



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *PS v Minister of Employment and Social Development*, 2020 SST 1187

Tribunal File Number: GP-19-1225

BETWEEN:

**P. S.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Connie Dyck

Claimant represented by: Aresh, in sui juris, Virani

Teleconference hearing on: August 5, 2020

Date of decision: August 7, 2020

## DECISION

[1] The Claimant (P. S.) is not entitled to a *Canada Pension Plan* (CPP) death benefit.

### Overview

[2] The Claimant was married to the deceased contributor (M. S.). I will refer to M. S. as the “Contributor” in this decision. The Contributor passed away in May 2018 and the Claimant applied for a CPP death benefit. The Minister denied her application. She appealed to the Social Security Tribunal.

### The CPP contribution requirements

[3] For a CPP death benefit to be payable, the Contributor must meet the requirements that are set out in the CPP. More specifically the Contributor must have made at least the minimum amount of CPP contributions required.<sup>1</sup>

[4] The Contributor’s contributory period began in January 1, 1966 (when the CPP began) and ended in May 1993 (the month before he started his CPP retirement pension).<sup>2</sup> This is a period of 27 years and 4 months. There are no months to exclude because the Contributor was not disabled under a provincial pension plan or the CPP nor was the Contributor was not a family allowance recipient during this time.<sup>3</sup>

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<sup>1</sup> The CPP says this in Section 44(1)(c)

<sup>2</sup> Section 49(a) and 49(b) of the CPP explain when the contributory period begins.

<sup>3</sup> These exceptions are noted in Section 49(c) and 49(d) of the CPP.

## The calculation of the CPP contributions required

[5] For the CPP death benefit to be payable, the Contributor must have made the required amount of contributions.<sup>4</sup> The Contributor must have made contributions:

- a) For at least 1/3 of the total number of years included either wholly or partly within his contribution period. The exclusions do not apply to this Contributor;<sup>5</sup>  
or
- b) For at least 10 years.

[6] The Contributor's contributory period began in January 1966 (when the CPP began). The Claimant says that the Contributor's contributory period should begin in 1979 when he immigrated to Canada from Iran<sup>6</sup> and end in 1993 when he retired and qualified for CPP/OAS. She says this equals a contributory period of 14 years. One third of 14 years equals 4.66 years. Since the Contributor has 5 years of contributions, the death benefit should be payable to the Claimant. The Claimant's representative submitted that an SST Appeal Division decision which says that an estate could not apply for death benefit in that case within the 60 day deadline "for the simple reason that it did not yet legally exist..."<sup>7</sup> supports that the contribution period starts when he arrived in Canada as it did not exist prior to that. However, this statement is referring to the fact that the "estate" was not in existence until it was established by the Courts. It does not refer to the existence of the contributory period, which in fact was in existence in 1966, although this is prior to the Contributor's arrival in Canada.

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<sup>4</sup> The required contributions calculation is found at Section 44(3) of the CPP.

<sup>5</sup> The exclusions are any month in a year after the year in which he reaches 65 years of age and for which his unadjusted pensionable earnings were equal to or less than his basic exemption for that year, but in no case for less than 3 years. These are found at Section 44(3)(a)

<sup>6</sup> This information is in the Claimant's Notice of Appeal to the Tribunal at GD 1.

<sup>7</sup> *R.S. v. Minister of Employment and Social Development*, 2019 SST 1043 (paragraph 16)

[7] Further, this argument is not possible based on the CPP legislation. The contributory period does not begin when a person immigrates to Canada. The contributory period for the CPP begins at the later date of either when a person turns 18 years old or in January 1966. In this case, that date is January 1966. The Federal Court of Appeal<sup>8</sup> decided that the CPP contributory rules apply to all Canadians, immigrants and non-immigrants. The Court found that calculations of contributory periods for the CPP do not violate the s.15 Charter rights of immigrants who come from countries where there is no international agreement in place. This is the case of Iran from where the Contributor emigrated.

[8] The Claimant's representative has also submitted that the Minister's failure to respond in a timely manner directly contradicts Section 81(2) of the CPP and is a critical error in fact.<sup>9</sup> The decisions of the SST Appeal Division are not binding on me, however, they can provide guidance.<sup>10</sup> In this case, the AD found that the General Division had jurisdiction to consider the deny of the Minister's decision. The Added Party in this case made a request for reconsideration in the summer of 1997, but the file somehow slipped through the cracks and no reconsideration decision was actually made until September 2012. The Appellant similar to this appeal, made numerous requests for an explanation but received no satisfactory answer. Also, the Appellant stressed that there had been a lack of transparency and disclosure and that the Minister's "shoddy handling of the file should not go unchecked". The Claimant's representative in the case before me has also submitted that the Minister mishandled the current appeal. He submitted that the Minister's representative informed him the reconsideration would take approximately 120 days. Unfortunately, the decision was made 196 days after the reconsideration request from the Claimant. However, there is no specific deadline for

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<sup>8</sup> The decision is called *Lezau v. Canada (MSD)*, 2008 FCA 99.

<sup>9</sup> This information is in GD 1 and at GD 4-1.

<sup>10</sup> I looked to this decision for guidance. *S. B. v Minister of Employment and Social Development*, 2018 SST 405

the Minister to provide a reconsideration decision. Specifically, “without delay” is not defined in the legislation. While I agree with the Claimant’s representative that this is an unfortunate delay, I cannot find that it is reason to overturn the Minister’s decision.

[9] The Claimant’s representative submitted that the Minister acted “in bad faith,” when they failed to provide legislation upon which they relied when making their decision. He says the Minister has “failed to remain truthful and transparent during this process”.<sup>11</sup> He also asserts that the “Regional Director is intentionally attempting to deceive” the Claimant by providing misinformation.

[10] In the initial decision of July 13, 2018,<sup>12</sup> the Minister said the Contributor would need 8 years of valid contributions to the CPP. However, he only had 5 years (1985 – 1989 inclusive). In the reconsideration decision of April 24, 2019,<sup>13</sup> the Minister said that the Claimant would need 10 years of contributions, but only had 5 years. I agree with the Claimant’s representative that this is confusing. However, I do not believe that it was an intentional attempt to deceive the Claimant. In both cases, the Minister said the contributor only had 5 years of contributions. Whether he needed 8 or 10 years, the end result was that he did not have enough and that he only had 5 years of valid contributions. The Claimant’s representative also referred to a decision called *Canada v. Purcell*.<sup>14</sup> In this decision, the Court said a decision maker must act in good faith when exercising discretionary powers. If a decision maker acted in bad faith, erred in law, or relied on a misapprehension of the facts, the discretionary decision was reviewable. However, I find that the Minister exercised its discretion judicially. The Minister did not act in bad faith, err in law or mistake the facts.

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<sup>11</sup> This is at GD 1-14.

<sup>12</sup> This decision is at GD 2-7.

<sup>13</sup> The reconsideration decision is at GD 2-10.

<sup>14</sup> *Canada (Attorney General) v. Purcell*, [1996] 1 FCR644.

[11] Further, I considered the Minister's submissions regarding the error regarding 8 vs 10 years of valid contributions required. The Minister acknowledged that the letter dated July 13, 2018 (the initial decision) incorrectly stated that the Contributor would have needed to work and make valid contributions for 8 years. This was incorrect. The Minister apologized for the error and clarified that 10 years of valid contributions would be needed. Although the Minister made an error initially, it was corrected. Further, the Contributor only had 5 valid years and the result was that he did not have enough valid years of contributions in either case.

[12] The Claimant's representative also referred to Section 63(1) of the DESD Act, which addresses reimbursement and compensation costs to parties. However, this is not a matter in which I have jurisdiction. This discretion lies with the chairperson.

## **CONCLUSION**

[13] The appeal is dismissed.

Connie Dyck  
Member, General Division - Income Security