



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. D. Executrix of the Estate of A. P. v. Minister of Employment and Social Development*, 2017 SSTGDIS 42

Tribunal File Number: GP-16-3601

BETWEEN:

**B. D.
Executrix of the Estate of A. P.**

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Raymond Raphael

DATE OF DECISION: April 20, 2017

REASONS AND DECISION

INTRODUCTION

[1] B. D. in her capacity of executrix of the estate of A. P. (the deceased contributor) applied for a death benefit on behalf of the estate. The application was date stamped by the Respondent on September 16, 2015. [GD2-23]

[2] The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on November 1, 2016.

[3] This appeal was decided on the basis of the documents and submissions filed for the following reasons:

- a) The member has decided that a further hearing is not required.
- b) There are no gaps in the information in the file or need for clarification.
- c) 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

[4] Section 44(1)(c) of the CPP provides that a death benefit shall be payable to the estate of a deceased contributor who has made contributions for not less than the minimum qualifying period.

[5] Section 71.(1) of the CPP provides that where 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.

[6] Section 71.(2) of the CPP provides that 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.

[7] Section 71.(3) of the CPP provides that where a payment has been made pursuant to subsection (2), the Minister is not liable to make that payment to any subsequent applicant.

[8] Section 64(1) of the CPP Regulations provides that when the estate of deceased contributor has not applied for the death benefit within the interval of 60 days after the contributor's death 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.

ISSUE

[9] Is the Appellant estate entitled to the death benefit in relation to A. P., the deceased contributor?

EVIDENCE

[10] B. D. (B. D.) is the daughter of the deceased contributor A. P. and is also the executrix of his estate. She is the Appellant in this appeal in her capacity as executor of the estate. N. N. (N. N.) claims to have been the common-law spouse of the deceased contributor. This is disputed by B. D. [GD1-5], by her sister L. C. [GD1-10] and their uncle M. P., the deceased contributor's brother [GD1- 13].

[11] A brief chronology of significant events is as follows:

- A. P. passed away on March 10, 2014. [GD2-10]
- N. N.'s application for the death benefit was date stamped by the Respondent on March 31, 2014 [GD2-6]. In her application N. N. indicated that she was the common-law spouse of the deceased contributor and that B. D. was the executor of his estate.
- On April 8, 2014 the Respondent wrote to B. D., in her capacity as executrix advising that they had received an application for a CPP death benefit following the deceased contributor's death and that the application identifies her as executor of his estate. The letter asks B. D. to complete and return an enclosed statement. [GD2-13]
- The statement was signed by B. D. and received by the Respondent on May 2, 2014 [GD2-18]. In the statement she confirmed that she was the executrix of the deceased contributor's estate, that the estate did not wish for the death benefit, that N. N. was responsible for funeral expenses and that N. N. was the deceased contributor's spouse. [GD2-18]
- On May 8, 2014 the Respondent approved N. N.'s application for the death benefit and the benefit was paid to her. [GD2-21]
- B. D.'s application in her capacity as executrix of the estate of A. P. was date stamped by the Respondent on September 16, 2015 [GD2-23]. In the application B. D. indicated that the deceased contributor was single.

- The Respondent denied this application both initially [GD2-27] and upon reconsideration [GD2-42]. This is the appeal from the reconsideration.

SUBMISSIONS

[12] The Appellant's submissions:

- a) On March 17, 2017 the Appellant advised the Tribunal that "after great consideration and eventual understanding of how this processes [sic] works" I agree with the decision about payment of the death benefit. [GD6-1]
- b) She indicated that she has serious concerns about her father being named as N. N.'s spouse; that this is not accurate; and that she wants the government to acknowledge that her father did not have a common law partner at the time of his death.
- c) She is requesting that the appropriate department correct this issue.

[13] The Respondent's submissions:

- a) The deceased contributor died on March 10, 2014 and no application was received from his estate within 60 days following his death which triggers the discretion by the Minister under section 71.(2) of the CPP to pay the benefit to the statutorily prescribed persons, who do not include the estate.
- b) The Minister has paid the benefit to N. N. in accordance with the CPP Act and Regulations and section 71(3) of the Act prohibits double payment of the death benefit.
- c) The Tribunal is bound by the language of the CPP legislation and does not have the authority to vary legal requirements set out in the CPP and the CPP Regulations or to override the statutory requirements.

ANALYSIS

[14] The deceased contributor died on March 10, 2014 and the estate did not apply for the death benefit within 60 days. In April 2014 the Appellant returned a signed statement to the

Respondent confirming that the estate did not wish for the death benefit, that N. N. was responsible for funeral expenses and that N. N. was the deceased contributor's spouse.

[15] The failure by the estate to apply for the death benefit within 60 days of death triggers the discretion exercisable by the Minister under subsection 71.(2) of the CPP to pay the benefit to the statutorily prescribed persons: *Cormier v Canada* (2002) FCA 514.

[16] The Respondent properly paid the death benefit to N. N. in May 2014. Payment to the estate which did not apply for the death benefit until September 2015 would render the Respondent responsible for a double payment contrary to section 71.(3) of the CPP.

[17] The Appellant has now acknowledged that she agrees with the decision that the estate is not entitled to the death benefit. Her primary concern is that N. N. not be recognized by the government as the deceased contributor's spouse and she wants the appropriate department to correct this.

[18] The Tribunal has no jurisdiction to deal with this request. It can only decide the merits of the appeal. It is bound by the CPP provisions and is not empowered to exercise any form of equitable power in respect of the appeals coming before it.

[19] The Appellant estate is not entitled to payment of the death benefit.

CONCLUSION

[20] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security