



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v Minister of Employment and Social Development*, 2019 SST 118

Tribunal File Number: GP-18-2502

BETWEEN:

R. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Tyler Moore

DATE OF DECISION: January 9, 2019

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a Division of Unadjusted Pensionable Earnings (DUPE). The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on November 5, 2018.

[2] This appeal involves whether or not a DUPE can be considered for approval.

[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.

EVIDENCE

[5] The Claimant filed an initial application for a Division of Unadjusted Pensionable Earnings which was received on May 23, 2018.

[6] The Claimant and her former common-law spouse were separated in March 2007. He subsequently passed away on April 25, 2013.

SUBMISSIONS

[7] 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). As of the time of this decision, no further submissions had been received from the Claimant.

[8] The Appellant previously submitted that:

- a) She does acknowledge the 4 year time limit set out to apply for a DUPE following a common-law separation. However, in her case that time limit should be waived. The Claimant feared making an application at an earlier date because of the very real

possibility of retaliation from her former common-law partner because he was mentally ill, an addict, and already retired.

[9] The Respondent submitted that:

- a) In the absence of an agreement in writing between the Claimant and her former common-law spouse, the credit splitting application would have needed to be received by March 31, 2011. The Claimant does not meet the eligibility requirements.

ANALYSIS

[10] 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.

[11] The Tribunal finds the Claimant is not eligible to have a DUPE considered for approval. Section 55.1(c) of the CPP sets out that an application for a DUPE must be received within 4 years after the day on which the former common-law partners commenced to live separate and apart in order to be considered. The Claimant's initial application for a DUPE was received well after the expiration of that time limitation. Section 55.1(c) also sets out that the only exception to the time limitation is if both former common-law partners agree in writing to have the credit division performed. Given the fact that the Claimant's former common-law partner passed away in 2013, the exception cannot be applied in this case.

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

CONCLUSION

[13] The appeal is summarily dismissed.

Tyler Moore
Member, General Division - Income Security