



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. D. v. Minister of Employment and Social Development and D. D.*, 2018 SST 916

Tribunal File Number: GP-17-1388

BETWEEN:

W. D.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

D. D.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Susan Smith

Date of decision: August 13, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Claimant's ex-spouse applied for a Canada Pension Plan (CPP) division of unadjusted pensionable earnings (DUPE). The application was allowed and the DUPE was calculated. The Claimant and his ex-spouse were both in receipt of CPP retirement pensions at the time of the application and their respective retirement amounts were recalculated. The amount by which the Claimant's retirement pension was reduced is greater than the amount by which his ex-spouses retirement pension was increased. The Claimant is not satisfied with the explanation given by the Minister regarding the complex calculations that are applied to ascertain each individual's retirement pension amount and the impact various circumstances will have on the final result. He disputes the calculation on the basis the result does not make sense, it is not fair to him, and the reasons for the discrepancy have not been adequately explained.

[3] The Minister received the Claimant's ex-spouses application for the DUPE on April 1, 2016. The application was approved and the DUPE was applied. The Claimant received the decision of the Minister dated October 12, 2016, explaining the revised amount of his retirement pension after the DUPE. The Claimant requested reconsideration of the calculation and the Minister maintained the decision on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE

[4] Did the Minister correctly calculate the Claimant's CPP retirement pension amount after the DUPE?

ANALYSIS

[5] The CPP provides that a DUPE is mandatory when an application made by either spouse is approved by the Minister.¹ The effect of an application for DUPE is that the unadjusted

¹ Section 55.1 Canada Pension Plan

pensionable earnings for each person shall be added together, divided equally, and attributed equally to each person.² After the DUPE has taken place the adjusted record of earnings for each person is used to calculate the amount of the retirement pension to which each person is entitled in accordance with a complex formula.³ The calculation of average monthly pensionable earnings (AMPE) may include various deductions and may additionally affect the calculation of a retirement pension.⁴

The Minister has properly applied the law in allowing the DUPE and recalculating the Claimant's retirement pension amount

[6] The Claimant disagrees with the result that has occurred with respect to recalculation of retirement pension amounts for him and his ex-spouse following the DUPE. He is dissatisfied that the DUPE has resulted in a combined amount payable to him and his ex-spouse that is less than the combined amount payable to them before the DUPE.

[7] The facts with respect to the application for the DUPE are not in dispute. The Claimant's sole issue is with respect to the recalculation of pension amounts resulting in a net combined amount payable to both parties being less than the net combined amount before the DUPE.

[8] The Minister provided the Claimant with a detailed calculation and explanation as to how the calculation was made in accordance with the CPP and CPP regulations to recalculate entitlement to retirement pension amount for him and for his ex-spouse.⁵ The Minister confirmed that the formula used and the calculation for each pension amount following the DUPE was correct and the discrepancy could be explained in part by the effect the DUPE had on the child rearing drop out.⁶ The Minister submitted that calculations are complex and there are many nuances that affect how the calculation that can be altered after the DUPE and that the amount by which one person's pension is reduced as a result of a DUPE rarely equals the amount by which the other person's is increased.⁷

² Subsection 55.2(5) Canada Pension Plan

³ Section 46 Canada Pension Plan

⁴ Section 48 Canada Pension Plan

⁵ GD2-22-25, October 12, 2016

⁶ GD2-4-5, April 26, 2017

⁷ GD3-9

[9] I am satisfied by the evidence that the Minister has correctly applied the relevant provisions of the CPP and the CPP regulations in calculating the amount of the Claimant's retirement pension following approval of a DUPE.

The Claimant has not provided any information to demonstrate any error in the calculations or any information that could change the calculations

[10] The Department of Employment and Social Development (DESD) Act provides that the Tribunal may decide any question of law or fact that is necessary for the disposition of any application made under the ACT. In a case relating to the DUPE, the Tribunal may only decide questions of law or facts pertaining to whether any person is eligible for a division of unadjusted pensionable earnings or its amount.⁸

[11] The DUPE is mandatory in circumstances such as the Claimant's where his ex-spouse filed an application; the parties were legally married and had been living separate and apart for at least one year; and they did not enter into a legally binding agreement that specifically prohibited a claim for division of CPP pensionable earnings. The question as to the amount of the DUPE was determined based on the agreed upon periods of cohabitation submitted by the Claimant and his ex-spouse, the Added Party.

[12] Although the Claimant is correct in stating that the net combined amount payable to him and his ex-spouse is less after the DUPE than it was before the DUPE and that such a reduction was not the intended result; there is no indication that any error has been made in the calculation or that the legislation has been incorrectly applied. It is apparent the Claimant has not fully understood the explanation given by the Minister. The legislation, though complex, is clear as to the method of calculating the amount of retirement pension payable and I am satisfied that the method of calculation has been properly applied in the Claimant's case.

[13] I am bound by the CPP provisions and can only apply the law as written. As a statutory decision maker, I am required to interpret and apply the law as set out in the CPP. I have no authority to make exceptions to the provisions of the CPP or to render a decision on the basis of fairness, compassion, or extenuating circumstances.

⁸ Section 64 Department of Employment and Social Development Act

[14] I find the Claimant has failed to meet the burden of proof in demonstrating the Minister has made any error in calculating the Claimant's retirement pension amount in accordance with the legislation.

CONCLUSION

[15] The appeal is dismissed.

Susan Smith
Member, General Division - Income Security