



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *The Estate of B. T. v. Minister of Employment and Social Development*,  
2016 SSTGDIS 45

Tribunal File Number: GP-15-1499

BETWEEN:

**The Estate of B. T.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Shane Parker

HEARD ON: June 15, 2016

DATE OF DECISION: June 20, 2016

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

H. G., administrator of the estate and sister of the deceased contributor, Mr. B. T.

### **BACKGROUND**

[1] This appeal relates to whether the Appellant is entitled to the Canada Pension Plan (CPP) death benefit.

[2] The deceased contributor (the late B. T., “B. T.” or “Mr. B. T.”) passed away on December 17, 2008 (see: Certificate of Death at GD2-8). On July 7, 2009 the Public Guardian and Trustee of Saskatchewan (“Saskatchewan”) applied for the CPP death benefit as a court appointed administrator of Mr. B. T.’s estate (see: Application at GD2-5 to 7, the “2009 application”). On June 11, 2014 Mrs. H. G., in her capacity as court appointed administrator of Mr. B. T.’s estate, submitted another CPP death benefit application (the “2014 application”).

[3] On July 22, 2014 the Respondent denied the June 2014 application. It maintained its denial in its reconsideration dated February 27, 2015. Mrs. H. G., acting on behalf of the estate, appealed the reconsideration decision to the Tribunal on April 22, 2015 (GD1).

[4] The Tribunal sent a Notice of Hearing letter to the parties on April 6, 2016. The Notice informed that the hearing was scheduled for June 15, 2016 (GD0).

[5] On June 2, 2016 the Respondent filed a request that the Tribunal summarily dismiss the appeal on the basis that, in its submission, the appeal has no reasonable chance of success (GD3).

[6] The hearing of the appeal proceeded by teleconference for the reasons set out in the Notice of Hearing, namely:

- The issues under appeal are complex; and,
- There are gaps in the information in the file and/or a need for clarification.

**PRELIMINARY ISSUE: Request to summarily dismiss the appeal (GD3)**

[7] At the outset of the hearing, Mrs. H. G. argued that the Respondent's submissions requesting a summary dismissal of the matter and found at page GD3 should not be admitted by the Tribunal on the basis that it was filed after the filing period deadline in the Notice of Hearing. She did not receive GD3 until June 9, 2016, after the response period in the Notice of Hearing, and less than a week before the scheduled hearing. She did not have a reasonable opportunity to respond to GD3.

[8] The Tribunal must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success according to subsection 53(1) of the *Department of Employment and Social Development Act*. Mrs. H. G. makes a compelling argument that the Respondent's request to summarily dismiss should not be admitted as part of the hearing file. For the reasons discussed in the Notice of Hearing and below, this appeal is not an appropriate candidate for summary dismissal whether GD3 is admitted or not. Moreover, an adjournment would be inappropriate because Mrs. H. G. did not request one, and was prepared to proceed with the hearing. The Respondent's request to summarily dismiss the appeal is hereby denied.

**MAIN ISSUE: ENTITLEMENT TO THE CPP DEATH BENEFIT**

**SUBMISSIONS PERTAINING TO THE MAIN ISSUE UNDER APPEAL**

[9] Mrs. H. G. articulates the Appellant's submission this way in the Notice of Appeal:

My brother B. T. had final expenses related to his death. My mother G. T. paid them. He did not have a will. He did not have a common law spouse, he resided alone; my mother G. T. would have been the only valid person to receive a death benefit for my brother B. T. My mother G. T. died March 18, 2014.

My mother and I were filing for B. T.'s death benefit last January after she told me that she had not filed for it. We applied for a copy of his birth certificate. I received it and made application for his death benefit after that.

I believe you paid B. T.'s death benefit out to someone else in error. My brother deserves a marker/headstone at his grave. My mother could not afford it. I am now an administrator for my brother B. T.'s estate and would like to receive the benefit so that I may purchase a headstone to honor my brother.

(GD1-3)

[10] At the close of the hearing, Mrs. H. G. argued that the benefit paid to Saskatchewan should be completely reversed, because it was she and her late mother who paid Mr. B. T.'s funeral expenses, not Saskatchewan. She argued that Saskatchewan should not be allowed to be paid the death benefit when reasonable inquiries by the Respondent would have determined Mr. B. T. had next of kin.

[11] The Respondent's submission can be summarized as follows: since Mr. B. T.'s estate did not apply for the CPP death benefit within 60 days of his death, at law the Respondent correctly paid the benefit to the first applicant, Saskatchewan. The benefit can only be paid once, and therefore it cannot be paid to Mr. B. T.'s estate.

## **TESTIMONY**

[12] Mrs. H. G. said that the 60-day time period for an estate to apply for the benefit is a "flawed feature" of the CPP, because it barely allows next of kin a grieving period, let alone the opportunity to deal with an estate's financial affairs. She said that she and her late mother paid Mr. B. T.'s funeral expenses. She added that neither she nor Mr. B. T.'s late mother were contacted by the Respondent to inquire about the existence of Mr. B. T.'s estate or next of kin, following his death. She was perplexed how the Public Guardian (Saskatchewan) became administrator of the estate, and received the death benefit, when Mr. B. T. had three living relatives in the same city. She later acknowledged that it may have had to do with the fact that Mr. B. T. died without a will. In any event, Mrs. H. G. added that with some due diligence by the Respondent, this matter could have been dealt with through Mr. B. T.'s living relatives, rather than the Public Guardian (Saskatchewan).

## LAW and ANALYSIS

[13] Section 60 of the CPP expresses the general principle that benefits under the CPP cannot be paid unless they are applied for.

[14] The relevant provisions of the CPP pertaining to entitlement to the death benefit are as follows.

[15] Section 71 of the CPP and subsection 64 of the CPP Regulations govern to whom payment of the CPP death benefit is made:

**71.**(1) Where payment of a death benefit is approved, the Minister shall, **except as provided in subsections (2) and (3)**, pay the death benefit to the estate of the contributor.

(2) Exceptions - The Minister may direct payment of a death benefit in whole or in part to such person or body **as is prescribed** where

(a) he is satisfied, after making reasonable inquiries, that there is no estate;

(b) the estate has not applied for the death benefit within the prescribed time interval following the contributor's death; or

(c) the amount of the death benefit is less than the prescribed amount.

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**64.** (1) When paragraph 71(2)(a) of the Act applies **or when the estate of a deceased contributor has not applied for the death benefit within the interval of 60 days after the contributor's death**, or when the amount of the death benefit is less than two thirds of 10% of the Year's Maximum Pensionable Earnings for the year in which the contributor died, in the case of a death that occurred before January 1, 1998, or less than \$2,387, in the case of a death that occurred after December 31, 1997, a direction under subsection 71(2) of the Act may, subject to subsections (2) and (3), be given for payment of the death benefit

(a) to the individual or institution who **has paid or is responsible for the payment of the deceased contributor's funeral expenses;**

(b) in the absence of an individual or institution described in paragraph (a), to the survivor of the deceased contributor; or

(c) in the absence of an individual or institution referred to in paragraph (a) and a survivor referred to in paragraph (b), to the next of kin of the deceased contributor.

[bold emphasis added here]

[16] Subsection 71(3) of the CPP provides that the death benefit can only be paid once:

**71. (3)** Where a payment has been made **pursuant to subsection (2)**, the Minister is not liable to make that payment to any subsequent applicant.

[bold emphasis added here]

[17] Finally, section 57 of the CPP explains the amount of the death benefit payable:

**57. (1)** Subject to subsection (1.1), a death benefit payable to the estate of a contributor is a lump sum amount equal to

(a) six times the amount of the contributor's retirement pension, calculated as provided in subsection (2), or

(b) ten per cent of the Year's Maximum Pensionable Earnings for the year in which the contributor died, whichever is the lesser.

(1.1) *Maximum in cases of death after December 31, 1997* - Where the contributor's death occurs after December 31, 1997, the lump sum referred to in subsection (1) shall not exceed \$2,500.

[18] The Federal Court of Appeal explained how these provisions work in *Cormier v. Canada (Minister of Human Resources Development)*, 2002 FCA 514. The Court stated that the only statutory liability of the Respondent to pay a death benefit is owed to the estate. If the estate fails to apply within 60 days of the death, the only effect of this failure is to trigger the discretion exercisable by the Respondent under subsection 71(2) to pay the benefit to statutorily

prescribed persons, who do not include the estate of the contributor. The Court added that the Respondent's obligation to pay the estate under subsection 71(1) continues, even if representatives of the estate do not apply for the death benefit within the 60 days of death. However, if the estate does not apply within 60 days and the Respondent makes the discretionary payment under subsection 71(2), subsection 71(3) expressly provides that the Respondent is no longer liable to pay the estate if it subsequently applies under subsection 71(1).

[19] In the present appeal, Mr. B. T. passed away on December 17, 2008. There is no evidence of an application for the death benefit within 60 days of that date. The Respondent made a discretionary payment to Saskatchewan pursuant to paragraph 71(2)(b) of the CPP after Saskatchewan applied for the benefit in July 2009. Paragraph 71(2)(b) provides the discretion to the Respondent to pay the death benefit to a statutorily prescribed person or body.

[20] The applicable statutory prescription in section 64 of the CPP Regulations is important and cannot be ignored. Subsection 64(a) sets out the specific condition that the institution or individual other than the estate (Saskatchewan in this case) pay or assume responsibility for payment of the deceased contributor (Mr. B. T.)'s funeral expenses, in order to receive the death benefit. In the present case, Saskatchewan did not meet this precondition. In its 2009 application it deliberately and specifically applied for the death benefit as a court appointed administrator by placing an 'X' in the box next to that option. More notably, the box next to "the person responsible for the funeral expenses" directly beneath is left blank (see Question 12 of the 2009 application at GD2-6). Next to this "funeral expense" option in the application, the following instructions are found: "You must submit the funeral contract or funeral receipts with your application." Not surprisingly, there is no evidence anywhere in the appeal file that Saskatchewan paid or assumed responsibility for Mr. B. T.'s funeral expenses. The only evidence related to payment of Mr. B. T.'s funeral expenses is that given under oath by Mrs. H. G., who stated that both she and Mr. B. T.'s late mother, as Mr. B. T.'s next of kin, paid these expenses.

[21] Presumably without this knowledge, given the absence of evidence of any inquiries by the Respondent into the existence of an estate or next of kin, the Respondent paid the benefit to Saskatchewan. The Respondent relies upon subsection 71(3) of the CPP that it is only liable to pay the benefit once. However, in reviewing the Federal Court of Appeal's explanation and the applicable legislative provisions cited above, the Tribunal finds that the Respondent is not protected by subsection 71(3) in this case. Subsection 71(3) explicitly provides the following condition for the one-time payment liability to apply: that payment has been made "pursuant to subsection (2)", meaning subsection 71(2) of the CPP. Here, the Respondent did not adhere to subsection 71(2) because it did not pay the benefit "as is prescribed". Section 64 of the CPP Regulations sets out the prescription that payment be made in the following order of preference: a) the individual or institution who has paid or is responsible for the payment of the funeral expenses of the deceased contributor (Mr. B. T. in this case); b) the survivor of Mr. B. T.; or c) the next of kin of Mr. B. T. Saskatchewan clearly did not meet any of these prescriptions. The Respondent erred in paying the benefit to Saskatchewan. Therefore, the Respondent's liability to pay the benefit to the estate remains pursuant to subsection 71(1) of the CPP.

[22] In summary, since the one-time payment liability of subsection 71(3) is not engaged in this case, the Tribunal finds that payment of the benefit shall be made to the Appellant. As commented by the Federal Court of Appeal above, and found by the Tribunal here, the Respondent's obligation to pay the death benefit to the estate continues pursuant to subsection 71(1) of the CPP. The Appellant is entitled to the death benefit because the Respondent did not follow the exception to this rule set out in subsection 71(2), having paid the benefit to an entity other than what is prescribed under section 64 of the Regulations. As such, subsection 71(3) does not absolve the Respondent from its statutory liability to pay the benefit to the Appellant.

## **CONCLUSION**

[23] The appeal is allowed. The Respondent shall pay the CPP death benefit to the Appellant.

Shane Parker  
Member, General Division - Income Security