Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *Minister of Employment and Social Development v. S. T.,* 2016 SSTADIS 415

Tribunal File Number: AD-15-1378

BETWEEN:

Minister of Employment and Social Development
(Formerly known as the Minister of Human Resources and Skills Development)

Appellant

and

S. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Hazelyn Ross

HEARD ON: October 13, 2016

DATE OF DECISION: October 25, 2016

Canada

REASONS AND DECISION

IN ATTENDANCE

Appellant's representative	-	Marcus Dirnberger
Respondent	-	S. T.
Respondent's mother	-	A. T.

INTRODUCTION

[1] On September 28, 2015 the General Division of the Social Security Tribunal of Canada, (the Tribunal), issued a decision in which it determined that the Respondent was eligible to receive a Disabled Contributor's Child benefit for the period September 2012 to December 2012.

[2] The Appellant sought and obtained leave to appeal the decision on the basis that the General Division may have erred, in law and in fact, when it determined that the Respondent had been in full-time attendance during this period.

[3] This appeal proceeded by Videoconference for the following reasons:

- The request of the appellant.

ISSUE

[4] The Appeal Division was required to determine the following issues:

1. What is full-time attendance as contemplated by the *Canada Pension Plan* (CPP)?
2. Whether the Respondent's attendance at college during the disputed period met the criteria for full-time attendance, thereby entitling her to the benefit?

THE LAW

Grounds of Appeal

[5] The grounds of appeal from a decision of the General Division are set out at subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), namely, that:

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.

Disabled Contributor's Child benefit

[6] Section 42 of the CPP and section 66 of the *Canada Pension Plan Regulations* (CPP Regulations) govern eligibility for receipt of the Disabled Contributor's Child Benefit. The definition of "Dependent Child" is set out in section 42 of the CPP while section 66 of the CPP Regulations addresses what is to be considered "full-time attendance". Subsection 42(1) provides that:

"Dependent Child" of a contributor means a child of the contributor 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 dies, whichever occurred later.

"disabled contributor's child" or any form of that expression of like import means a dependent child of a contributor who is disabled, but does not include a dependent child described in paragraph (c) of the definition "dependent child" in this section.

[7] Section 66 of the CPP Regulations provide as follows:

> **66. (1) For the purposes of paragraph (b) of the definition "dependent child" in 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 and a dependent child shall be deemed to be or to have been in full-time attendance at a school or university during an absence by reason of a normal period of scholastic vacation. (SOR/90-829, s. 30.)

SUBMISSIONS

[8] The Appellant's representative submitted that the Respondent was not entitled to receive the benefit because she was not in full-time attendance during the period in question. He argued that the General Division recognised this fact but equated the Respondent's part-time study with full-time attendance, which is not in line with the CPP. The Appellant's representative also submitted that at paragraph 34 of the decision, the General Division made conclusions about the Respondent; however, it was not clear how the General Division arrived at its conclusions. He pointed to a lack of evidence that the Respondent had a learning disability that would bring her within the definition of "disabled."

[9] The Respondent submitted that she met the definition of "full-time attendance" because while she was taking only two courses, these courses were pre-requisites and she could continue her studies only if she had completed them. She vigorously refuted any suggestion that she was disabled or had learning difficulties as implied by the General Division at paragraph 34.

ANALYSIS

Full-time attendance

[10] The Appellant's representative submitted that the General Division effectively gave no meaning to the term "full-time attendance". He argued that where a person fails and then takes two courses on a recommendation could not be full-time attendance and the General Division erred in law to come to the conclusion that it was

[11] The Appeal Division finds that neither the CPP nor section 66 of the CPP Regulations defines "full-time attendance." The only definition is found in section 66 of the Regulations.

However, the definition offered is circuitous in that it defines “full-time attendance at a school or university” as 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.” This gives no guidance as to how full-time attendance is to be quantitatively assessed.

[12] In everyday language “full-time” is generally understood as occupying the whole of an individual’s time or attention. This usage accords with the dictionary definition of the term.

Thus, the Appeal Division agrees with the Appellant’s representative that taking two courses for six hours each week is not full-time attendance. In fact, the General Division implicitly conceded this point when it stated that “it was persuaded that the Respondent’s attendance equated to full- time attendance.”

[13] In its decision, the General Division indicated that the Respondent’s testimony was “instructive” in assisting it to reach its decision. The Appellant’s representative submitted that this was an error of law as the General Division did not say why it found her testimony “instructive”.

[14] For her part, the Respondent submitted that she had difficulty with the courses in question but denied giving evidence that she suffered from a learning disability. She raised the question of prerequisite courses. While essentially presenting new evidence, the Appeal Division finds that the Respondent’s position casts further doubt on the General Division’s appreciation of the Respondent’s circumstances.

[15] However, the Appeal Division does not rely on the Respondent’s new submissions for its finding that the General Division appears not only to have based its decision on an erroneous finding of fact, that is, that the Respondent was disabled by virtue of a learning disability; but also that it made an error of law when it equated her part-time attendance with full-time attendance.

[16] The Appeal Division comes to this conclusion because it finds, as argued by the Appellant’s representative, that the Tribunal’s record does not contain any evidence that the

Respondent suffered from a learning disability. Therefore, the General Division had little or no objective basis for its findings.

[17] Accordingly, the Appeal Division is satisfied that the General Division decision is based on an erroneous finding of fact. The Appeal Division also finds that the General Division erred in its application of the law when it concluded that, during the period September 2012 to December 2012, the Respondent had been in full-time attendance at college.

CONCLUSION

[18] The appeal is allowed.

DECISION

[19] Pursuant to section 59 of the DESD Act, the Appeal Division finds that it is appropriate to give the decision that the General Division should have given, that is, that between September 2012 and December 2012 the Respondent was not in full-time attendance at college.

Hazelyn Ross
Member, Appeal Division