

Citation: *M. C. v. Minister of Human Resources and Skills Development*, 2013 SSTGDIS 1

Appeal No: 114613

BETWEEN:

M. C.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security – Summary Dismissal

SOCIAL SECURITY TRIBUNAL MEMBER: Shane Parker

DATE OF DECISION: August 19, 2013

DECISION

[1] The Tribunal finds that the appeal has no reasonable chance of success; therefore, the appeal is summarily dismissed.

INTRODUCTION

[2] The Appellant applied for a *Canada Pension Plan* (CPP) Survivor's Pension on October 8, 2010. The Respondent denied the application at the initial level and on January 17, 2011 denied the application at the reconsideration level. The Appellant appealed that decision to the Office of the Commissioner of Review Tribunals (OCRT) on March 30, 2011.

ISSUE

[3] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[4] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Social Security Tribunal.

[5] Subsection 53(1) of the *Department of Human Resources and Skills Development Act* (DHRSD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.

[6] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[7] To qualify for a CPP Survivor's Pension, the deceased contributor must have made contributions for not less than the minimum qualifying period. If the survivor is not 65 years

of age at the time of application, the survivor must be one of the following at the time of the deceased contributor's death:

- a) Reached 35 years of age;
- b) Have dependent children;
- c) Be disabled.

(see: paragraph 44(1)(d) of the CPP)

[8] Subsection 2(2) of the CPP stipulates that an individual is deemed to have reached a specified age at the beginning of the month following the month of that individual's birthday.

EVIDENCE

[9] The Appellant was born on September 5, 1975. On June 7, 2002 she married the late D. C., who passed away on September 29, 2010. They had no children and the Appellant was 35 years of age at the time. The Appellant immediately applied for a CPP Survivor's Pension, which was received by the Respondent on October 8, 2010.

SUBMISSIONS

[10] The Appellant submitted that she reached 35 years of age at the time of her spouse's death and therefore qualifies for a CPP Survivor's Pension. In compliance with section 22 of the *Social Security Tribunal Regulations*, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make further submissions. She did not provide any.

[11] The Respondent submitted that under the CPP the Appellant reached age 35 in October 2010, the month following her birthday, and after her spouse's death. Therefore, she does not qualify for a CPP Survivor's Pension.

ANALYSIS

[12] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP.

[13] In the present matter, the Tribunal regrettably agrees with the Respondent. While the Appellant was actually 35 years of age at the time of her spouse's death, the CPP requires that she be considered that age on October 1, 2010, the month following her birthdate, which falls after her spouse's death by a mere two days. Under a strict application of the CPP in its current form, the Tribunal has no choice but to find that the Appellant's appeal has no reasonable chance of success.

CONCLUSION

[14] The appeal is summarily dismissed.

Shane Parker

Member, General Division