



Pension Plan Issues with Progressive Disability

Caution: This help sheet is designed to provide general legal information only. It is **not** designed to provide specific legal advice and cannot be relied on as any definitive statement of the law. For information specific to your personal circumstances, please seek legal advice.

Is this help sheet for me?

This help sheet discusses the federal Canadian Pension Plan (“CPP”) issues that commonly arise for people with Parkinson’s disease or other progressive disabilities. It also touches on related issues in British Columbia disability assistance legislation generally. The laws in other jurisdictions may be different.

There are three main types of pension plans:

1. the Canadian Pension Plan;
2. public sector pension plans (for example, BC Municipal Pension Plan or the Federal Public Service Pension Plan); and,
3. private pension plans administered by your employer.

Most people who work in Canada contribute to the CPP and are eligible for a CPP retirement pension. This help sheet discusses CPP issues.

You may also have a pension plan with your employer either in the public or private sector. Those pension plans will have their own rules. Please contact your employer’s pension administrator for information about what your options may be under that plan as well.

What CPP Benefit is best for you?

After being diagnosed with a progressive disease like Parkinson’s disease, there are certain factors that you should be aware of when planning what CPP benefit to apply for and *when*.

If you are under 65 years of age, you have three options:

1. apply for Canadian Pension Plan (CPP) disability benefits;
2. elect to receive an early CPP retirement pension; or,
3. wait until you are eligible for your full CPP retirement pension at age 65.

A person can only receive the CPP retirement pension or the CPP disability benefit. You cannot receive both at the same time.

If you are 65 years of age or older and have contributed to CPP, you are entitled to a CPP retirement pension.

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Personal Information Bank
HRSDC PPU146



APPLICATION FOR DISABILITY BENEFITS CANADA PENSION PLAN

FOR OFFICE USE ONLY

Application taken by

Year

Month

Day

Date Stamp

INFORMATION ABOUT YOU

Language Preference

Social Insurance Number

Early Canada Pension Plan Payments

If you are between the ages of 60 to 65, you may apply to receive an early CPP retirement pension. As long as you have made sufficient contributions, you can choose this option. However, the decision to take an early CPP retirement pension is a final decision. You cannot change your mind. The amount you will receive each month will remain less than what you would receive if you wait until age 65 to start your CPP pension payments.

Example:

Jack was having difficulty continuing to work due to the onset of Parkinson's disease. He wanted to retire and get his pension. He was 63 years old and not yet eligible for his full CPP retirement pension. He opted to get his retirement pension early at a reduced rate.

You are eligible to receive your full CPP retirement pension when you turn 65 years old. After you turn 60, you may also apply for an early retirement pension. If you choose to receive pension benefits early, CPP reduces your pension amount by a set percentage for each month that you take it before age 65, calculated from the time you begin receiving your pension.

Example:

If you took your CPP pension at age 60 in 2011 (60 months before age 65), the reduction is 0.5% per month, for a maximum reduction of 30%.

From 2012 to 2016, the early pension reduction gradually increases from 0.52% to 0.6% per month. This means that if you start receiving your CPP pension in 2016 at age 60, your pension amount will be 36% less than it would be if you wait until age 65.

The reduction in your CPP benefits is permanent if you take your CPP benefits early. You will continue to receive the reduced amount after you turn 65 years old.

If you are in your early 60's, you may want to seek legal and/or financial advice about what option is best for you.

Canadian Pension Plan Disability Benefits

The Canada Pension Plan also provides disability benefits in some circumstances. If the symptoms of Parkinson's disease are contributing to your decision to retire early, you should consider applying for CPP disability benefits instead of an early CPP retirement pension.

CPP disability benefits typically provide more income than an early CPP retirement pension. The monthly amount of the CPP disability benefit is based on the contributions you made to the Canada Pension Plan prior to your application.

One of the key advantages of CPP disability benefits is the amount you receive is not reduced because of your age. When you turn 65, the CPP disability benefit will be replaced with a CPP retirement pension. This means that you will typically receive more money each month if you receive the CPP disability benefit than if you opt for an early CPP retirement pension. **However, in order to be eligible for CPP disability benefits, you have to prove that your medical condition prevents you from doing any paid work. This can be a very hard test for someone with a progressive disability to meet. Often the decision to retire is made when your condition has affected your ability to work but you are not yet at the stage where you can do no paid work.**

To qualify for the CPP disability benefit, you must:

- be under 65 years of age,
- meet the minimum qualifying period, and,
- have a severe and prolonged disability as defined in the CPP legislation.

What is the Minimum Qualifying Period for CPP Disability Benefits?

The minimum qualifying period means that you must have worked and contributed to the CPP for a certain number of years immediately before you became disabled. There are three ways you can meet the minimum qualifying period:

1. If you have **worked for less than six years**, you must have made contributions to the CPP in the **last four years** that you worked.
2. If you have **worked for six years or more**, you must have made contributions to the CPP in at least **four out of the last six years**.
3. If you have **worked for twenty-five years or more**, you must have made contributions to the CPP in **three out of the last six years**.

A Note on Late Applications

Sometimes people do not apply for their CPP disability benefits soon after they become disabled. In that case, they apply outside of the minimum qualifying period. If you are a late applicant, you can still apply for the CPP disability benefit, however, you will have to show that you were disabled ever since your last minimum qualifying period.

Example #1:

Mark is in his mid 50's. He has worked for more than 25 years and contributed to CPP his whole career. He will need to have contributed to CPP in three of the last six years to meet the minimum qualifying period.

If Mark started work in 1975, leaves work in 2000, and applies for CPP disability benefits in 2005, he would have to show he has been disabled since 2003. That is, he last contributed in 1998, 1999 and 2000 (three years) but not 2001, 2002 and 2003. 1998 to 2003 is the six-year window for his minimum qualifying period.

Example #2:

Bridget is in her early 40's. She immigrated to Canada later in life. She started working (and contributing to CPP) in 2000. If she worked until 2008, 2010 would have been the last year in which she qualified to apply for CPP disability benefits (the four out of the last six years rule means in the six years between 2005 and 2010, Bridget worked in 2005, 2006, 2007 and 2008 (four years) but not 2009 and 2010). If Bridget applied in 2012, she would have to show that she has been disabled since 2010.

The minimum qualifying period means that you must have worked and contributed to the CPP for a certain number of years immediately before you became disabled.

What is a “Severe and Prolonged Disability”?

In order to be eligible for CPP disability benefits, a person must be “determined in the prescribed manner to have a severe and prolonged mental or physical disability.” This means that you have to show that your disability is severe and prolonged. You must provide a medical report filled out by a medical practitioner as evidence of your condition.

Many conditions will result in a “severe and prolonged” disability. What do these terms mean, in practice?

Severe: A disability is severe when you are “incapable regularly of pursuing any substantially gainful occupation.” This can be hard to prove, particularly when you are suffering from a progressive disease. If you are able to do paid work, your application will be denied. Human Resources Development Canada will

also deny your application for benefits if they determine your condition allows you to do another type of paid work (even if it is not your regular job).

Prolonged: A disability is prolonged when it is “likely to be long continued and of indefinite duration or is likely to result in death.” While science is getting close, there currently is no cure for Parkinson’s disease. If your Parkinson’s disease is severe enough to prevent you from doing any paid work, you most probably can establish that your condition is prolonged as well.

Example: Exploring Options over Time

Allen is diagnosed with Parkinson’s disease at age 59 and has paid into the Canada Pension Plan all his working life. At age 64, he has medical evidence he can perform no paid work because he has a severe and prolonged disability. These are Allen’s options at various ages leading up to retirement:

	EARLY CPP PENSION	CPP DISABILITY BENEFITS	REGULAR CPP PENSION
Age 59	<ul style="list-style-type: none"> not an option (Allen is too young) 	<ul style="list-style-type: none"> not an option as Allen can still perform paid work 	<ul style="list-style-type: none"> not an option (Allen isn’t yet 65 years old)
Age 60	<ul style="list-style-type: none"> an option but the pension will be reduced by maximum amount 		
Age 64	<ul style="list-style-type: none"> an option but the pension will be reduced (but not as much as at age 60) 	<ul style="list-style-type: none"> an option if Allen has medical evidence he cannot perform any paid work due to disability 	
Age 65			<ul style="list-style-type: none"> Allen is entitled to his regular CPP benefits

Common Difficulties:

1. CPP says I'm not "Disabled" according to the Plan

To be eligible for the CPP disability benefit you have to prove your condition meets the definition of disability under the Plan. This can be very tough for someone with a progressive disease to meet because you have to prove that you cannot do any type of substantially gainful occupation. **The problem people suffering from Parkinson's face is that though their symptoms are affecting their job, their condition is not yet at the point where they cannot do any work.**

Example: Applying Too Early for CPP Disability Benefits:

Parwinder wanted to stop working full-time because she found her Parkinson's symptoms made working difficult. She applied for CPP disability benefits to supplement her income while she worked part-time. Her application was denied. CPP concluded that Parwinder's medical condition did not meet the definition of 'disability' in the legislation: she was still able to work when she applied.

If you have a private pension plan through your employer, the definition of "disabled" may be different and easier to meet than the definition in the Canada Pension Plan. This is worth exploring with your employer's pension administrator.

2. I am already receiving an early CPP retirement pension but now I'm disabled

The decision to elect to receive an early CPP retirement pension is generally one you cannot change.

There is one critical exception: you can apply to convert your CPP retirement pension into CPP disability benefits within the first 15 months of receiving the retirement pension payments. However, you have to show that you were disabled for the purpose of the CPP at the time you first elected to receive the CPP retirement pension. This can be difficult to do if you do not have detailed medical records from that time.

Example:

Ana was diagnosed with Parkinson's disease at age 51. Fortunately, she was doing very well for many years. At age 60, Ana decided to take an early CPP pension. She was very disabled at this time but did not know she may be eligible for CPP disability benefits which would give her more money each month. Later that year, Ana learned she could apply to convert her retirement pension into CPP disability benefits if she had enough medical evidence from the time she first received her pension benefits and if she acted quickly.

	WORKING	EARLY CPP PENSION	CPP DISABILITY BENEFITS	REGULAR CPP PENSION
Age 51	Diagnosed with Parkinson's disease	<ul style="list-style-type: none"> not an option (Ana is too young) 	<ul style="list-style-type: none"> not an option as Ana can still perform paid work 	<ul style="list-style-type: none"> not an option (Ana isn't 65 years old yet)
Age 60		<ul style="list-style-type: none"> an option but the pension will be reduced by maximum amount 	<ul style="list-style-type: none"> Ana could have applied if she had medical evidence she could perform no paid work 	
			<ul style="list-style-type: none"> Ana may apply to convert her early CPP pension to disability benefits if she has medical evidence when her reduced CPP pension started that she was unable to perform any paid work due to disability 	
		Within 15 months after Ana started to receive her reduced CPP pension...		

What to do if your application for CPP Disability Benefits is denied

If your application for CPP disability benefits is denied, you can have the decision reviewed. It is beyond the scope of this help sheet to discuss what the grounds for review may be in any specific case. Typically, you will need to show that CPP has not applied the legislation correctly or has misunderstood your medical evidence in refusing your application.

There are three stages of internal review of CPP discussions. Generally, you can only go to Court after you have exhausted all three of the CPP appeal processes.

The CPP internal appeal processes are:

1. appeal to Minister of Human Resources Development Canada;
2. appeal to Review Tribunal; and,
3. appeal to Pension Appeal Board.

Each stage has strict timelines that can rarely be extended:

- The appeal to the Minister must be made within 90 days of receiving the decision that your application was denied.
- If you are unsuccessful, you can appeal to the Review Tribunal within 90 days.
- If you are not successful at the Review Tribunal, you have 90 days to apply for permission to appeal to the Pension Appeal Board.
- If you are also unsuccessful at the Pension Appeal Board, you may apply to the Federal Court for judicial review of the decision within 30 days.

Generally, on a judicial review, the Court considers the material you put before the CPP, whether the CPP officials followed the legislation properly and whether the process met general legal principles of fairness. The most typical remedy a Court will grant on a judicial review is to require the CPP to reconsider your application. A judicial review application requires special expertise in administrative law.

Please seek legal advice on how to frame your appeal early in the process to maximize your chances for success. If you wait until judicial review for legal advice, you may have lost the opportunity to improve your case.

A note on other pension plans

If you work in the public sector, you may be eligible for a public sector retirement pension or a disability pension. These plans have different requirements than CPP. You should ask your pension plan provider for more information. For example, in order to qualify for a disability pension under the *BC Municipal Pension Plan*, you must be under 60, totally and permanently disabled, and have terminated employment. Consult BC Pension Corporation for more information.

If you work in the private sector, you may have a private pension plan. The Pension Benefits Standard Act (BC) requires these plans to provide disability pensions if a plan member has a disability that is likely to considerably shorten his or her life expectancy. Each plan is different and the definition of disability in your plan may be easier to meet than under the CPP. You should ask your employer's pension plan administrator for more information.

Please seek legal advice on how to frame your appeal early in the process to maximize your chances for success.

Other considerations:

Provincial Disability Assistance Benefits

In British Columbia, the Ministry of Social Development currently also provides social benefits for people with disabilities. This is called the Person with Disabilities (PWD) benefit. If you qualify, you receive a monthly income and other benefits like low-cost transit passes or improved health and prescription drug coverage.

To qualify for a PWD benefit, you must show that you have a severe mental or physical impairment that significantly restricts your ability to perform daily living activities (such that you need assistance) and this impairment is expected to last more than two years in duration. You must also meet the financial eligibility requirements. Currently, if you are a single person with no dependents, you are financially eligible if your liquid assets do not exceed \$3,000 (that is, your bank accounts, RRSP, or Tax Free Savings Account). If you have dependents or live in a family unit, you are financially eligible if your liquid assets do not exceed \$5,000. You may still own your home or a vehicle (these are “exempt assets”). For more information on eligibility and asset limits, contact the Ministry of Social Development.

The PWD benefit typically acts as a ‘top-up’ to your CPP benefit. For example, if you are eligible for \$900 a month in PWD benefits and receive \$600 a month in a CPP pension benefits, you may be eligible for another \$300 a month in PWD benefits from the Province. The Minister will typically require that you apply for any CPP benefit you may be eligible to receive before you apply to the Province for a PWD benefit.

Even if the CPP benefit you are receiving is already at the maximum amount that you would be eligible for under a PWD benefit, you should still consider an application for PWD status. The PWD status will make you eligible for other provincial benefits such as transit passes and prescription coverage that you otherwise would have to pay for from your own pocket.

If you qualify, you receive a monthly income and other benefits like low-cost transit passes or improved health and prescription drug coverage.

Helpful Resources

Canada Pension Plan has a comprehensive website through Service Canada
www.servicecanada.gc.ca/eng/isp/cpp/cpptoc.shtml

Service Canada considers CPP and CPP disability applications and reconsideration requests. The application forms are also available on the website at www.servicecanada.gc.ca

BC Pension Corporation is responsible for the administration of BC's College, Municipal, Public Service, Teachers' and WorkSafeBC pension plans.
www.pensionsbc.ca

BC Ministry of Social Development is responsible for the Persons with Disabilities (PWD) Assistance benefit. Information on how to obtain an application form is available on their website at www.hsd.gov.bc.ca/pwd.htm

BC Coalition of People with Disabilities provides advocacy and support. Help sheets on how to apply for CPP disability benefits, how to make an appeal if denied benefits, how to apply for PWD benefits, and what other benefits you may be eligible for are available on the web at www.bccpd.bc.ca

Legal Services Society provides legal aid in BC. They have a guide, "When I'm 64", that describes the benefits and services for people aged 60 and over available on their website at www.lss.bc.ca

Access Pro Bono helps individuals find lawyers who are willing to take on work without charging fees ("pro bono"). www.accessprobono.ca.

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