



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. K. v Minister of Employment and Social Development*, 2019 SST 425

Tribunal File Number: GP-18-484

BETWEEN:

P. K.

Claimant (Appellant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelley Sherwood

Claimant represented by: Dorothy King

Date of decision: April 25, 2019

DECISION

[1] The Claimant is entitled to a disabled contributor's child benefit (DCCB) under the Canada Pension Plan (CPP).

OVERVIEW

[2] The Claimant has autism. He was in receipt of a DCCB. After he completed high school, he enrolled in a program called X offered by the X. With the assistance of his mother, he filed an application for his DCCB to continue for the duration of the program. The Minister denied the application. The Minister did not dispute the fact that the Claimant's age was between 18 and 25¹. Instead, it denied his application stating that the Claimant's school did not qualify as an acceptable institution under the CPP. The Claimant appealed the reconsideration decision to the Social Security Tribunal (the Tribunal).

PRELIMINARY MATTERS

[3] The Claimant's representative is his mother. In her letters to Service Canada and submissions to the Tribunal, she repeatedly raised constitutional issues relating to her son's rights as a disabled person under the *Canadian Charter of Human Rights and Freedoms*². The Tribunal contacted the Claimant's mother to ask whether she wished to pursue a constitutional challenge as the Tribunal must follow specific procedural requirements in matters where a party raises such an issue³. She confirmed that she did not wish to proceed in that manner. Therefore, while I acknowledge that many of her submissions address disability rights, I will not be addressing the constitutional matter in my decision.

ISSUES

[4] Was the Claimant enrolled in a post-secondary educational program as defined in the CPP as a full-time student, which would make him eligible for the DCCB from September 2017 until September 2018?

¹ A file letter from the Claimant's mother confirms that the Claimant was 20 years old in 2018.

² GD2 – 9, GD1 – 6 to 9, GD4 – 3, GD5 – 2 to 5, GD6 – 1 to 2

³ Paragraph 20(1)(a) of the *Social Security Tribunal Regulations*

ANALYSIS

[5] According to the CPP⁴, a “dependent child” of a contributor means a child whom:

a) is less than eighteen years of age,

b) is eighteen or more years of age but less than twenty-five 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 eighteen or more years of age and is disabled, having been disabled without interruption since the time he reached eighteen years of age or the contributor died, whichever occurred later.

ANALYSIS

The Minister’s definition of an “acceptable educational institution” is not in keeping with the CPP

[6] The CPP and the CPP *Regulations* are not very specific or clear as to the meaning of “full-time attendance at a school or university”, and the definitions are to be given their most liberal interpretation⁵.

[7] The Minister provided the Claimant’s mother with a list of what it considers “acceptable institutions”. This list included universities, community colleges, business colleges, institutes of technology, technical schools and vocational schools⁶. The Minister further explained to the Claimant’s mother that the following factors are used to determine if an institution is acceptable for CPP purposes:

- it is recognized as an educational institution by a province or territory, or its course of study is affiliated with an institution that is so recognized;
- it offers the student a diploma or certificate upon completion of the course of study;

⁴ Subsection 42(1) of the CPP

⁵ *MHRD v. Ruelland* (March 21, 1997), CP 04084

⁶ GD2 – 21 to 22

- it provides training that will directly prepare the student for further study at a recognized educational institution; and
- it can demonstrate that the student must attend or otherwise participate in courses, for example, submit papers, make presentations, write tests, pass examinations, and other activities that would indicate full-time study.

[8] This may be the policy used by Service Canada in its adjudication framework, but this wording is not in the CPP or its regulations. Instead, the CPP broadly defines a school or university as “a school, college, university or educational institution that provides training or instruction of an educational, professional, vocational or technical nature”⁷. It makes no mention of the institution being recognized by a provincial body, offering a diploma or certificate, providing a basis for pursuing further studies, or writing and passing examinations.

[9] Accordingly, I concluded that the Minister’s interpretation of the definition of a school or university is highly restrictive, and not in keeping with a liberal interpretation of the definition of a school as is required. Had the Parliament of Canada wanted to define acceptable educational institutions in the manner as cited by Service Canada, our legislators would have done so.

The Claimant’s schooling program is vocational in nature

[10] Merriam Webster’s dictionary defines vocational as “relating to, or undergoing training in a skill or trade to be pursued as a career”⁸.

[11] In September 2017⁹, the director of X completed form called “Declaration of Attendance at School” on behalf of the Claimant. She indicated that the Claimant was enrolled in a course called X. The program was full-time at 30 hours per week. His enrolment in the program was expected to go from September 2017 until September 2018.

[12] When Service Canada contacted Ms. Ford in October 2017 for more information¹⁰, Ms. Ford reported that the program was tailored to the needs of its participants. Skills taught

⁷ Section 66(1) of the CPP *Regulations*

⁸ <https://www.merriam-webster.com/dictionary/vocational>

⁹ GD2 – 17 to 18

¹⁰ GD2 – 25

included social skills, independent living, memory skills, instructional skills and sustaining employment skills. As part of the program, the group runs a café where the participants apply their skills in a workplace setting and gain work experience. Ms. Ford stated that the Claimant needed to acquire many of these skills to be able to live by himself and sustain himself independently. Based on his current development, Ms. Ford offered her opinion that the Claimant would likely need two years of training in the program.

[13] The Minister has submitted that the training program at X does not offer the type of instruction as required in the CPP¹¹. However, I disagree with the Minister's "one-size-fits-all" approach. What qualifies as vocational or training program to one student is not necessarily the same for another.

[14] Therefore, based on Ms. Ford's description of the program, I am satisfied that it is vocational in nature.

The information about the Claimant's current program is beyond the scope of my assessment

[15] In response to questions from the Tribunal, the Claimant's mother submitted information about the Claimant's current program, which he enrolled in effective November 2018¹². While I acknowledge this information, it is beyond my scope of analysis. I can only assess the application before me, which covers the Claimant's schooling at X from September 2017 to September 2018. The Claimant's mother would have to file a new "Declaration of Attendance at School" form with Service Canada for consideration of this new period and program.

¹¹ GD2 – 7

¹² GD6 – 1 to 34

CONCLUSION

[16] Accordingly, I find that the Claimant is eligible for the DCCB from September 2017 to September 2018.

[17] The appeal is allowed.

Kelley Sherwood
Member, General Division - Income Security