

Citation: *M. B. v. Minister of Employment and Social Development*, 2015 SSTGDIS 115

Date: October 19, 2015

File number: GP-14-3891

GENERAL DIVISION - Income Security Section

Between:

M. B.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Judy Daniels, Member, General Division - Income Security Section

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* (CPP) survivor benefit. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Tribunal on September 25, 2014.

ISSUE

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

THE LAW

[2] Subsection 53(1) of the *Department of Employment and Social Development Act* (DES Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

[3] Section 22 of the *Social Security Tribunal Regulations* (SST 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.

[4] Subsection 60(1) of the CPP states that no benefit is payable to any person under this Act unless an application therefor has been made by him on his behalf and payment of the benefit has been approved under this Act. Additionally, subsection 43(1) of the *Canada Pension Plan Regulations* (CPP Regulations) states that an application for a benefit must be made in writing at any office of the Department of Human Resources Development or the Department of Human Resources and Skills Development.

[5] Subsection 72(1) of the CPP states the following:

where payment of a survivor's pension is approved, the pensions is payable for each month commencing with the month following
(a) the month in which the contributor died, in the case of a survivor who at the time of the death of the contributor has reached thirty-five years of age or was a survivor with dependent children,

(b) the month in which the survivor became a survivor who, not having reached sixty-five years of age, is disabled, in the case of a survivor other than a survivor described in paragraph (a), or
(c) the month in which the survivor reached sixty-five years of age, in the case of a surviving spouse other than a survivor described in paragraph (a) or (b), **but in no case earlier than the twelfth month preceding the month following the month in which the application is received.**

[6] The effect of subsection 72(1) of the CPP is that the earliest a survivor's pension can be paid is eleven months preceding the application.

EVIDENCE

[7] The Appellant's spouse, the contributor, died in July 2012.

[8] The Appellant submitted an application for a survivor's pension on May 9, 2014.

[9] The Appellant's date of birth is February 14, 1925, making her 89 years of age at the time of the application.

[10] The Appellant requested that the survivor's pension be retroactive to August 2012 and that request was subsequently denied both at the initial and reconsideration level.

SUBMISSIONS

[11] In her Notice of Appeal, the Appellant submitted that:

- a) Her husband died in July 2012 and the funeral home was to complete the application for CPP death and survivor's benefits;
- b) The funeral home did not complete the application and have acknowledged their mistake;
- c) Once the Appellant was aware of this omission she submitted her application; and
- d) As the delay for the application was not an error on her part but that of the funeral home she would like the survivor's pension application to be retroactive to August 2012.

[12] In response to the Notice of Intent to Summarily Dismiss, the Appellant submitted that:

- a) The Morse Funeral Home explained that the CPP survivor's pension application would be sent on her behalf directly to the appropriate government office. Unfortunately an error was made by Morse Funeral Home and they have acknowledged their mistake;
- b) Once her accountant notified the Appellant of the mistake by Morse Funeral Home, she sent her application forthwith; and
- c) She has done everything correctly and in a timely manner.

[13] The Respondent submitted that:

- a) The Appellant applied for the survivor's pension by application received by the Respondent on May 9, 2014. The deceased contributor had passed away in July 2012;
- b) On July 28, 2014, the Appellant's application for a survivor's pension was granted with an effective date of June 2013.
- c) Pursuant to subsection 72(1), the earliest that the survivor's pension could be paid was June 2013, which was the maximum retroactive date possible for an application for a survivor's pension received by the department in May 2014; and
- d) The Applicant commenced receiving payments in August 2014 going back to June 2013, the earliest date for which she could be paid her survivor's pension. This is 11 months prior to the date of the application and is the earliest date that the benefit can be paid according to CPP legislation.

ANALYSIS

[14] In compliance with section 22 of the SST 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 submissions.

[15] 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. The Tribunal cannot use the principles of equity or consider extenuating circumstances to make its decision.

[16] The Tribunal finds that pursuant to subsection 60(1) of the CPP and subsection 43(1) of the CPP Regulations, an applicant is required to submit an application to the Respondent's office for any benefit under the CPP.

[17] Subsection 72 (1) of the CPP states that where payment of a survivor's pension is approved, the pension is payable for each month commencing with the month following:

(a) the month in which the contributor died, in the case of a survivor who at the time of the death of the contributor has reached thirty-five years of age or was a survivor with dependent children,

(b) the month in which the survivor became a survivor who, not having reached sixty-five years of age, is disabled, in the case of a survivor other than a survivor described in paragraph (a), or

(c) the month in which the survivor reached sixty-five years of age, in the case of a surviving spouse other than a survivor described in paragraph (a) or (b),

but in no case earlier than the twelfth month preceding the month following the month in which the application is received.

[18] The effect of this provision is while paragraph 72(1)(a) states that the pension is payable commencing the month following the month in which the contributor died; subsection 72(1) also states that "in no case earlier than the twelfth month preceding the month following the month in which the application is received."

[19] The Tribunal finds that the Appellant filed her survivor's pension application in May 2014. In accordance with subsection 72(1) of the CPP, the earliest the Appellant's survivor's pension could be payable is eleven months prior to May 2014, which is June 2013.

[20] June 2013 is the date that the Respondent began paying the survivor's benefit to the Appellant, which is eleven months prior to the date of application. As a result, the law does not allow the Appellant to receive retroactive a survivor's pension earlier than June 2013.

[21] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[22] The appeal is summarily dismissed.

Judy Daniels

Member, General Division - Income Security