



Citation: *R. H. v Minister of Employment and Social Development*, 2020 SST 458

Tribunal File Number: GP-19-1231

BETWEEN:

R. H.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

D. H.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Jackie Laidlaw

Teleconference hearing on: January 20, 2020

Date of decision: March 19, 2020

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) death benefit.

OVERVIEW

[2] The son of the Claimant died on July 11, 2018 with no will. The Claimant's ex-wife is an added party to this claim. She will be referred to as AP in this decision. The AP applied for the death benefit on July 31, 2018, which was approved on August 10, 2018. The Claimant paid for the funeral and applied for the benefit on November 9, 2018. The Minister denied the application for the Claimant initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

PRELIMINARY MATTERS

[3] The AP failed to attend the hearing dated January 20, 2020 due to a last-minute mix-up regarding the form of hearing. I had relevant questions for the AP and decided the most expeditious way to ask was to send the questions to the AP in the mail.

[4] Questions were sent by mail on January 23, 2020 to the AP. She had until February 10, 2020 to respond and sent in her answers promptly by fax on January 28, 2020. The AP answers were shared with the parties, the Claimant and the Respondent. They were both given until March 3, 2020 to respond. Neither the Claimant nor the Minister responded to the AP answers.

[5] After waiting for submissions until March 5, 2020, I made my determination.

ISSUE

[6] Is the Claimant entitled to the death benefit for his son?

ANALYSIS

The uncontested facts

[7] The Claimant paid for the funeral expenses.

[8] There is no will, no estate, and no executor for the deceased.

The legislation

[9] The hierarchy of payees for a death benefit is established as such:

- a) The estate of the deceased;
- b) To the individual or institution who has paid or is responsible for the payment of the funeral expenses;
- c) In the absence of an individual or institution in paragraph (b) to the survivor of the deceased contributor; or
- d) In the absence of an individual or institution in paragraph (b) or (c), to the next of kin of the deceased contributor.¹

[10] Section 71(2) of the *Canada Pension Plan* allows that the Minister may direct the death benefit in whole or in part to a person where

- a) He is satisfied, after making reasonable inquiries that there is no estate.
- b) The estate has not applied for the death benefit within 60 days of the contributor's death.
or,
- c) The amount of the death benefit is less than the prescribed amount.

[11] Where a payment has been made pursuant to subsection 71(2), the Minister is not liable to make that payment to any subsequent applicant.²

Minister's Submissions

[12] The Minister had already paid the benefit to the AP and the Claimant was denied payment because the payment had already been made according to section 71(3) of the *CPP*.

¹ Subsection 64(1) of the *Canada Pension Plan Regulations*

² Section 71(3) of the *Canada Pension Plan*

[13] The application from the AP was received within the 60-day priority period. The Claimant applied four months after the benefit was paid.

[14] Both parties provided funeral receipts from the funeral home purporting to demonstrate that each was responsible for the funeral expenses.

[15] The Minister approved the AP's application in good faith on the basis of her application with the estimate from the funeral home and had no way of knowing the Claimant was a potential applicant for the benefit until four months later in November 2018.

[16] The Minister approved the AP's application in good faith on the basis that the signed funeral contract was an agreement that she undertook to pay the amount owing in full to the funeral home within 30 days.

Claimant's submissions

[17] He submitted a funeral receipt and the AP only submitted a contract with no receipt.

[18] He is the first payee in the hierarchy as he paid the funeral expenses.

[19] The Minister did not act in good faith when paying the benefit to the AP as they accepted the application without any actual proof of the AP having paid the funeral expense.

ANALYSIS

[20] There is no estate or will and therefore according to the legislation the first payee for the death benefit would be the person who has paid or is responsible for the payment of the funeral expenses. There is no dispute that person who paid for the funeral is the Claimant.

[21] The Minister paid the AP for the funeral expense on the basis that she was responsible for the payment.

[22] I accept that being responsible for the payment does not necessarily mean the AP was paying the expense.

[23] The AP was never responsible for the payment of the funeral. She admits it was clear at the funeral home on July 12, 2018 that the Claimant would pay for the funeral.

[24] The Added Party is not eligible for the benefit. She has stated that she did not pay for the funeral, and that the Claimant paid for it. She was aware that the Claimant told her he would pay for the funeral and that she was not responsible for the payment. She also stated that she mistakenly “ticked” the box in the application stating she paid for the funeral. She acknowledges that she submitted an estimate from the funeral home and not a receipt. She stated that she applied for the benefit as the next of kin.

[25] The AP noted twice in her submissions that she believed it was the next of kin who would receive the death benefit. As such, she would be the last payee on the hierarchy after the person responsible for or paying the expense.

The funeral home contracts

[26] The AP submitted an estimate (also called a contract) and the Claimant submitted a receipt along with the estimate and the cashed cheque to the funeral home.

[27] The Claimant is incorrect that because he submitted a bill and not an estimate, he should receive the benefit. The legislation states that in the absence of an estate, the first payee is the individual or institution who has paid or is responsible for the payment of the funeral expenses. The application for the benefit states that either a funeral contract or a funeral receipt must be submitted.

[28] The AP was the first to arrive at the funeral home and started the paperwork. The Claimant testified that he, the AP and her sister were with the funeral director on July 12, 2018 when he, the Claimant said he would pay for the funeral, and to have the bill sent to his address. The AP testified that she was aware the Claimant told the funeral director he would pay for the funeral. She had already signed the initial estimate. The section entitled “additional terms or schedule of payment” was blank. Once the Claimant stated he would pay for the funeral presumably a few hours after signing the estimate, she was not responsible for the payment.

[29] The estimate provided by the Claimant had a note on it, inserted under the section entitled “additional terms or schedule of payments” stating that the, “final account to be paid by R. H.,” and included his address. The funeral home signed this as a true copy of the original document (sent by the AP) on July 14, 2018, two days after the initial document was signed on July 12, 2018. I accept that the Minister did not receive this until November, after payment had been made to the AP. However, this document was readily available at the funeral home before payment to the AP was approved.

[30] Even though the AP signed the contract, which was an estimate, it outlines that it can be cancelled. In which case, the AP would not have any responsibility to pay.

The applications

[31] The application for the benefit made by the AP was not provided as evidence. However, the template application asks if there is a will, and under what category the person is applying.

[32] The AP has stated that she “incorrectly” noted she was responsible for the funeral expense when she submitted the estimate. Again, the estimate she provided was not the one which had been altered by the funeral home to indicate the responsible payer, though that was in existence at the time of her application. She has testified in her written answers that she was applying as the next of kin. It is presumed she did not “tick” that box as she noted “ticking” that she was responsible for the funeral expense.

[33] I do not know if she noted there was no will.

[34] The Minister accepted the application and estimate without any reasonable inquiries. It has now been established that there was a great error on the AP’s application that would have lead the Minister to believe she was responsible for the payment.

[35] The Minister has a responsibility to make reasonable inquiries regarding the death benefit before issuing payment. I agree with the Claimant that the Minister failed in this and did not apply the regulations properly.

[36] Section 64(1) of the CPP Regulations gives 60 days for the estate of a deceased contributor to apply for the death benefit. The Minister has a responsibility to make reasonable

inquiries if there is an estate. Given the 60-day period, and section 71(3) disallowing double payment, it is presumed the Minister waits 60 days before payment for an estate to apply if the Minister has not made reasonable inquiries regarding an estate.

[37] I find it unreasonable that accepting a box ticked “no will” would be a reasonable inquiry about the existence of an estate. If the AP did not tick the box “no will” then the Minister had a responsibility to inquire about an estate, or at least if the AP was acting on behalf of the estate.

[38] The Minister stated that the first application from the AP was received within the 60-day priority period. The only priority period is for an estate and not the next of kin, or even the person responsible for the payment of the expense. There is no indication the Minister made reasonable inquiries regarding the estate, or waited 60 days for any estate to make the claim. Either the Minister was accepting the AP’s claim as from the estate, which was incorrect, or accepted the AP’s application form without question. If the Minister had made reasonable inquiries, she would have been aware of the Claimant’s existence and subsequently the responsibility for payment of the funeral was with the Claimant.

[39] The Minister states she was acting in good faith. The Minister does not act in good faith but according to the legislation.

[40] The Minister has submitted that she accepted the AP’s application knowing it was not a receipt and assumed the AP would pay the contract in full. There is no basis for the Minister’s assumption that the AP would pay the contract in full, as she was not representing the estate. The AP gave misinformation to the Minister “ticking” the box on her application that she was responsible for the funeral on her application and attaching an estimate for the funeral. Both of these conditions, providing an estimate where nothing has been paid on a contract that can be cancelled, and the “ticking of a box”, would reasonably require more investigation on the part of the Minister before paying the benefit. At the very least, the Minister must make reasonable inquiries if there is an estate.

[41] The Minister has the resources to make reasonable inquiries before making a payment.

[42] The Minister submitted that she had no way of knowing that the Claimant was a potential beneficiary of the benefit as he, the Claimant, applied in November 2018. The Minister could

have readily realized this with a phone call or letter to the funeral home or in the course of reasonably inquiring if there was an estate.

[43] The Claimant paid for the funeral on July 23, 2018. This date is before the application from the AP dated July 31, 2018 and well before the approval date of August 10, 2018.

[44] The AP stated she applied mistakenly noting she was responsible for the payment of the funeral and instead was applying for the benefit as the next of kin. As such, under the regulations she would not be the first payee for the benefit.

[45] I find, in this case, the Minister did not follow the CPP legislation correctly by not making reasonable inquiries into the estate.

[46] The benefit was not paid according to the requirements of the Regulations and should have been paid to the Claimant, who has provided ample evidence, undisputed by the Added Party, that he was not only responsible for the payment, but also actually paid for the funeral.

[47] I find the Claimant is entitled to the death benefit for his deceased son. He was responsible for and paid for the funeral expenses and therefore under section 64(1) of the CPP is the first payee of the funeral expense as there is no estate.

CONCLUSION

[48] The appeal is allowed.

Jackie Laidlaw
Member, General Division - Income Security