



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. D. v. Minister of Employment and Social Development and City of Ottawa*,
2017 SSTGDIS 167

Tribunal File Number: GP-17-1022

BETWEEN:

P. D.

Appellant

and

Minister of Employment and Social Development

Respondent

and

City of Ottawa

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Kelly Temkin

DATE OF DECISION: November 7, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a Canada Pension Plan (CPP) death benefit. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on April 12, 2017.

[2] This appeal involves determining whether or not the appeal should be summarily dismissed. The question asked by the Appellant is whether he is entitled to receive the CPP death benefit, following the death of his son, E. D..

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[4] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

THE LAW

[5] Paragraph 71 (2) of the CPP provides for the payment of a death benefit:

71. (1) Where payment of 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.

(2) Exceptions - 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.

[6] Subsection 64 of the CPP Regulations provides for payment of the death benefit to other than estates:

64. (1) *When paragraph 71(2)(a) of the Act applies or when the estate of a deceased contributor has not applied for the death benefit within the interval of 60 days after the contributor's death, or when the amount of the death benefit is less than two thirds of 10% of the Year's Maximum Pensionable Earnings for the year in which the contributor died, in the case of a death that occurred before January 1, 1998, or less than \$2,387, in the case of a death that occurred after December 31, 1997, 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.

[7] Subsection 71 (3) of the CPP prohibits double payment of the Death Benefit:

71 (3) Where a payment has been made pursuant to subsection (2), the Minister is not liable to make that payment to any subsequent applicant.

EVIDENCE

[8] The deceased contributor, E. D., died on February 28, 2016.

[9] The initial application was submitted by the City of Ottawa on July 4, 2016. This application was subsequently processed August 5, 2016, with funeral expenses totalling \$2,359.44. There was no indication on the initial application that any other party contributed to the funeral costs.

[10] The Appellant's application was received August 29, 2016 with an invoice for funeral expenses in the amount of \$ 6,536.69, and denied October 3, 2016 due to the fact that the Respondent had already released the Death Benefit to an agency.

SUBMISSIONS

[11] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of

the *Social Security Tribunal Regulations* (Regulations). The Appellant did not file any submissions in response to the notice despite being provided the opportunity to do so.

[12] The Appellant submitted in his Notice of Appeal that:

- a. He did not apply for the death benefit within 60 days of his son's death because he was waiting for autopsy and toxicology results which were not received until June 27, 2016.
- b. He was waiting for a death certificate which the funeral home would not release without permission from the City of Ottawa. He did not receive the death certificate until August 2016.
- c. He was solely responsible for all matters relating to his son's death including his funeral at a cost of \$6,536.69

[13] The Respondent submitted that:

- a. The full death benefit was paid to the agency in the amount of \$ 716.40.
- b. The Appellant cannot receive the death benefit as the death benefit had already been paid to another person/agency.
- c. The Appellant's application to receive a death benefit under the CPP cannot be approved as the legislation does not allow the grant of a death benefit in the Appellant's circumstances.

ANALYSIS

[14] The CPP states that if the estate does not apply within 60 days of the date of death the Respondent may then consider any other applications they receive. The deceased contributor passed away on February 26, 2016. The Appellant filed for the death benefit on August 29, 2016 which is more than 60 days after the death of the deceased contributor.

[15] The application for the death benefit was filed by the City of Ottawa on July 4, 2016. There was no indication on the initial application that any other party contributed to the funeral costs.

[16] The file shows that when the Appellant's application was received by CPP, they had already paid the death benefit to another party, the City of Ottawa.

[17] Subsection 71 (3) of the CPP prohibits double payment of the Death Benefit. Therefore the Appellant cannot receive the death benefit as this benefit had already been paid to another agency.

[18] The Tribunal acknowledges the Appellant's difficult circumstances and financial burden. The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP. The Tribunal cannot use the principles of equity or consider extenuating circumstances to allow the Appellant to receive the death benefit.

[19] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[20] The appeal is summarily dismissed.

Kelly Temkin
Member, General Division - Income Security