

**Citation: *P. C. v. Minister of Employment and Social Development*, 2015 SSTAD 805**

**Date: January 13, 2016**

**File number: AD-15-237**

**APPEAL DIVISION**

**Between:**

**P. C.**

**Appellant**

**and**

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

**Respondent**

**Decision by: Valerie Hazlett Parker, Member, Appeal Division**

**Decided on the record on June 25, 2015**

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* Orphan's Benefit for her child in October 2002. This was granted, and payment commenced in November 2001. The Appellant requested further retroactive payment of the Orphan's Benefit to August 1998 when the child's father passed away. The Respondent denied this request. The Appellant appealed this decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. On April 15, 2015 the General Division summarily dismissed the appeal.

[2] The Appellant appealed to the Appeal Division of the Social Security Tribunal. She contended that she suffers from fetal alcohol syndrome and mental illnesses that rendered her incapable of applying for this benefit for her child prior to October 2002. The Respondent argued that the standard of review to be applied to the General Division decision in this case was reasonableness. Further, it argued that the decision contained no error of fact or of law, and was reasonable so the appeal should be dismissed.

[3] This appeal was decided on the basis of the written record for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility of the parties is not a prevailing issue.
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### ANALYSIS

[4] The Appellant made no submissions regarding what standard of review should be applied to the General Division decision. The Respondent contended that the proper standard of review was reasonableness. The leading case on this is *Dunsmuir v. New Brunswick* 2008

SCC 9. In that case, the Supreme Court of Canada concluded that when reviewing a decision on questions of fact, mixed law and fact, and questions of law related to the tribunal's own statute, the standard of review is reasonableness; that is, whether the decision of the tribunal is within the range of possible, acceptable outcomes which are defensible on the facts and the law. This reasoning was adopted by the Federal Court of Appeal in *Atkinson v. Canada (Attorney General)* 2014 FCA 187, a case which also involved the *Canada Pension Plan*. This appeal involves a question of mixed law and fact. The standard of review to be applied is reasonableness.

[5] The *Department of Employment and Social Development Act* governs the operation of the Social Security Tribunal. Subsection 58(1) of the Act says that only grounds of appeal are:

- a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Therefore, I must decide if the Appellant has presented a ground of appeal under s. 58 of the *Department of Employment and Social Development Act* that renders the General Division decision unreasonable.

[6] The Appellant argued that she was incapable of applying earlier for the Orphan's Benefit due to fetal alcohol syndrome and mental illness. This argument was presented to the General Division and considered by it when it made the decision. This argument does not point to any error made by the General Division.

[7] The principles of natural justice are concerned with ensuring that parties to a proceeding are able to present their case, answer the case against them, and have a decision

made impartially based on the evidence and the law. The Appellant did not allege that any of these principles were breached.

[8] The General Division decision correctly set out the sections of the *Canada Pension Plan* that apply this case. It also referred to the Federal Court of Appeal decision of *Stratton v. Canada (Attorney General)* 2006 FCA 370, and applied it to the facts before it. The General Division also correctly stated that this Tribunal is not able to grant relief to any claimant based on compassionate grounds. The General Division made no error of law.

[9] From this I am satisfied that the Appellant has not raised a ground of appeal under the *Department of Employment and Social Development Act*. There is no legal basis on which to conclude that the General Division decision was unreasonable. This Tribunal is not able to “bend the rules” for any claimant.

[10] For these reasons, although it may seem harsh, this appeal is dismissed.

*Valerie Hazlett Parker*  
Member, Appeal Division