice of hearing from the tribunal for an October date, with a date of Aug. 7 to file further supporting documentation. Shortly thereafter, the offer to settle from Service Canada came with a deadline to accept of Aug. 6. It is impossible to know whether the WSIAT decision was the piece of evidence that Service Canada needed to approve my client’s application, or that the fact that a hearing date had been set gave the impetus for someone to give his application a closer look.

Whether by going all the way to an appeals hearing, or accepting one of these settlement offers, many CPP disability appeals are successful, with appellants being found disabled as of a date several years before the hearing and retroactive benefits owing. The appeals process is clearly broken. We have to wonder what can be done on the front end when assessing initial applications for benefits to reduce the strain on the system and to provide a more equitable result to individuals who pay into the CPP system to provide some insurance for themselves in the event of disability.

Emily Casey is lawyer practising in downtown Toronto at Tkatch & Associates. She represents plaintiffs in personal injury litigation, including motor vehicle accidents, slip & falls, medical malpractice and product liability, in addition to handling benefits appeals including ODSP, CPP and LTD.



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