



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *NA v Minister of Employment and Social Development*, 2020 SST 1192

Tribunal File Number: GP-20-533

BETWEEN:

N. A.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Teleconference hearing on: July 27, 2020

Date of decision: August 7, 2020

DECISION

[1] N. A. is the Claimant in this case. I have decided that the Claimant is entitled to a survivor's pension (SVR) effective April 2017. This written decision explains my reasons.

Overview

[2] The Claimant's spouse (the deceased contributor) passed away on March 15, 2017. On March 11, 2019, the Claimant applied in person for a survivor's pension. The Minister approved the application, and paid benefits retroactive to April 2018 (11 months before the application). The Claimant asked the Minister to reconsider its decision because she believed she was entitled to more retroactivity than what the Minister awarded. The Claimant explained that she had made earlier applications for the survivor's pension, and she submitted that retroactivity should be calculated from one of the earlier applications. The Minister reconsidered, but maintained the decision to pay benefits retroactive to April 2018. The Minister explained that it did not receive an application before March 2019. The Claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

The Position of the Minister

[3] The Minister is required to apply the legislation that governs the CPP.¹ The Minister's position is that the SVR is generally paid back to the month after the death of a spouse² but this is only the case if the SVR application is received no later than 12 months after death. The SVR pension was paid starting at the earliest possible date, April 2018, which is 11 months prior to the date of application. The Claimant is not entitled to any additional payments of the SVR.³

[4] The Claimant disputes the Minister's decision that she did not apply earlier than March 2019. The Claimant submits that she is not challenging a retroactivity provision – she is saying the Minister used the wrong date of application.

The Position of the Claimant

¹ GD3-5

² Section 72 of the CPP

³ GD3-5

[5] The Claimant's position is she applied for the SVR on April 4, 2017 and January 31, 2018. She is entitled to benefits from April 2017.

Issue in this appeal

[6] Is the Claimant entitled to any additional SVR benefits beyond what she has already received?

[7] I must decide whether the Claimant's application for the SVR was received by the Minister before March 2019, and if so when.

[8] It is up to the Claimant to prove that it is more likely than not⁴ that the Minister received the SVR applications before March 2019.

Canada Post Tracking Records

[9] The Minister submits it is unable to use Canada Post tracking records to support the payment of the CPP benefit.⁵ The Minister submits that it is not aware of the contents of items that were sent and cannot use tracking records as evidence that particular items were sent.

[10] The Claimant submits that the tracking records are sufficient to show she sent the application to Service Canada on April 27, 2017 and January 31, 2018. When I asked if she could provide confirmation of delivery, the Claimant admitted she does not have confirmation of delivery. Canada Post does not keep details regarding delivered items past 60 days. However, she did refer me to a letter on file from the funeral home stating that the aftercare coordinator now advises clients to deliver their applications in person since there have been issues with documents arriving at Service Canada but not being processed.⁶

[11] The Minister acknowledges that there is a record in the ITRDS dated May 15, 2018 showing that the Claimant phoned Service Canada with respect to the SVR.⁷ However, the Minister was unable to locate any record of the application being received and advised the

⁴ This is a clear-language paraphrase of the legal requirement to decide "on a balance of probabilities."

⁵ GD3 – 5

⁶ GD1-37

⁷ GD2-24

Claimant to resubmit the application at a Service Canada Centre. The Claimant admitted she had no proof the earlier applications were in fact delivered to Service Canada because the tracking sheet does not confirm delivery.

[12] *Vinet-Proulx*⁸ is a Federal Court decision that was decided in a slightly different context because the claimant in that case had applied for Old Age Security (OAS) benefits (and not a CPP SVR pension). The two cases are similar, because in both cases an application for benefits was somehow lost.

[13] In *Vinet-Proulx*, the Court noted that the issue of determining on what date an application for benefits was sent by an applicant and of determining on what date the application in question was received by [the Minister]⁹ are questions of fact within the jurisdiction of the review tribunal. It may decide based on the testimonies heard and the documents filed, or even based on presumptions, on a balance of probabilities. The Court considered the relevant statutory provisions and concluded that the Minister was bound to apply the provisions of the statute to the application *that it had received*. The Court found that the Review Tribunal exceeded its jurisdiction by making an award (of retroactivity) that the Minister could not have made in the first place.

[14] In 2016, the Tribunal held that the claimant's benefit does not become payable until the application has been made *and* approved and the application cannot be approved by the Minister until it is actually received.¹⁰ The Tribunal concluded that the receipt of an application by the Minister is the key triggering event: a benefit is not payable until the Minister has approved it and the Minister cannot grant its approval until an application for the benefit has been received.¹¹

The Minister received the applications in May 2017 and February 2018

[15] In *S.M.*¹² the Tribunal made a finding of fact that the Appellant could not show his earlier application for a retirement pension was received by the Minister. What I need to consider is

⁸ *Canada (A.G.) v. Vinet-Proulx*, 2007 FC 99

⁹ Department

¹⁰ *S. M. v. Minister of Employment and Social Development*, 2016 SSTGDIS 11

¹¹ While not bound by GD decision, I find it to be persuasive..

¹² Paragraph 45

whether the evidence in this case demonstrates that the Minister received either of the Claimant's earlier SVR applications. I may decide this based on the testimonies heard and the documents filed, or even based on presumptions, on a balance of probabilities.¹³

[16] I acknowledge that the Minister says there is no record of the documents being received. I acknowledge that the evidence I have to weigh is not ideal. However, there is a presumption that registered mail is in fact received. The Minister does not dispute that the address where documents were sent by registered mail is correct and the documents were not returned to the funeral home. I am satisfied that the confirmation from the funeral home that they mailed the applications and clients had similar issues¹⁴ combined with a copy of the Claimant's applications dated April 2017 and January 2018 and detailed tracking records,¹⁵ establishes that in this particular case, the Minister received the applications in May 2017 and February 2018.¹⁶ In making my finding that the applications were received, I would have preferred records that confirmed receipt of delivery by the Minister; however, the test is on a balance of probabilities.

[17] While I am satisfied that the Minister received both applications, I note that the 2017 application does not appear to be signed.¹⁷ On the other hand, the 2018 application is signed. However, I cannot decide if the application was complete.

[18] The legislation states the SVR is generally paid back to the month after the death of a spouse¹⁸ if the application is received no later than 12 months after death. Since the applications were received in May 2017 and February 2018, the effective date for payment is the month after the deceased contributor passed away, April 2017.

[19] The appeal is allowed.

Kelly Temkin
Member, General Division - Income Security

¹³ *Vinet-Proulx*

¹⁴ GD1-37

¹⁵ GD1-9 and GD1-16 (January 31, 2018)

¹⁶ Taking judicial notice of the fact, that mail in Canada is usually delivered within 7 days.

¹⁷ GD1-14

¹⁸ Section 72 of the CPP