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

Citation: *P. D. v. Minister of Employment and Social Development*, 2017 SSTADIS 133

Tribunal File Number: AD-17-131

BETWEEN:

P. D.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: March 30, 2017

REASONS AND DECISION

OVERVIEW

[1] At its root, this case is about whether the Applicant is entitled to more than 11 months' retroactivity for a disabled contributor's child benefit (DCCB). The General Division determined that, under subsection 74(2) of the *Canada Pension Plan*, the maximum retroactive benefit allowed is no earlier than 11 months before an application for the DCCB was received. The Applicant seeks leave to appeal the General Division's decision, on the basis that it had failed to consider the evidence before it and had also failed to observe a principle of natural justice. The Applicant claims that the DCCB in respect of the Added Party, his third child, should be paid retroactively to cover the period between May 2010 and May 2015.

ISSUE

[2] Does the appeal have a reasonable chance of success?

FACTUAL BACKGROUND

[3] The relevant facts for the purposes of this application are as follows:

i. The Applicant filed an application for a Canada Pension Plan disability pension on May 14, 2010. The Respondent denied the application, leading the Applicant to appeal the decision to a Canada Pension Plan Review Tribunal, which in turn denied his appeal. The Applicant sought leave to appeal to the Pension Appeals Board, which granted leave to appeal in March 2013.

ii. In April 2014, the Applicant and the Respondent came to an agreement that the Applicant is disabled as defined by the *Canada Pension Plan* and that he is entitled to a disability pension commencing January 2010.

iii. The Added Party was born in May 2010.

iv. The Applicant filed an application for a DCCB in respect of the Added Party on June 5, 2015 (GD2-134).

[4] The Applicant states that he was unable to include the Added Party in his application for a Canada Pension Plan disability pension, because this child had yet to be born.

[5] In his application requesting leave to appeal, the Applicant stated that it was only after he began receiving payment for the Canada Pension Plan disability pension that he first realized that he was not receiving the DCCB in respect of the Added Party, due to the fact that he had not included the name of this child in the initial application for a disability pension.

[6] In a subsequent letter dated February 24, 2017, the Applicant claimed that, after the Pension Appeals Board granted leave to appeal, Service Canada officers informed him that he could not amend his application for a disability pension to include the Added Party as a child, as an appeal was pending.

GROUNDS OF APPEAL

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

> (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.

[8] Before granting leave, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the

appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[9] The Applicant claims that the General Division failed to consider some of the evidence and, in particular, the fact that the Added Party was not born until after he had filed an application for a Canada Pension Plan disability pension. He argues that the General Division should have considered this, along with the fact that he had waited a considerable period of time for a resolution of his appeal of the Respondent's decision denying him a disability pension in the first instance. In his letter of February 24, 2017, the Applicant claimed that he should be relieved of the retroactivity provisions under subsection 74(2) of the *Canada Pension Plan*, given that he had not been permitted to amend his application for a disability pension while an appeal to the Pension Appeals Board was pending[1].

[10] The Applicant's letter of February 24, 2017 suggests that, sometime prior to April 1, 2013, he was fully aware that the Added Party had not been named in the application for a disability pension, and that he was required to take some steps to ensure that he received the DCCB in respect of his youngest child. It is unclear whether, following the settlement agreement with the Respondent in April 2014, the Applicant undertook any immediate steps to apply for the DCCB in respect of the Added Party, until he filed the application for the DCCB in June 2015.

ANALYSIS

[11] The Applicant argues that the General Division failed to appreciate that the Added Party was born after he had already filed an application for a disability pension. In fact, the General Division addressed this at paragraph 18 of its decision, when the member wrote, "It is clear that the [Applicant] did not include his son [the Added Party] in his initial application [for a disability pension] as the child had not yet been born."

[1] As of April 1, 2013, any appeals which had not already been filed and heard by the Pension Appeals Board were transferred to the Social Security Tribunal – Appeal Division. The Applicant's appeal to the Pension Appeals Board would not have been "pending" after this date.

[12] The Applicant asserts that the General Division should have granted greater retroactivity, given the circumstances: (1) he had applied for a disability pension before the Added Party was born and (2) he was not permitted to amend his application for a disability pension, as there was a pending appeal before the Pension Appeals Board, and (3) without it, he faces financial hardship. In other words, he suggests that the General Division should have exercised its jurisdiction to grant greater retroactivity.

[13] It appears that the Applicant provided conflicting information in the application requesting leave to appeal and his letter dated February 24, 2017, regarding his knowledge about whether the Added Party would be receiving the DCCB. On the one hand, the Applicant claims that he was unaware that he was not receiving the DCCB in respect of the Added Party, until sometime after he began receiving payment of the disability pension. Yet, in his subsequent correspondence, he suggests that he was aware that he would not be receiving the DCCB in respect of the Added Party, and that he therefore sought to amend the application for a disability pension to include the Added Party as a disabled contributor's child while an appeal to the Pension Appeals Board was still pending.

[14] Setting these considerations aside, however, there are no provisions under the *Canada Pension Plan* or the DESDA that confer any jurisdiction on the General Division (or the Appeal Division for that matter) to consider any extenuating factors, or to extend the period of retroactivity. In other words, the General Division lacks any jurisdiction to grant a greater period of retroactivity. Indeed, the fact that the Added Party was born after the application for a disability pension had been made, or the fact that the Applicant might have been advised that he could not amend his application for a disability pension, were irrelevant considerations in calculating the amount of retroactivity to which the Applicant was entitled.

[15] The definitive factor in determining the amount of retroactivity for the DCCB is when the application for the DCCB was made. Subsection 74(2) of the *Canada Pension Plan* stipulates that the benefit is payable for each month "[…] in no case earlier than the twelfth month preceding the month following the month in which the application was received." The General Division was correct to apply these provisions. It was limited to granting no more than 11 months of retroactive benefits.

[16] Finally, the Applicant maintains that the DCCB should be paid retroactively up to May 2015, the month before he applied for the DCCB benefit in respect of the Added Party. However, the Applicant has already been provided with 11 months of retroactive benefits, which includes this timeframe up to May 2015. There are no provisions under the *Canada Pension Plan* that entitle him to receive a payment twice for the same timeframe.

[17] I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[18] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division