



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. D. v. Minister of Employment and Social Development*, 2016 SSTGDIS 56

Tribunal File Number: GP-14-2409

BETWEEN:

M. D.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Freda Shamatutu

TYPE OF HEARING: On the record

DATE OF DECISION: July 22, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant's application for a CPP survivor's pension was date stamped by the Respondent on May 8, 2012. The Respondent denied the application at the initial and reconsideration levels. The Appellant appealed to the Social Security Tribunal.

[2] The hearing of this appeal was by On the Record for the following reasons:

- a) The Appellant resides in the Czech Republic.
- b) She advised that she could not participate in any hearings due to financial and health reasons. She speaks only Czech and can only communicate in writing.
- c) The method of proceeding provides for the accommodations required by the Appellant.
- d) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[3] Section 44(1)(d) of the CPP provides that a survivor's pension shall be paid to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period.

[4] Section 44(3) of the CPP provides that for the purposes of paragraphs (1)(d), 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 with no less than 3 years; or (b) for at least ten years.

[5] Section 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.

[6] Section 97 (1) of the CPP provides that any entry in the Record of Earnings relating to the earnings or contribution of a contributor shall be conclusively presumed to be accurate.

ISSUE

[7] The issue is whether the contributor in this case (Mr. K. D.) met the MQP earnings and contribution requirements in order for the Appellant to qualify for the CPP survivor's pension.

EVIDENCE

[8] The Appellant met her husband (the contributor) in 1995 and married him in 1996. She has no idea when he came to Canada as he never discussed this with her. He passed away in a traffic accident in Canada on September 21, 2007. Prior to his death, he provided her with his social insurance number and told her that in the event of his death, she was entitled to receive a pension from the Canadian authorities.

[9] The contributor's Record of Earnings (ROE) indicates that he made valid contributions to the Canada Pension Plan in 1984, 1985, 1987, 1988, 1989 and 1990 (6 Years).

[10] The contributor had made contributions to the Czech Republic which was confirmed by the Czech Republic social security authorities in 1942, 1943, 1944, 1945, 1946, 1947 and 1948.

SUBMISSIONS

[11] The Appellant submitted that she qualifies for the CPP's survivor's pension because:

- a) The contributor had made contributions in the Czech Republic and in Canada which should qualify her for a survivor's pension in Canada pursuant to the Agreement between Canada and the Czech Republic.
- b) She is not fit for work due to her health and her age and is in financial difficulties.
- c) A favourable decision would make her living situation easier.

- d) Her husband's sudden death in a traffic accident in Canada prevented him from safeguarding her financially. However, he was convinced that she would receive a pension from the Canadian authorities in the event of his death.
- e) She is entitled to a survivor's pension as she has proven that the contributor had made contributions for a period of 11 years in the Czech Republic and that he had also made contributions to the CPP.

[12] The Respondent submitted that the Appellant does not qualify for the CPP's survivor's pension because:

- a) The Canada Pension Plan states that sufficient contributions must be made to the Canada Pension Plan for an appellant to be eligible for a survivor's pension.
- b) The contributor did not make sufficient contributions to the Canada Pension Plan for the Appellant to qualify for the CPP survivor's pension.
- c) Under the Social Security Agreement between Canada and the Czech Republic, creditable periods from the Czech Republic may be used to make up the deficiency in the Canada Pension Plan contributions.
- d) The authorities in the Czech Republic have confirmed that the contributor only has seven (7) years of creditable periods under the Czech Republic's legislation from 1942 to 1948.
- e) Creditable periods before the start of the Canada Pension Plan in January 1966 cannot be considered. As the contributor's creditable periods in the Czech Republic are prior to 1966, they cannot be used to make up the required years to qualify the Appellant for the CPP survivor's pension. This means that contributions made in the Czech Republic cannot be considered under the terms of an International Social Security Agreement.
- f) The contributor needed a total of 9 years of contributions to qualify. He had 6 years of Canadian contributions and no contributions in the Czech Republic after January 1966 the start of the Plan.

- g) The evidence indicates that the deceased contributor did not make sufficient contributions to the Canada Pension Plan for the Appellant qualify for the CPP survivor's pension.

ANALYSIS

[13] To be entitled to a CPP survivor's pension, the contributor must have made sufficient contributions to the CPP. He must have made valid contributions to the CPP in at least one third of his contributory period with no less than 3 years (paragraph "a") or for at least 10 years (paragraph "b").

[14] Under the Social Security Agreement between Canada and the Czech Republic creditable periods from the Czech Republic may be used to make up for the deficiency in the Canada Pension Plan contributions.

[15] The deceased contributor's contributory period began in January 1966 and ended in March 1992, a total of 27 years. One third of 27 years is 9 years. According to the legislation, this means he needs to have made contributions to the CPP in at least 9 years of the 27 years of his contributory period. His record of earnings in Canada shows that he had valid contributions in Canada for the years 1984, 1985, 1987, 1988, 1989, and 1990 that is, a period of only 6 years.

[16] The Czech Republic authorities have confirmed that the contributor had seven years of creditable periods under that countries legislation from 1942 to 1948. Specifically he had made contributions in the Czech Republic in 1942, 1943, 1944, 1945, 1946, 1947 and 1948.

[17] The contributions made in the Czech Republic were made prior to January 1966. According to the CPP, creditable periods before the start of the Canada Pension Plan in January 1966 cannot be considered.

[18] This means the contributions to the Canada Pension Plan and the creditable periods under the Czech Republic's social security scheme are insufficient for the Appellant to qualify for a Canada Pension Plan survivor's pension.

[19] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute.

[20] The Tribunal is required to interpret and apply the provisions as they are set out in the CPP. The Tribunal is not empowered to exercise any form of equitable power in respect of appeals coming before it.

[21] The evidence supports that the contributor did not meet the minimum requirements for the Appellant to qualify for a survivor's pension as set out in paragraph 44(1)(d) of the CPP and Article 11 paragraph (1) of the Agreement on Social Security Between Canada and the Czech Republic.

[22] The Appellant does not qualify for the CPP's survivor's pension.

CONCLUSION

[23] The appeal is dismissed.

Freda Shamatutu
Member, General Division - Income Security