



Canada Pension Plan Disability

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<http://www.dal.ca/faculty/law/dlas/public-legal-education.html>

Acknowledgement

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This document contains general legal information and not legal advice. **If you need advice about a specific legal problem then you should contact a lawyer.** If you will have difficulty affording a lawyer then you should contact [Nova Scotia Legal Aid](#) or [the Legal Information Society of Nova Scotia's lawyer referral service](#).

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Introduction

What is Canada Pension Plan Disability?

CPP Disability is a monthly pension paid to CPP contributors who are unable to work as a result of a **severe** and **prolonged** mental or physical disability.

The disability does not have to be work related.

CPP disability is governed by the *Canada Pension Plan*:

<http://laws-lois.justice.gc.ca/eng/acts/C-8/>

There are also *Canada Pension Plan Regulations*:

[http://laws-lois.justice.gc.ca/eng/regulations C.R.C., c. 385/](http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._385/)

Who is Eligible for CPPD?

The basic eligibility criteria for CPP disability are as follows:

1. An applicant must be under the age of 65 at the time of their application. If an applicant is over the age of 65 they should apply for a CPP retirement pension;
2. An applicant must be suffering from a disability (or disabilities) that is both **severe** and **prolonged**; and
3. An applicant must have made sufficiently recent valid CPP contributions.

How is Disability Defined?

For the purposes of the *Canada Pension Plan* disability is defined in section 42(2). That section contains the following definition:

- (a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,
- (i) a disability is **severe** only if by reason thereof the person in respect of whom the determination is made is incapable of regularly of pursuing any substantially gainful occupation, and
- (ii) a disability is **prolonged** only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death;

What is a 'severe' disability?

Advocates and their clients must understand that severe has a very specific meaning in the context of CPP Disability.

In a nutshell a severe disability is a mental or physical disability (or a combination thereof) that renders someone unable to perform **any** job on a regular basis (either full time or part time).

Someone is **not** suffering from a severe disability only if they are unable to do their former job. For example, if someone had a job that required heavy lifting that they can no longer do they are not necessarily suffering from a severe disability.

The case law surrounding what a severe disability is has added some nuance to the definition described in the previous slide. Specifically the case law has determined that the issue of whether a disability is severe must be considered in a 'real world context'.

This means that when determining whether someone is suffering from a 'severe' disability factors such as age, education, language proficiency and past work and life experience must be considered when assessing hypothetical occupations that an applicant could engage in. For example, the scope of hypothetical occupations a middle aged person with an elementary school education and limited English or French language skills would not include a doctor or an engineer.

What is a 'prolonged' disability?

The definition of 'prolonged' is much more simple than that of 'severe' in the CPP Disability context.

A 'prolonged' disability is one for which the long term prognosis is that it will not improve or will worsen over time.

CPP Disability is **not** designed to provide benefits for people suffering from 'closed periods' of disability. For example, if an applicant for CPP Disability is given a prognosis that treatment will resolve their disability in 10 months from the date of their application (and that proves to be the case) their disability will not be considered 'prolonged'.

Minimum Qualifying Period

Canada Pension Plan Contributions & the Minimum Qualifying Period

Regardless of how severe and prolonged an applicant's disability is they will **not** qualify for CPP Disability unless they meet certain financial contribution criteria.

1. The first concept to understand is that of a 'valid' CPP contribution.

In order to be valid a CPP contribution for the purposes of CPP disability the contribution must be made on a certain minimum annual level of income (referred to as the Year's Basic Exemption or YBE). The YBE for 2013 was \$5,100.00. This means that any CPP contributions made on an annual income of less than \$5,100.00 in 2013 would not count as a 'valid' contribution for the purposes of qualifying for CPP disability.

2. The second concept is what is referred to as the 'minimum qualifying period' (MQP).

The *Canada Pension Plan* states that in order to qualify for CPP Disability an applicant **must** have made 'valid' contributions in 4 out of the previous 6 years prior to their application. **If** an applicant does not meet the 4 out of 6 test they may still be able to qualify for CPP Disability via the 'late applicant provision'. According to this provision it is permissible to look back in time to when the applicant last met their minimum qualifying period. Provided that the applicant was then and has continued to suffer from a severe and prolonged disability they are deemed to meet the MQP even without valid contributions in 4 out of the last 6 years. An applicant can also qualify if they have valid contributions in three of the last six years, and have contributed for a period of 25 years.

The MQP will be calculated upon application for CPP Disability. It will be expressed as a date - usually December 31st of the last year in which the applicant met the MQP criteria outlined on the previous slides.

Importance of the Minimum Qualifying Period

The importance of the MQP cannot be overstated. An applicant **must** meet the definition of disability reviewed earlier prior to the end of their MQP. Effectively an applicant is frozen in time as of the date of their MQP. For example, if an applicant's MQP is December 31st, 2012 they must have been suffering from a severe and prolonged disability no later than that date. They will not qualify for CPP Disability if their disability only became severe and prolonged as of January 1st, 2013.

Additional Factors to Consider

There are two final factors that should not be overlooked when determining an applicant's MQP:

- i. The credit splitting provision allows lower earning ex-spouses to split their CPP credits with their former spouses accumulated during their relationship; and
- ii. Canada has social security agreements with some countries that allow pension contributions made in those countries to be counted when determining someone's eligibility for a CPP Disability benefit.

Upon application, if applicable, a credit splitting application will be sent to applicants who indicate they are separated or divorced.

Finally, the Federal Government calculates an applicant's MQP using a document entitled the 'Record of Earnings'. This document shows an applicant's annual CPP contributions. If an applicant thinks that their MQP has been incorrectly calculated this document can be obtained by contacting Service Canada at **1-800-277-9914** or online via the My Service Canada Account.

Applications & Appeals

Applying for Canada Pension Plan Disability

An application kit for CPP Disability can be obtained by contacting Service Canada at **1-800-277-9914** office or found online at:

<http://www.hrsdc.gc.ca/cgi-bin/search/eforms/index.cgi?app=profile&form=isp1151&lang=eng>

This stage of the application process is purely paperwork, and it is likely that you will only meet with an applicant after their initial application has been denied.

At the initial application stage three documents are usually given the most consideration: the Application for Disability Benefits, the Questionnaire for Disability Benefits and the Medical Report.

Reconsideration

If an applicant's initial application for CPP Disability is denied they may request that that decision be reconsidered. A request for reconsideration must be made in writing **within 90 days** of the receipt of the letter indicating that the application was denied. The reconsideration stage is again an entirely paper process.

The initial denial letter will contain **extremely important** information. It will provide the applicant's MQP date as well as a brief explanation of why their application was denied. This letter should serve as your guide to the deficiencies of the applicant's initial application.

Appeals to the Social Security Tribunal

If an applicant's request for reconsideration is denied they have another chance to appeal to the new Social Security Tribunal (SST). The SST is composed of a general and appeal division. Within the general division there is an Income Security Section which will hear CPP Disability appeals.

The SST began hearing CPP Disability appeals as of April 1st, 2013. It replaced the Review Tribunal and the Pension Appeals Board which previously heard CPP Disability appeals.

All appeals before the SST General and Appeal Divisions will be heard by one member panels.

While the Social Security Tribunal is a new body it is still subject to the previous case law surrounding CPP Disability.

Procedure

Like at the Reconsideration stage an applicant has **90 days** from the receipt of the letter indicating that their reconsideration was denied to request an appeal to the Social Security Tribunal General Division.

Instructions on how to appeal a CPP disability denial, along with the required forms, can be found at the SST's website:

<http://www.canada.gc.ca/sst-tss/hta-cij/cppgendiv-divgenrpc-eng.html>

After an appeal is filed the government must provide the SST a package of documents which will include the initial application for CPP Disability and the government's response, the appellant's request for reconsideration and the government's response as well as any documents relevant to the government's decision on reconsideration, however it will only provide **one** copy. Therefore it is extremely important that you retain the copy of the documentation you receive from the SST.

Do not bind or tab any submissions to the SST, the tribunal will do this for you.

If at any point after receiving an appeal the SST determines that it has no reasonable chance for success they must summarily dismiss it. Before summarily dismissing an appeal the SST must give written notice to the appellant, and offer the appellant a reasonable period of time during which to make submissions to the SST.

Assuming summary dismissal is not an issue an appellant has 365 days, from the time they submitted their appeal, to submit further documentation or submissions in support of their appeal. At any time during the 365 day period the appellant may notify the SST that they have no further documentation or submissions to submit.

After the expiry of the 365 days, or the receipt of a notice that there is no further documentation being submitted, the SST must decide whether to make a decision based on the documentation before it or to hold a hearing.

Hearings

Hearings can either be in the form of written questions and answers or oral. Oral hearings can be via teleconference, videoconference or in person. If you want to have an oral hearing (which is the most desirable form of hearing) you **must** request an oral hearing from the time of filing your Notice of Appeal to the SST.

The SST will provide interpretive services as required.

If you intend on calling witnesses at your hearing you should advise the SST as early in the appeal process as possible. This is extremely important as having more witnesses will weigh in favour of having an oral hearing.

One adjournment will be granted without reasons, however any subsequent adjournments will require exceptional circumstances.

Social Security Tribunal Appeal Division

An appellant may appeal a decision of the SST to the appeal division **within 90 days** of the date the decision is communicated to them by the SST general division.

Leave to Appeal

Unlike at the SST general division an appellant must be granted 'leave to appeal' to the SST appeal division. Leave will only be granted in the following circumstances:

- i. the General Division failed to observe a principle of natural justice (i.e. the right to a fair hearing) or otherwise acted beyond or refused to exercise its jurisdiction;
- ii. the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- iii. the General Division based its decision on an erroneous finding of fact that it made in an arbitrary manner or without taking into account the evidence before it.
- iv. The application for leave to appeal form to the SST Appeal Division can be found here:
<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATATTAD.pdf>

The one exception to the requirement to obtain 'leave to appeal' is a decision by the SST general division to summarily dismiss an appeal.

Procedure

Clients who wish to appeal to the SST Appeal Division should consult with a lawyer.

Any submissions in support of an appeal **must** be made within 45 days of leave to appeal being granted.

With certain exceptions, decisions of the SST appeal division can be judicially reviewed by the Federal Court of Appeal. Should a client wish to seek a judicial review they **should** consult a lawyer. Applications for judicial review **must** be made within **30 days** of the decision being communicated to the appellant.

Helpful Tips

Initial Application

If you have the opportunity to meet with a client prior to the submission of their application for CPP Disability you should focus on two areas of the Application:

- i. First, focus on assisting them in completing the Questionnaire for Disability Benefits. This is an applicant's opportunity to provide detailed information about how their disabling condition(s) affects their daily lives, as well as information about their most recent employment amongst other things.
- ii. Second, if a medical report has not already been drafted, this is a good time to draft a specifically-worded medical report request that will drive home to the doctor the information you're looking for. This report is usually prepared by the applicant's family doctor, but can be prepared by a specialist.

Reconsideration

Reconsideration should be seen as a free 'second kick at the can'. It provides a second chance to submit any further objective medical information that was either not submitted with the initial application or has been obtained post application, such as: Reports from specialists, MRI results, physiotherapy assessments, etc.

The initial denial letter should be used as a guide as to what further medical evidence is required. However, in 99.9% of cases you will be trying to prove that the applicant had a severe and prolonged disabling condition no later than the expiry of their MQP.

If you anticipate receiving further objective medical evidence that will be helpful to your client do not hesitate to indicate that to the person conducting the reconsideration, and ask them to wait to make their decision until you've submitted that information.

Remember as this stage is only on paper the best evidence is **objective** as opposed to subjective as there is no way for the person conducting the reconsideration to assess the credibility of subjective evidence. You may wish to obtain a report from any specialist's your client has seen regarding their disabling condition(s).

Social Security Tribunal

This level is the first chance your client will have to hopefully appear before a live decision maker. This level is the chance for you to submit **subjective** evidence as to the nature of your client's disability.

As there is no longer a guarantee of a hearing (let alone an in person hearing) you should submit all of your remaining evidence, both **objective** and **subjective**, within the allotted 365 days.

Examples of subjective evidence includes: evidence from the appellant themselves, from partners, adult children or former co-workers. The focus of this evidence should be on the affect the disabling condition has on the appellant, and the date of its onset.

Due to the non-guarantee of an oral hearing subjective evidence should be submitted in the form of sworn statements in advance of the hearing. If an oral hearing is granted any witnesses who submitted a sworn statement should be present at the hearing.

Always keep in mind your client's MQP when considering what evidence is relevant to include.

If you find cases that you think could be helpful to your client's case you may submit them to the SST along with a brief explanation of their application to your client's case.

First Meeting

Ask a potential CPP Disability client to bring the following to their first meeting with you:

- i. List and dosage of medications;
- ii. List and contact information of past and present doctors;
- iii. Copy of their CPP Disability Application (if applicable);
- iv. Any correspondence in response to their Application (if applicable); and
- v. Any correspondence from the SST (if applicable).

During the first meeting you should obtain the following from your client:

- i. Consent forms allowing you to speak to all of their doctors (*insert hyperlink to sample medical consent form*);
- ii. A Consent to Communicate form to allow you to speak to CPP:
<http://www.servicecanada.gc.ca/cgi-bin/search/eforms/index.cgi?app=prfl&frm=isp1603cpp&ln=eng>
- iii. If applicable an Authorization to Disclose allowing you to speak to the SST can be found in the following link:
<http://gc.ca/sst-tss/hta-cij/cppgendiv-divgenrpc-eng.html>
- iv. Request for photocopy of a Worker's Compensation file, if any:
http://www.wcb.ns.ca/wcbns/index_e.aspx?DetailID=761

The first meeting is also when you should advise your client of the following:

- If they are in receipt of income assistance they will have to repay any income assistance received for any period of time they are also in receipt of CPP Disability, and their CPP Disability will be deducted dollar for dollar from their income assistance entitlement on an ongoing basis; and
- If they have a private long term disability plan that it may contain a provision deducting CPP Disability benefits.

If Your Client is Successful

Congratulations! However you should ensure your client is reminded of the following:

- All applicants will receive a retroactive amount of CPP Disability calculated from 11 months prior to the date of their application (the earliest a CPP disability applicant can be considered disabled is 15 months prior to their application, and there is a 4 month waiting period). This amount can be substantial. You should ensure your client does not spend that money upon receipt as they may owe a portion, or all of it, to the Province if they were also in receipt of income assistance pending receipt of their CPP Disability;
- If your client returns to work they **must** advise CPP. A CPP Disability recipient can earn up to the Year's Basic Exemption on an annual basis. However if they earn more their benefits will be discontinued, and they may face an overpayment.
- CPP Disability benefits are taxable. It may be to your client's advantage to apply for the Disability Tax Credit. You should contact the Canada Revenue Agency for more information on this program.
- Finally there is also a monthly benefit available to the dependent children (under the age of 18, or aged 18-25 if a full-time student) of CPP Disability recipients. Further information, and application forms, about the Disabled Contributor's Child Benefit can be found here: <http://www.servicecanada.gc.ca/eng/services/pensions/cpp/child.shtml>

Additional Resources

Case Law

Applicable case law on CPP Disability comes from the Pension Appeals Board (eventually the SST Appeal Division) and the Federal Court of Appeal. The Supreme Court of Canada can also make decisions on CPP Disability, but rarely does.

Pension Appeal Board decisions can be searched online at: <http://dev3.canada.gc.ca/pab/>

Federal Court of Appeal decisions can be searched online at CANLII at: <http://www.canlii.org/en/ca/fca/>

Government

The federal government maintains a website on CPP Disability:
<http://www.servicecanada.gc.ca/eng/isp/cpp/disaben.shtml>

Community Legal Education Ontario (CLEO)

CLEO has a publication about CPP Disability: <http://www.cleo.on.ca/en/publications/cppdisability>

Nova Scotia Legal Aid

NSLA offices provide summary advice to clients regarding CPP Disability. Their contact information can be found here: <http://www.nslegalaid.ca/contact.php>