

Citation: *S. E. v. Minister of Employment and Social Development*, 2015 SSTGDIS 118

Date: October 22, 2015

File number: GP-14-1607

GENERAL DIVISION- Income Security Section

Between:

S. E.

Appellant

and

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

Respondent

Decision by: Heather Trojek, Member, General Division - Income Security Section

Heard by Teleconference on October 5, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

S. E. - Appellant

M. E. – Witness (father/contributor)

INTRODUCTION

[1] The Appellant's application for Child Contributor benefits or Declaration of Attendance at School form for the period from January 2014 to April 2014 was date stamped by the Respondent on January 14, 2014.

[2] The Respondent denied the application initially and in a letter dated February 27, 2014 upon reconsideration. She filed an appeal of the Respondent's reconsideration decision with the SST.

[3] Although the Appellant indicates in her notice of appeal that she is seeking entitlement to benefits ongoing from July 2012, the Tribunal's jurisdiction is limited to time period denied in the Respondent's letter dated February 27, 2014, as that is the only decision referred to in her notice of appeal.

[4] On August 19, 2015, the Respondent advised the Tribunal it has received other applications for child contributor benefits from the Appellant and is holding them in abeyance pending the outcome of the current appeal.

[5] The hearing of this appeal was by Teleconference for the following reasons:

- a) There are gaps in the information in the file and/or a need for clarification.
- b) Credibility is not a prevailing issue.

THE LAW

[6] According to Subsection 42 (1) of the CPP a "dependent child" of a contributor means a child who

- (a) is less than eighteen years of age,
- (b) is eighteen or more years of age but less than twenty-five years of age and is in full-time attendance at a school or university as defined by regulation, or
- (c) is a child other than a child described in paragraph (b), is eighteen or more years of age and is disabled, having been disabled without interruption since the time he reached eighteen years of age or the contributor died, whichever occurred later;

[7] Section 66 (1) of the CPP Regulations states that:

For the purpose of subsection 42(1) of the Act, “full-time attendance at a school or university” means full-time attendance at a school, college, university or other educational institution that provides training or instruction of an educational, professional, vocational or technical nature.

[8] Section 66 (2) goes on to state that where a dependent child

- (a) after having been in full-time attendance at a school or university at the beginning of an academic year, is absent from the institution, or
- (b) is absent owing to his failure to resume full-time attendance at a school or university during an academic year by reason of an illness, that child shall be considered to be or to have been in full-time attendance throughout that absence including the normal period of scholastic vacation if
- (c) Immediately after such absence the child resumes full-time attendance at a school or university at any time during that academic year; or
- (d) where it is determined by the Minister that the child is unable to comply with paragraph (c), he resumes full-time attendance at a school or university in the next ensuing academic year.

[9] Regulation 67(a) states an applicant or beneficiary shall, in support of his claim as a dependent child of 18 or more years of age who

- (a) is or has been enrolled in a course requiring full-time attendance at a school or university, file with the Minister a declaration signed by a responsible officer of the institution, certifying as to such enrolment.

ISSUE

[10] The Tribunal must decide if the Appellant was a “full time” student from January 2014 to May 2014 and thus entitled to a disabled contributor’s child’s benefit for that time period.

ORAL EVIDENCE

[11] At the hearing the Appellant confirmed that she was born on X X, 1991. She lives with her parents and began attending M. College in 2010. Initially she was enrolled in the Child Youth Worker program. In January 2011 she switched to the Early Childhood Education (ECE) Program. Before she was hospitalized for schizophrenia she completed four credits in the ECE program.

[12] She did not attend school in 2012 and 2013 because she was being treated for schizophrenia. She was hospitalized for her condition in 2013.

[13] In January 2014, she returned to M. College and registered in two night school courses which were needed for her ECE program. One of the two courses was called Creative and Innovative thinking; she could not recall the name of the second course.

[14] She attended one her classes on Monday evenings and the other on Thursday evenings. Both classes were two hours in length; they started at 6:30 p.m. and ended at 8:30 p.m. There were approximately twenty people in each class.

[15] Attendance was taken at the beginning each class. A paper was passed around and the students who were in attendance signed it. Although attendance was taken, the students were not given a mark or grade for it.

[16] The Appellant’s father drove her to school every evening; it is a ten minute drive from her house to the college. If her father did not drive her, she would have to take two buses to get to school.

[17] She passed both the classes that she took that semester. She recalls that her marks were good and believes that she got above 70% in each.

[18] When asked about her attendance, she testified that she was sick for one week; as a result she missed one class in each course. That was the only time that she did not miss classes that semester. In order to get caught up she recalls asking her classmates what they did in class and what homework needed to be completed.

[19] After that semester she did her first ECE placement; it started in June 2014 and lasted for nine days. She attended every day from 8:00 a.m. to 4:00 p.m. In addition to attending her placement she also had to complete on-line assignments which took approximately two hours a week. The Appellant passed her first placement. She confirmed that she attended eight of the nine days that she was required to attend. She missed one day because she had to attend a family function.

[20] She did her second placement in July 2014. It was one month in length. Like her first placement, she attended from 8:00 a.m. to 4:00 p.m. every other day of the week. She also had to complete two hours of on-line assignment per week. Every day she had to sign an attendance form. Attendance was a component of her mark. During this placement she missed one day due to illness. Unfortunately, she failed her placement; she believes that she was unable to pass due to the side effects of her medication.

[21] She returned to school in May 2015 and attempted to redo her second placement. This placement was also one month in length. She was required to work the same hours she did in her previous placement; she also had to complete the same on-line assignments. She recalled missing one day of her placement due to illness. Unfortunately, she did not achieve a passing grade in this placement and was unable to stay in the ECE program.

[22] In September 2015, she enrolled in a new program called Office Administration and Legal Services; she is currently enrolled in five courses.

[23] She testified that after she was hospitalized for schizophrenia she was too tired and too stressed out to take more than two courses. On the advice of her doctor she took a reduced course load.

[24] When asked what M. College defines as being full-time student, she testified that students taking six courses a semester are considered to be full-time.

Witness

[25] The Appellant's father testified that he started to receive CPP disability in July 2012.

[26] He lives with his wife and their seven children.

[27] In January 2012, he drove the Appellant to school and picked her up. He was able to do this because he does not work. He drove her to school on Tuesday and Thursday evening. He recalled that the only time she missed school was when she was sick for one week.

DOCUMENTARY EVIDENCE

[28] According the Office of the Registrar at M. College, the Appellant was enrolled in six courses in the child and youth worker program from January 2011 to April 2011. This meets or exceeded the minimum requirement to be considered a full-time student at the College (GD4-26).

[29] The Appellant was enrolled in the Early Childhood Education (ECE) program at M. from September 2011 to December 2011. She was registered in five courses. According to the Office of the Registrar this does meet or exceed the minimum requirement to be considered a full-time student (GD-23).

[30] Ms. Donna Rosizky, Registered Nurse, Case Manager, TOPSS Team (Transitional Outpatient Program for Schizophrenic Service), confirms that the Appellant was hospitalized from February 2013 and June 2013 and is still in recovery (GD4-11).

[31] Dr. Katalin Ivanyi, psychiatrist, confirms in a CPP illness certificate dated January 22, 2014 that the Appellant has schizophrenia and was off school December 2011 to January 2014 (GD4-31-32).

[32] The Office of the Registrar at M. College Appellant confirms in the declaration of attendance received by the Respondent on January 14, 2014, that from January 13, 2014 to April 21, 2014, the Appellant was taking two evening continuing education classes in the ECE program. In a declaration of attendance, the college confirmed that this course load "does not" meet or exceed the minimum requirement to be considered a full-time student (GD4-36).

[33] From May 5, 2014 to August 22, 2014, the Appellant took two placement courses through the continuing education department at M. College. The numbers of hours she was required to attend per week is seven. According to the Office of the Registrar at the College, this does not meet the minimum requirement to be considered a full-time student (GD4-15).

[34] The Appellant took two part-time night school courses in ECE program through the continuing education department at M. College from January 12, 2015 to April 16, 2015. In a declaration of attendance dated January 15, 2015, the college certified that this” does” meet or exceed the minimum requirement to be considered a full-time student (GD4-36) (GD5).

SUBMISSIONS

[35] The Appellant submitted that she qualifies for a disabled contributor’s child benefit because:

- a) She has and continues to be a student at M. College;
- b) Due to the effects of her schizophrenia, her doctors recommended that she take a reduced course load in 2014.

[36] The Respondent submitted that the Appellant does not qualify for disabled contributor child benefit because:

- a) She has not been in full time attendance since the contributor’s effective date;
- b) Although, the Appellant submitted an illness certificate, it can only be used when a student starts full time attendance and cannot complete that school year due to illness.

ANALYSIS

[37] The Respondent submits that the Appellant is not entitled to child contributor benefits under the provisions for illness contained in section 66 (2) of the CPP. In order to be entitled to benefits under this section the Appellant would have had to have been enrolled in classes in the same academic year that she was ill or the ensuing academic year. As the Appellant never enrolled in classes in the 2012/2013 academic year, she could not be entitled to benefits in that

academic year or in following academic year; the Tribunal therefore agrees with the Respondent and finds that the Appellant is not entitled to benefits under this section of the CPP.

[38] The Tribunal, however, does not agree with the Respondent's submission that the Appellant was not in full time "attendance" at M. College from January 2014 to April 2014.

[39] According to the Federal Court of Appeal, the CPP is benefits-conferring legislation; such legislation has a benevolent purpose and ought to be interpreted in a broad and generous manner with any doubt arising from the language of the legislation being resolved in favour of the Appellant (*Villani v. Canada (A.G.)*, 2001 FCA 248).

[40] At first blush the Tribunal agrees that the plain language meaning of "full-time" attendance means enrollment in the maximum number of courses/classes normally required to complete a degree or diploma within an anticipated time period. However the Supreme Court of Canada in *Rizzo* found that it is not sufficient to restrict analysis to the plain language meaning of statutory words, this is particularly true when it comes to the interpretation of benefits conferring legislation (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27).

[41] When interpreting the meaning of "full-time" attendance, the Tribunal was influenced by two decisions by the former Pension Appeals Board (PAB).

[42] In *MHRD v. Ruelland* (March 21, 1997), CP 4084 (PAB), the Board found that the Appellant's attendance at an adult training centre for twelve hours a week in the evenings fulfilled the definition of full-time. In its decision the Board states "that if the Parliament of Canada had intended the Act and Regulations to be more restrictive in terms of what constitutes full-time attendance that legislative body would have to be more specific."

[43] In *MHRD v. Attewell* (January 15, 1999), CP 6345 (PAB), the Board found that the Appellant's attendance at one course for eight hours a week at an educational institution which enables students who had dropped out of the regular school system to continue their education also fulfilled the definition of full-time.

[44] In keeping with these decisions, the Tribunal finds that it is not the number of courses that the Appellant is enrolled in that determines if her attendance is full time; but whether she

attended on a full-time basis the courses that she was enrolled in. In the Tribunal's opinion, this is the type of broad and generous interpretation that has been endorsed by the Federal Court of Appeal and Supreme Court of Canada.

[45] The fact the CPP or its Regulation do not specifically define what is meant by "full time attendance" gives the Tribunal the ability to assess each case on its own merits and does not confine entitlement to a one-size fits all scenario. It also opens up the possibility of entitlement to students, such as the Appellant, who are unable, as a result of disability, to attend school according to the plain language meaning of "full-time". In the Tribunal's opinion if the Parliament had intended to exclude these students from entitlement to child contributor benefits, it would not have left the definition of "full-time attendance" open to interpretation.

[46] The Tribunal found the Appellant to be a very credible witness. Her testimony was straightforward, believable and supported by the contemporaneous evidence contained in her file. At the hearing the Appellant testified that she attended and completed two courses at M. College between January 2014 and April 2014. She attended classes two days a week for two hours, for a total of six hours a week. Her father drove her to and from each class. Her evidence was supported by the testimony provided by her father at the hearing. The Appellant and her father both testified that she missed one week of classes during the semester in question due to illness. The Appellant's attendance record between January 2014 and April 2014 was essentially perfect. As a result, the Tribunal finds that the Appellant was in full-time attendance at M. College from January 2014 to April 2014, and is thus entitled to the child contributor benefit during that time period.

[47] Section 67(a) of the CPP regulations states that Appellants who claim entitlement to a child contributor benefit must file with the Minister a declaration signed by a responsible officer of the educational institution that they attend; this declaration is to certify that they are enrolled in a course requiring full-time attendance. In the Tribunal's opinion, the requirement to file such a declaration cannot be interpreted to mean that full-time attendance is determined or defined by the policy of the educational institution which the student is registered; if Parliament had intended that to be the case, it would have made that intention clear. In the Tribunal's opinion, the language used in the regulation is not definitive. Like the term "full-time attendance" there

is no definition of what the Legislature meant of defined as being “enrolled in a course” which is the language used in the Section 67(a) of the regulation. The Tribunal, therefore finds, that its interpretation of full-time attendance is not inconsistent with the wording in the Regulation.

[48] The declaration of attendance received by the Respondent on January 14, 2014, indicates that the number of courses the Appellant is enrolled in does not meet the minimum requirement to be considered a full-time student M. College. At that time she was enrolled in two evening classes. The Tribunal notes that a declaration of attendance dated January 15, 2015, confirms that the Appellant took the same number of courses from January 12, 2015 to April 16, 2015. In contrast with the former declaration, the college indicates that this meets the minimum course load required to be considered a full-time student.

[49] Regardless, the Tribunal finds that how the declaration of attendance is completed by educational institution is not determinative of whether or not the Appellant is a full-time student. The Tribunal’s opinion is consistent with the finding of the PAB in *MHRD v. Attewell*, supra, which found that the filing of the declaration is procedural as opposed to a substantive requirement; as such, non-compliance, does not nullify the Appellant’s entitlement to benefits. In the Tribunal’s opinion, the fact that M. College did not indicate that the Appellant meet its definition of a full-time student between January 2014 and April 2014 does not disentitle her to benefits or mean that she was not in full time attendance, as contemplated under the CPP.

CONCLUSION

[50] Based on the totality of the evidence and for the reasons noted in its decision, the Tribunal finds that the Appellant is entitled to disabled child contributor benefits from January 2014 to April 2014.

[51] The appeal is allowed.

Heather Trojek
Member, General Division - Income Security