



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. P. v. Minister of Employment and Social Development*, 2017 SSTGDIS 118

Tribunal File Number: GP-17-22

BETWEEN:

H. P.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Anne S. Clark

HEARD ON: August 15, 2017

DATE OF DECISION: August 22, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a Disabled Contributor's Child benefit (DCCB) for the period of January 2016 to April 2016. The Respondent denied the Application initially and upon reconsideration. The Appellant appealed to the Social Security Tribunal (Tribunal).

[2] To be eligible for a DCCB the Appellant must meet the requirements that are set out in the CPP. The Appellant became 23 years of age in March 2016. Since she is over 18 years of age and not yet 25 paragraph 42(1)(b) states she must be in full-time attendance at a school or university as defined by regulation to be a dependent child.

[3] Subsection 66(2) of the *Canada Pension Plan Regulations* (Regulations) provides, in part, that a dependent child who was in full-time attendance and was absent or unable to resume full-time attendance by reason of illness may be considered to have been in full-time attendance during the absence if the dependent child resumed full-time attendance at any time during that academic year.

[4] This appeal was heard by teleconference for the following reasons:

- a) There were gaps in the information in the file and a need for clarification.
- b) 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.
- c) A teleconference will allow the Appellant and the Respondent to address the applicable test under the CPP for eligibility and whether the Appellant met the test during the period in question.

[5] The following people attended the hearing:

- a) H. P., Appellant
- b) Z. P., Witness (Appellant's mother)

[6] For the reasons set out below I decided that the Appellant is eligible for DCCB for the period of January 2016 to April 2016.

PRELIMINARY ISSUES

[7] The Appellant requested that her mother (Witness) be able to testify and remain in the hearing to assist the Appellant. I agreed to allow the Witness to give her testimony first to avoid having to exclude her during the Appellant's testimony.

EVIDENCE

[8] The Witness lives with the Appellant. She confirmed that the Appellant required surgery and treatment for thyroid cancer in 2016. The doctor recommended the Appellant remain off school during the treatment but she continued to go to school part-time even while she was very sick from treatment.

[9] The Appellant testified that she has been in full-time (66%) attendance at university since September 2013 with the exception of January to April 2016 (Winter Term) when she could only take two courses due to illness. She required surgery and later learned that she had cancer. She had follow up treatment and continues in treatment for the cancer.

[10] The Appellant resumed her usual full-time attendance in May 2016 and continues in full-time attendance. The Appellant confirmed that, with the exception of January to April 2016, she has received the DCCB since September 2013.

[11] Dr. Erika Safar completed an Illness Certificate on October 28, 2016 (GD2-18). She confirmed the Appellant had surgery scheduled for December 2015. The surgery took place on February 23, 2016 and Dr. Safar stated the Appellant's probable date of return to school would be June 2016.

SUBMISSIONS

[12] The Appellant submitted that she qualifies for a DCCB for January to April 2016 because she was unable to maintain full-time attendance during that period due to illness.

[13] The Respondent submitted that the Appellant does not qualify for a DCCB for January to April 2016 because she was not in full-time attendance as required by the CPP.

ANALYSIS

Preliminary Issues

[14] The Appellant testified that she received DCCB prior to January 2016 and her DCCB resumed in May 2016 when she resumed full-time attendance.

[15] The Respondent did not attend the hearing and there was no information on file from the Respondent about the periods of time when the Appellant was entitled to a DCCB. I therefore allowed the Respondent time after the hearing to submit a statement of the periods when the Appellant received a DCCB.

[16] The Respondent filed a report (GD7) to confirm that, with the exception of January to April 2016, the Appellant was deemed to be in full-time attendance beginning in May 2012 and continuing without other interruption until 2017. It should be noted that the year 2012 is likely an error and should read 2013. This error has no bearing on the outcome of the appeal.

Test for a Disabled Contributor's Child Benefit

[17] The appeal deals with the period of January 2016 to April 2016 or the winter academic term. The Appellant's birthdate is X X, X making her 22 years old at the beginning of the period and 23 at the end.

[18] To be eligible for a DCCB the Appellant must prove on a balance of probabilities, or that it is more likely than not, that she was in full-time attendance during the relevant period or was absent from or unable to resume full-time attendance because of illness and that she returned to full-time attendance in that academic year. For greater clarity the Appellant must show she was in full-time attendance before and after her period of illness.

[19] The medical evidence is that the Appellant was initially scheduled for surgery in December 2015 and her surgery date was changed to February 23, 2016. Her physician reported that she would be able to return to classes in June 2016. There is nothing on file to contradict the

Certificate of Illness and I accept as fact that the Appellant was unable to attend school on a full-time basis during the winter 2016 semester and returned to full-time attendance in May 2016.

[20] I note that the surgery did not take place until February 23, 2016. This does not alter the conclusion that, for the winter semester, the Appellant was not able to attend school on a full-time basis because of illness. Her surgery was first scheduled for December 2015 and delayed for some reason. It makes sense that she would not have registered for full-time classes knowing that she would have surgery in the middle of the term and not be able to complete her courses.

[21] The Respondent submitted that a dependent child can be considered eligible for DCCB if the dependent child is on a reduced caseload because of disability (GD4-3). The Respondent identified 40% of a full-time caseload as meeting the requirement for full-time attendance for a dependent child who has a disability and cited the Government of Canada Student Financial Assistance Program and the Ontario Student Assistance Program as authority for reducing the caseload to 40% for disabled students.

[22] I note that the Appellant actually carried 33% of a full-time caseload during her period of illness (GD2-25) and the Respondent decided this would not satisfy the requirements for a disabled student. Given the facts of this appeal it is not necessary for me to decide if the Appellant's caseload would be sufficient to make her meet the caseload of a full-time disabled student.

[23] Under subsection 66(2) of the Regulations the Appellant can be absent from or unable to resume full-time attendance and still be considered in full-time attendance if she was in full-time attendance before and after her period of illness within in the same semester. The Appellant was in full-time attendance from September 2013 until December 2015. She was not in full-time attendance because of illness from January to April 2016 and returned to full-time attendance in May 2016. The fact that the Appellant pushed herself to do some school work during her period of illness does not preclude a finding that she was unable to resume full-time attendance in January 2016 by reason of an illness.

CONCLUSION

[24] I find the Appellant was in full-time attendance at the beginning of the academic year (September 2015) and was unable to resume full-time attendance for a period beginning in January 2016. She resumed full-time attendance in May 2016. Under subsection 66(2) of the CPP Regulations she shall be considered to have been in full-time attendance during her period of illness, January 2016 to April 2016.

[25] The appeal is allowed.

Anne S. Clark
Member, General Division - Income Security