



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. S. v Minister of Employment and Social Development*, 2019 SST 1366

Tribunal File Number: AD-19-660

BETWEEN:

**M. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Kate Sellar

DATE OF DECISION: November 27, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] M. S. (Claimant) paid for the cost of his sister's funeral. The Claimant's late sister made contributions to the Canada Pension Plan at various times when she was working in retail jobs and at a job with X. The Claimant applied for a *Canada Pension Plan* (CPP) death benefit. The Minister denied the Claimant's application. The Claimant appealed the Minister's decision to this Tribunal.

[3] The General Division summarily dismissed the Claimant's appeal on September 5, 2019. The General Division found that the Claimant's appeal had no reasonable chance of success. The Claimant's sister did not contribute enough to the CPP to allow the Claimant to collect the death benefit.

[4] The Claimant appealed to the Appeal Division. I need to decide whether the General Division member made an error under the *Department of Employment and Social Development Act* (DESDA). I find that the General Division did not make an error. The Claimant's appeal is dismissed.

### **ISSUE**

[5] Did the General Division member make an error by summarily dismissing the Claimant's appeal?

### **ANALYSIS**

#### **Reviewing General Division Decisions**

[6] The Appeal Division does not give parties a chance to argue their case again from the beginning. Instead, the Appeal Division reviews the General Division's decision to decide whether there are errors. That review is based on the wording of the DESDA, which sets out the

grounds of appeal for cases at the Appeal Division.<sup>1</sup> The DESDA allows for appeals where the General Division has failed to provide a fair process, or has made an error of law, or an error of fact.<sup>2</sup>

### **Summary Dismissal**

[7] The General Division member must summarily dismiss an appeal if they are satisfied that the appeal has no reasonable chance of success.<sup>3</sup> The question that the Tribunal must answer is whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and all the arguments from both sides. The question is whether the appeal is bound to fail regardless of the evidence or arguments that the Claimant might bring at a hearing.<sup>4</sup>

### **CPP Death Benefit**

[8] The CPP sets out the rules for access a death benefit. To qualify, the Claimant's sister needed to make valid contributions to the CPP for a minimum of 10 years during her contributory period.<sup>5</sup>

### **Did the General Division member make an error by summarily dismissing the appeal?**

[9] The General Division member did not make an error under the DESDA by summarily dismissing the Claimant's appeal.

[10] The General Division member decided that the Claimant's appeal had no reasonable chance of success. The General Division member explained that the Claimant's sister made valid contributions to the CPP for a total of 7 years during her contributory period. But for the Claimant to qualify for the death benefit, the Claimant's sister would have needed at total of 10 years of contributions.

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<sup>1</sup> DESDA, s 58(1).

<sup>2</sup> DESDA, s 58(1)(a), (b) and (c).

<sup>3</sup> DESDA, s 53(1); see also *Miter v Canada (Attorney General)*, 2017 FC 262.

<sup>4</sup> This is described in a case called *A.Z. v Minister of Employment and Social Development*, 2018 SST 298.

<sup>5</sup> *Canada Pension Plan*, s 44(1)(c) and s 44(3) explain how to qualify for the death benefit. *Canada Pension Plan*, s 49 explains how to calculate the contributory period, which is the period of time in which the Claimant must have the 10 years of contributions.

[11] The Claimant argues that he did not get consistent information from Service Canada when he called them about the death benefit. He points out that his sister worked hard and did make contributions to the CPP at the jobs she worked in retail and for X.

[12] I do not understand the Claimant to be challenging the General Division's finding of fact about the number of years his sister contributed. He also does not seem to be challenging the General Division's reading of the law which says she needs to have 10 years of contributions. The Claimant has also not raised any concern with the General Division failing to provide a fair process.

[13] The Minister did not provide arguments to the Appeal Division, and the time for doing that has now passed.

[14] In my view, the General Division did not make an error by summarily dismissing the appeal. It does not appear that the General Division failed to provide the Claimant with a fair process. The General Division applied the facts about the contributions to the law about how to qualify for a death benefit. The General Division did not have any choice about applying the rules from the CPP to the Claimant's case. Although the Claimant's sister made contributions to the CPP during her contributory period, she did not have the 10 years of contributions that the law requires for the Claimant to get the death benefit. As a result, the appeal was, unfortunately, bound to fail regardless of what arguments or evidence the Claimant might have made if he had the chance.

[15] To summarily dismiss an appeal, it must be plain and obvious that the appeal is bound to fail, and unfortunately that was the case here.

## **CONCLUSION**

[16] The appeal is dismissed.

Kate Sellar  
Member, Appeal Division

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| METHOD OF PROCEEDING: | On the Record           |
| APPEARANCES:          | M. S., self-represented |