



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. K. v Minister of Employment and Social Development*, 2019 SST 720

Tribunal File Number: GP-19-518

BETWEEN:

J. K.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Teleconference hearing on: June 27, 2019

Date of decision: July 11, 2019

DECISION

[1] The Claimant, J. K., appealed the Minister's decision not to pay him a *Canada Pension Plan* (CPP) disabled contributor's child benefit (DCCB) from September to December 2018. I am allowing the appeal because I have decided the Claimant is entitled to the DCCB for that period. These reasons explain why.

OVERVIEW

[2] A DCCB is paid to a dependent child of a disabled CPP contributor.¹ The CPP says a dependent child is someone who is under 18. Someone who is 18 or older but under 25 is a dependent child if he is in full-time attendance at a school, college, university or other educational institution.² To claim the DCCB, the student has to send the Minister a declaration of this attendance, signed by him and certified by the institution.³

[3] The Claimant turned 18 in January 2016. He has been a student at X since September 2016. He told me that as far as he knows he has always received a DCCB as a university student, except as outlined below.

[4] In October 2018 the Claimant sent a Declaration of Attendance at School or University to the Minister, showing he was taking one course that semester.⁴ The Minister decided the Claimant could not be paid the DCCB from September to December 2018 because he was going to school part-time rather than full-time.⁵

[5] The Claimant asked the Minister to reconsider this decision. He provided a Declaration for the January 2019 to June 2019 school year,⁶ and an Illness Certificate for September 2017 to

¹ Paragraph 44(1)(e) and subsection 42(1) *Canada Pension Plan*

² Subsection 42(1) *Canada Pension Plan*; subsection 66(1) *Canada Pension Plan Regulations*

³ Section 67 *Canada Pension Plan Regulations*

⁴ GD2-22-24

⁵ GD2-25-26

⁶ GD2-19-21

December 2018,⁷ as the Minister requested.⁸ However, the Minister maintained its decision without further explanation.⁹ The Claimant appealed to the Tribunal.

THE ISSUE IN THIS APPEAL

[6] I have to decide if the Claimant was entitled to the DCCB from September to December 2018. There is no dispute that he was attending university at the time. The question is whether he was in full-time attendance.

ANALYSIS

The Claimant's attendance

[7] The Claimant told me he had a psychiatric assessment when he was 18. He was diagnosed with anxiety. Because of this, he has been registered as a student with a disability at the university's Accessible Learning Centre since September 2016. He has an individual academic plan, or IAP, which allows for his disability to be accommodated so that he can continue his education.

[8] The Claimant is in an honours program in business administration. He told me that students in the program must attend full-time, meaning they have to take five courses in each of the fall and winter semesters, for a total of ten courses each academic year. Each course takes about three hours a week of lecture time, and many more hours of homework and assignments.

[9] The Claimant has not been able to manage this course load, due to his anxiety. He has had to drop courses and make them up later. This is what he told me about his attendance up to the time of the hearing:

First year 2016-2017:

- September to December 2016: he started five courses and dropped one, completing four courses.

⁷ GD2-6

⁸ GD2-9-10

⁹ GD2-17-18

- January to April 2017: he started five courses and dropped one, completing four courses.
- May to August 2017: he completed two courses, so he had the required ten courses to finish his first year.

Second year 2017-2018:

- September to December 2017: he completed four courses.
- January to April 2018: he started four courses and dropped one, completing three courses.
- May to August 2018: he completed three courses, so he had the required ten courses to finish his second year.

Third year 2018-2019:

- September to December 2018: he wanted to take the year off because of his anxiety. He thought this would increase his chances of being able to complete the program later. However, he decided to register for two courses so he would not get too far behind. Soon after he started classes his anxiety got worse, so he dropped to one course. He also dropped an on-line securities course he had been taking outside of school for about a month.
- January to April 2019: although he indicated in the declaration he signed in December 2018 that he would be taking three courses, he ended up dropping one. He completed two courses.
- May to August 2019: he is presently taking two courses. That means he will have completed five courses for his third year. He expects he will be able to take four courses in the September to December 2019 semester.

[10] The Claimant told me he cannot simply drop courses whenever he feels like it. He is only allowed to do so to accommodate his disability. The Accessible Learning Centre has to approve all the changes and amend his IAP. He is then considered full-time by his program despite not having a full course load during the normal academic year.

[11] I asked the Claimant how the business administration program considered three courses per semester to be full-time when the university registrar's office did not.¹⁰ He guessed this was the university's general rule without taking his IAP into account. It appears the Minister is satisfied that taking three courses per semester is full-time attendance, because it approved the Claimant's DCCB for that course load for January to June 2019.¹¹

What is full-time attendance?

[12] Regardless of these policies or definitions, I have to make my own decision based on the CPP. But the CPP does not say what "full-time attendance" is. There is room for argument about what it means, as shown by the differing views of the university and the Minister.

[13] I have to interpret the CPP in a "broad and generous manner" and if there is any doubt about what a provision means I have to resolve it in the Claimant's favour.¹² I do not think Parliament intended to discriminate against students whose disabilities prevent them from carrying a course load that was likely planned according to the needs and abilities of non-disabled students. Therefore, what is full-time for one student may not be for another.

[14] My conclusion about this is reinforced by the fact that the CPP Regulations provide for situations where a student is considered to be in full-time attendance if he is absent due to illness.¹³ There is no provision for students who drop courses because of illness but do not drop out entirely. I do not think Parliament intended to penalize students just because they are making an effort not to fall too far behind. That is exactly what the Claimant was doing when he decided to try taking two courses in the fall of 2018.

[15] I have to look at the facts in this case to decide what "full-time attendance" means as far as the Claimant is concerned. His Illness Certificate from a doctor at the Student Wellness Centre stated he has had anxiety and acute adjustment reaction since September 2017.¹⁴ He has given

¹⁰ See the registrar's notation on the Declaration at GD2-21.

¹¹ GD2-21

¹² *Villani v. Canada (Attorney General)*, 2001 FCA 248

¹³ Section 66 *Canada Pension Plan Regulations*

¹⁴ GD2-6

credible testimony that his anxiety started sometime before that, and that since starting university his course load has been adjusted to accommodate it.

[16] For the Claimant, even one course can be as demanding as five courses might be for a student without his mental health challenges. As a result, I think he is in full-time attendance if he is registered in at least one course, if the main reason for his reduced course load is his disability. That has been the case since September 2016, and more specifically, from September to December 2018.

Lack of supporting documents

[17] There are no documents in the file to confirm the Claimant's testimony about his course load at university, except for September 2018 and later. Nor are there any documents to confirm what he told me about his IAP or his connection to the Accessible Learning Centre. I note the Minister did not take issue with anything the Claimant wrote, and did not attend the hearing so apparently was content not to challenge anything the Claimant might say.

[18] I questioned the Claimant extensively about these matters. He answered my questions spontaneously and candidly. I believed what he told me. He has been waiting for the DCCB for almost a year. I do not think it is wise or necessary to delay payment even more by making him produce transcripts and other documents to confirm what I already believe is true.

CONCLUSION

[19] The appeal is allowed.

Virginia Saunders
Member, General Division - Income Security