



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. B. v Minister of Employment and Social Development*, 2019 SST 419

Tribunal File Number: GP-17-2641

BETWEEN:

V. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

HEARD ON: January 29, 2019

DECISION DATE: March 29, 2019

DECISION

I find that the Appellant is entitled to the child's benefit for the 2016/2017 school year under the *Canada Pension Plan* (CPP).

OVERVIEW

[1] The Respondent received the Appellant's application for the survivor's pension [*sic*] and the child's benefit on October 15, 2014.¹ The Respondent granted the Appellant the disabled contributor's child's benefit and the surviving child's benefit for the child of a deceased contributor. On January 20, 2017,² the Respondent informed the Appellant that, as of January 1, 2017, the benefit payments would stop because she had not started a program of studies in September 2016. She requested a reconsideration of the decision. The Respondent denied the application after a reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE

[2] I must determine whether the Appellant was attending a school or university full-time for the 2016/2017 school year.

ANALYSIS

i. Test for eligibility for the child's benefit

[3] According to the CPP,³ a dependent child means a child of the contributor who (a) is less than 18 years of age; (b) is 18 or more years of age but less than 25 years of age and is in full-time attendance at a school or university as defined by regulation; or (c) is a child other than a child described in paragraph (b), is 18 or more years of age and is disabled, having been disabled without interruption since the time they reached 18 years of age or the contributor died, whichever occurred later.

¹ GD2-11.

² GD2-6.

³ Section 42(1).

[4] According to the CPP Regulations,⁴ “full-time attendance at a school or university” means full-time attendance at a school, college, university or other educational institution that provides training or instruction of an educational, professional, vocational or technical nature and a dependent child will be deemed to be or to have been in full-time attendance at a school or university during an absence by reason of a normal period of scholastic vacation.

[5] The CPP Regulations⁵ also state that, where a dependent child, after having been in full-time attendance at a school or university at the beginning of an academic year, is absent from the institution, or is absent owing to their failure to resume full-time attendance at a school or university during an academic year by reason of an illness, that child will be considered to be or to have been in full-time attendance throughout that absence including the normal period of scholastic vacation if

- immediately after such absence the child resumes full-time attendance at a school or university at any time during that academic year; or
- where it is determined by the Minister that the child is unable to comply with paragraph (c), they resume full-time attendance at a school or university in the next ensuing academic year.

[6] What is more, where a dependent child is absent⁶ after they have begun an academic year by reason of illness and it is determined by the Minister, on evidence satisfactory to them, that by reason of such illness it is not possible for the child to resume full-time attendance at a school or university during that academic year, the child will be deemed to have been in full-time attendance at a school or university until the end of a normal period of scholastic vacation following that academic year.

[7] Finally, where a dependent child, after they have been in full-time attendance at a school or university at the beginning of an academic year, is absent⁷ from the institution by reason of

⁴ CPP Regulations, s 66(1).

⁵ CPP Regulations, s 66(2).

⁶ CPP Regulations, s 66(3).

⁷ CPP Regulations, s 66(4).

illness and, during such absence or during a normal period of scholastic vacation, the child ceases to be a dependent child or a disabled contributor's child or dies, that child will be considered to be in full-time attendance at a school or university until the end of the month in which they cease to be a dependent child or a disabled contributor's child or die.

[8] The CPP Regulations⁸ also requires that an applicant or beneficiary must, in support of their claim that a dependent child of 18 or more years of age is or has been enrolled in a course requiring full-time attendance at a school or university, file with the Minister a declaration signed by a responsible officer of the institution, certifying to such enrolment; and is or has been for a period of time in full-time attendance at a school or university, file with the Minister a declaration of such attendance signed by the child.

ii. Documentary evidence and testimony

[9] The Appellant was born on December X, 1998. She was 18 years old on December X, 2016.

[10] The Appellant obtained her high school diploma in June 2016.

[11] She enrolled full-time in the Bachelor of Science program, specializing in biomedical sciences, at the University of Ottawa. She was accepted on December 9, 2015,⁹ and the program began in September 2016.

[12] She paid her tuition, enrolled in courses for the fall 2016/winter 2017 semester, and prepared her course timetable for both semesters. She also obtained her student card and bought a textbook one of her professors recommended in an email.

[13] On August 12, 2016, the Appellant sustained a concussion.

⁸ CPP Regulations, s 67.

⁹ GD1-15.

[14] On August 13, 2016, she attended an orientation day. Unfortunately, according to the Appellant's testimony, she was not able to stay the entire day. She saw her doctor and, because of her symptoms, she asked to defer her studies until September 2017.

[15] Based on the doctor's letter dated September 2, 2016,¹⁰ the Appellant could not attend her courses during the fall 2016 semester because of a head injury. She was unable to pursue her program of study because of illness.

[16] The Declaration of Attendance at School or University dated December 20, 2016,¹¹ indicates that the Appellant could not continue her university courses because of a concussion on August 12, 2016, and that the program had been deferred since September 2016.

[17] An illness certificate dated January 6, 2017, indicates that the Appellant had post-concussion syndrome and that the date of illness onset was August 12, 2016, with the expected end date unknown.

[18] The Appellant pursued her program of studies in September 2017.¹² She began her program with five courses in her timetable. However, because of her concussion-related symptoms, the Appellant was forced to withdraw from three courses. She took two courses according to the 2017 timetable.¹³

[19] According to the CPP Regulations, to be eligible for the child's benefits, the Appellant must have been enrolled in courses in the same academic year that she was sick or the following academic year.

[20] The evidence shows that the Appellant was enrolled in courses in the 2016/2017 academic year. She was accepted to university, paid her tuition, and prepared her timetable for the 2016 fall and 2017 winter semesters. She also obtained her student card and bought a textbook recommended by one of her professors. She attended orientation day on August 30,

¹⁰ GD1-18.

¹¹ GD2-9.

¹² GD2-4.

¹³ GD1-24 to 34.

2016, but she realized that she could not stay the entire day because of symptoms following a head injury on August 12, 2016.

[21] A doctor's letter dated September 2, 2016, attests that the Appellant could not pursue her courses during the full semester because of illness.

[22] A declaration from the university confirms that her courses were deferred from September 2016 to September 2017¹⁴ and that she resumed her studies in September 2017.

[23] According to the Federal Court of Appeal, the CPP is benefits-conferring legislation. Such legislation has a benevolent purpose and should be interpreted in a broad and generous manner with any doubt arising from the language of such legislation being resolved in the Appellant's favour.¹⁵

[24] The Supreme Court of Canada has also found that it is not enough to limit analysis to the plain meaning of legislation, and that is particularly true concerning the interpretation of benefits-conferring legislation.¹⁶

[25] Considering liberal interpretation as stipulated by the Federal Court of Appeal and the Supreme Court of Canada, I have determined that the Appellant attended university full-time in September 2016. If the Appellant had not been admitted to and had not enrolled in a program, she would not have prepared her timetable for two semesters, and if she was not attending the educational institution, she would not have attended the orientation day. I have considered all the facts, and it is clear that the Appellant attended the university and that she thought she could attend courses during the 2016/2017 academic year, but at the first meeting (orientation day), she realized that she could not function because of symptoms arising from a head injury.

[26] She therefore satisfies the criteria listed in the CPP Regulations for eligibility for the child's benefit.

¹⁴ GD1-22.

¹⁵ *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹⁶ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27.

[27] Concerning the part-time course load, I was influenced by two decisions rendered by the former Pension Appeals Board (PAB).

[28] The Commission¹⁷ found that the Appellant's attendance at an adult training centre 12 hours a week in the evenings fulfilled the definition of "full-time." In its decision, the Commission stated that, if the Parliament of Canada intended the legislation and the regulations to be more limited concerning the definition of "full-time attendance," the legislature would have been more specific.

[29] In another decision,¹⁸ the Commission found that the Appellant's taking a course for eight hours a week at an educational institution that enables students who have dropped out of the regular school system to continue their studies to fulfill the definition of "full-time."

[30] In these circumstances, the Appellant was enrolled in two courses (about seven hours of classes and labs) for the fall 2017 semester.

[31] In line with those decisions, I find that it is not the number of courses in which the Appellant was enrolled that determines whether she attended the educational institution full-time, but rather the question of whether she attended full-time the courses in which she was enrolled.

[32] The fact that the CPP or the CPP Regulations do not specifically define the expression "full-time attendance" gives me the ability to assess each case on its own merits. A broad interpretation of provisions also enables the eligibility of students, like the Appellant, who are unable, because of illness, to attend school according to the plain meaning of "full-time." I find that if Parliament had intended to exclude such students from eligibility for child's benefits, it would not have left the definition of "full-time attendance" open to interpretation.

¹⁷ *MHRD v Ruelland* (March 21, 1997), CP 4084 (PAB).

¹⁸ *MHRD v Attewell* (January 15, 1999), CP 6345 (PAB).

CONCLUSION

[33] The appeal is allowed for these reasons.

Antoinette Cardillo
Member, General Division – Income Security