



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v. Minister of Employment and Social Development*, 2018 SST 168

Tribunal File Number: AD-17-916

BETWEEN:

L. M.

Applicant

and

Minister of Employment and Social Development

Respondent

and

D. C.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: February 16, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted.

OVERVIEW

[2] D. C. (DC) and the deceased married in 1959. They separated in 1997. The deceased resided in L. M.'s (LM) home after the separation until he was admitted to a long-term care home and later died. After his death, LM applied for and was granted a Canada Pension Plan survivor's pension on the basis that she was the deceased's common-law partner. DC appealed the Minister of Employment and Social Development's decision to grant LM the pension to the Social Security Tribunal. The Tribunal's General Division allowed the appeal and granted the pension to DC. Leave to appeal this decision to the Tribunal's Appeal Division is granted because the General Division may have failed to observe a principle of natural justice.

ISSUES

[3] Did the General Division fail to observe a principle of natural justice by failing to clearly explain to LM the consequences of not participating in the appeal?

[4] Did the General Division base its decision on an erroneous finding of fact when it neglected to examine all aspects of the relationship between LM and the deceased?

ANALYSIS

[5] The *Department of Employment and Social Development Act* governs the Tribunal's operation. It provides only three narrow grounds of appeal that the Appeal Division can consider, namely, that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹ In

¹ Subsection 58(1) of the DESD Act

addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.² LM's arguments to be granted leave to appeal must be considered in this context.

Issue 1: Did the General Division err by not explaining the consequences of not attending the hearing?

[6] The Tribunal must observe the principles of natural justice. These principles are concerned with ensuring that all parties know the legal case that they have to meet, have an opportunity to present their case, and have a decision made by an independent decision maker based on the law and the facts. LM argues that she did not receive all of the documents that were filed with the Tribunal in this matter, and that she did not understand the risks of not attending the hearing and presenting evidence on her own behalf. The Tribunal records show that LM was provided with copies of all the written evidence that was filed with it. However, on September 18, 2017, when LM spoke with Tribunal staff by telephone, she was advised that her participation was not mandatory and that she would still receive the decision once rendered. LM may have understood from this that her evidence and arguments would be fully considered prior to a decision being made, even if she did not attend the hearing. This suggests that LM may not have had a full opportunity to present her case. This ground of appeal may have a reasonable chance of success on appeal.

Other Issues

[7] LM has presented other grounds of appeal. However, since I have decided that one ground of appeal may have a reasonable chance of success on appeal, I need not consider the other arguments LM has presented.³

CONCLUSION

[8] Leave to appeal is granted.

[9] The parties are not restricted to the ground of appeal considered in this decision. They are reminded to file written submissions on all relevant legal issues within 45 days of the date

² Subsection 58(2) of the DESD Act

³ *Mette v. Canada (Attorney General)*, 2016 FCA 276

of this decision. The parties may also provide written submissions about whether an oral hearing is required to decide this appeal.

[10] It is easier to meet the legal test to be granted leave to appeal than the legal test to succeed on the merits. This decision to grant leave to appeal does not presume the result of the appeal on its merits.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	L. M., self-represented
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