

Citation: *J. L. v. Minister of Human Resources and Skills Development*, 2014 SSTGDIS 24

Appeal No: GT-108684

BETWEEN:

J. L.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

SOCIAL SECURITY TRIBUNAL MEMBER: Raymond Raphael

TYPE OF HEARING: Questions and answers

DATE OF DECISION: August 27, 2014

DECISION

[1] The Tribunal finds that the late D. L. did not make sufficient contributions to the Canada Pension Plan (CPP) to meet the Minimum Qualifying Period (MQP) in order for the Appellant to qualify for a CPP death benefit.

INTRODUCTION

[2] The Appellant's application for a CPP death benefit was date stamped by the Respondent on July 17, 2008. The Respondent denied the application at the initial and reconsideration levels and the Appellant appealed to the Office of the Commissioner of Review Tribunals (OCRT).

[3] The hearing of this appeal was by written questions and answers for the reasons given in the Notice of Hearing dated May 26, 2014.

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] Paragraph 44(1)(c) of the CPP provides that a death benefit shall be payable to the estate of a deceased contributor who has made contributions for not less than the minimum qualifying period.

[6] Paragraph 44(3) of the CPP provides that for the purposes of paragraph 44 (1) (c) a contributor shall be considered to have made contributions for not less than the minimum qualifying period only if the contributor has made contributions during the contributor's contributory period

- (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 sixty-five years of age and for which his unadjusted pensionable earnings were equal to or less than the basic exemption for that year, but in no case for less than three years; or

(b) for at least ten years.

[7] Paragraph 49 of the CPP provides that a contributor's contributory period is the period commencing January 1, 1966 or when he reaches eighteen years of age, whichever is later, and ending in the month when the contributor dies, excluding any month that was excluded from the contributor's contributory period by reason of disability.

ISSUE

[8] The issue is whether the contributor met the MQP earnings and contribution requirements in order for the Appellant to qualify for the CPP death benefit.

BACKGROUND AND EVIDENCE

[9] The Appellant is the widow of the late D. L. (the contributor) who was born in Poland in February 1962 and died in Toronto in June 2008. The Record of Earnings (ROE) indicates that the contributor only made contributions to the CPP for the years 1995 to 2001 (seven years). He was in receipt of CPP disability benefit from August 2002 to June 2008 inclusive [See Respondent's response to written question #2], and in accordance with s. 49 of the CPP those months are excluded from his contributory period.

[10] An Agreement on Social Security between Canada and the Republic of Poland was signed in April 2008; however, the agreement was not declared in force until October 1, 2009. [See Respondent's response to written question #1]. By letter dated December 9, 2009 the Appellant's daughter advised the Respondent that her late father contributed to the social security program in Poland for the years 1983, 1985, 1987 and 1989 and that, accordingly, he met the minimum contribution requirements.

SUBMISSIONS

[11] The Appellant submitted that she qualifies for the CPP death benefit because:

- a) All of the contributor's contributions including those in Poland should be considered because of the Canada/Poland agreement which was signed in April 2008, prior to the contributor's death.
- b) If all of the contributions are considered, there are sufficient contributions to qualify for the death benefit.

[12] The Respondent submitted that the Appellant does not qualify for the CPP death benefit because:

- a) The contributor did not make sufficient contributions to the CPP for the Appellant to be eligible for the CPP death benefit;
- b) The Canada/Poland agreement does not assist the Appellant since it was not proclaimed into force until after the contributor's death.

ANALYSIS

[13] Pursuant to the provisions of s.44 and s.49 of the CPP as set out above, the contributor's contributory period for the purposes of calculating the MQP extends from March 1980 (the month after he turned eighteen) until August 2002 (when he started receiving CPP disability). This is a period of 23 years since all years that are either wholly or partly within the contributory period are included. In order to qualify for the death benefit, he must have contributed for at least eight years, which is at least one third of the total number of years in the contributory period; unfortunately he only contributed for seven years.

[14] Article 28.2 of the Canada/Poland agreement provides that no provision of the agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of the agreement and Article 28.3 provides that subject to paragraph 2, a

benefit, other than a lump sum payment, shall be payable under this Agreement in respect of events which happened before the date of entry into force of this Agreement. Accordingly, the agreement does not assist the Appellant since it was not proclaimed into force until April, 2009 which was after the contributor's death.

CONCLUSION

[15] The appeal is dismissed.

Raymond Raphael

Member, General Division