

Citation: *I. S. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 14

Appeal No: CP 22317

BETWEEN:

**I. S.**

Appellant

and

**Minister of Human Resources and Skills Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

HEARING DATE: March 4, 2014

TYPE OF HEARING: In Person

DATE OF DECISION: March 12, 2014

## **PERSONS IN ATTENDANCE**

Representative for the Appellant

Paul Fernandes

Counsel for the Respondent

Nancy Luitieler

## **DECISION**

[1] The appeal is dismissed.

## **INTRODUCTION**

[2] On July 21, 2003, a Review Tribunal determined that a *Canada Pension Plan* (the “CPP”) survivor’s benefits were not payable.

[3] The Appellant originally filed an Application for Leave to Appeal that Review Tribunal decision (the “Leave Application”) with the Pension Appeal Board (PAB) on October 24, 2003.

[4] The PAB granted leave to appeal on January 29, 2004. Pursuant to section 259 of the *Jobs, Growth and Long-term Prosperity Act* of 2012, the Appeal Division of the Tribunal is deemed to have granted leave to appeal on April 1, 2013.

[5] The hearing of this appeal was conducted in person for the reasons given in the Notice of Hearing dated December 4, 2013.

[6] The Appellant did not attend the hearing. Her Representative was not able to contact her by telephone, and wished to proceed in her absence. This matter had been previously adjourned at the Appellant’s request. Section 12 of the *Social Security Tribunal Regulations* provides that a hearing must proceed if it has been previously adjourned and the Member is satisfied that the Appellant had sufficient notice of the hearing. In this case I am satisfied that the Appellant had sufficient notice of the hearing. She retained a Representative, who appeared on her behalf. The matter proceeded.

## **THE LAW**

[7] To ensure fairness, the Appeal will be examined based on the Appellant's legitimate expectations at the time of the original filing of the Application for Leave to Appeal with the PAB. For this reason, the Appeal determination will be made on the basis of an appeal *de novo* in accordance with subsection 84(1) of the *Canada Pension Plan* (CPP) as it read immediately before April 1, 2013.

[8] The relevant provisions of the CPP provided as follows in this matter:

49... the contributory period of a contributor is the period commencing January 1, 1966 or when he reaches eighteen years of age, whichever is the later, and ending...

(b) where a benefit other than a disability pension commences after the end of 1986, the earliest of...

(iii) the month in which he dies, or...

44(3) ... a contributor shall be considered to have made contributions for not less than the minimum qualifying period only if the contributor has made contributions

(a) For at least one third of the total number of years included either wholly or partly within his contributory period, excluding from the calculation of that contributory period any month in a year after the year in which he reaches... equal to or less than his basic exemption for that year, but in no case for less than three years; or

(b) For at least ten years.

## **PRELIMINARY MATTER**

[9] When this matter was first appealed to the Pension Appeals Board, the Appellant argued that the provisions of the CPP contravened Section 15 of the *Canadian Charter of Rights and Freedoms* (Charter). The Respondent brought a Motion to have this claim dismissed. On November 21, 2011 the Pension Appeals Board dismissed this claim.

[10] At this hearing, the Appellant's representative argued that the matter before me could not be properly decided unless I reviewed the Respondent's Motion Record prepared for its Motion to have the Charter claim dismissed, which included documents related to legislative debate when the CPP was enacted. The parties agreed that this Motion Record would be marked as Exhibit 5, and that I would review it prior to rendering a decision in this matter. No further Charter arguments were made in this proceeding as that issue had been decided by the Pension Appeals Board already.

## **ISSUE**

[11] The Tribunal must decide whether the deceased met the contributory requirements for the Appellant to receive survivor's benefits.

## **EVIDENCE**

[12] The following facts were agreed by the parties:

- The deceased was born on March 15, 1960 in India. He married the Appellant on March 30, 1986.
- The deceased contributed to the CPP in 1995, 1996, 1997, 1998, 1999, 2000 and 2001.
- The deceased died on November 4, 2001.
- The Appellant applied for CPP survivor benefits by application dated November 17, 2001.
- There was no agreement on social security between Canada and India at

that time.

- The application for survivor benefits was denied by the Respondent.

## **SUBMISSIONS**

[13] The Appellant submitted that she should receive the survivor benefits because:

- a) The deceased contributed to the CPP for each year that he worked in Canada;
- b) She suffered financial hardship as a result of the death of the deceased;
- c) The CPP survivor benefits should be provided to her on humanitarian or compassionate grounds.

[14] The Respondent submitted that the Appellant does not qualify for CPP survivor's benefits because:

- a) The deceased did not meet the statutory contributory requirements for them to be payable;
- b) The CPP does not permit the contributory requirements to be changed on compassionate grounds.

## **ANALYSIS**

[15] The Appellant must prove on a balance of probabilities that she qualified for the survivor's benefits. The facts in this case are clear. The deceased turned 18 in 1978. He passed away in 2001. Therefore his contributory period was 24 years in length. He contributed to the CPP for seven years, when he worked in Canada. There was no agreement between Canada and India whereby any of his work contributions from India could be considered for CPP purposes.

[16] I find the reasoning of the Pension Appeals Board in *Lipske v. Minister of Human Resources Development* (May 10, 2001) CP 14662 persuasive. It sets out clearly the four steps that must be taken to determine whether survivor benefits are

payable under the CPP:

- a) First, the length of contributory period must be determined;
- b) Second, since the CPP refers to years “wholly or partly” any part of a year within the contributory period is counted as a full year;
- c) Third, contributions must have been made for not less than one third of the total number of years that constitute the contributory period;
- d) Fourth, the qualifying period shall in any event be not less than three years.

[17] In the *Lipske* case, the contributory period was 24 years, with the contributor making contributions for seven years. The Pension Appeals Board concluded that survivor’s benefits were not payable, as contributions had not been made for one third of the contributory period. I find this persuasive. The facts are the same in this case. The deceased did not make contributions to the CPP for one third of his contributory period, so no benefits are payable.

[18] The Appellant’s representative argued that survivor’s benefits should be paid in this case for compassionate or humanitarian reasons. The CPP does not allow for the contributory requirements to be changed on humanitarian or compassionate grounds. There is no discretion in the application of the contributory requirements. This is confirmed clearly in the Pension Appeals Board decision of *Sawczuk v. Minister of Social Development* (October 26, 2006) CP 12144.

[19] In his written argument (set out in Exhibit 5), the Appellant’s representative submitted that the Respondent has discretion in applying the CPP requirements. He relies on the wording of s. 58(7) of the CPP which provides some discretion in how a benefit is calculated. It does not provide the Respondent with any discretion to determine whether an applicant qualifies for a CPP benefit. This argument fails.

[20] The Appellant’s representative also argued that the purpose of the CPP is to provide a minimum level of financial protection against the loss of earnings normally

associated with the disability, retirement or death of a wage earner, as stated by Ms. Giordano in parliamentary debate when the legislation was enacted. While this may be so, the CPP is not a social welfare scheme, and contribution requirements must be met.

## **CONCLUSION**

[21] The appeal is dismissed.

*Valerie Hazlett Parker*

Member, Appeal Division