



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RH v Minister of Employment and Social Development and OD*, 2020 SST 929

Tribunal File Number: GP-19-1119

BETWEEN:

R. H.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

O. D.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Nicole Zwiers

Claimant represented by: James Hennessey

Teleconference hearing on: September 24, 2020

Date of decision: September 30, 2020

DECISION

[1] The Claimant and added party, O. D. (O. D.), are entitled to a pro-rata split of the Canada Pension Plan (CPP) death benefit payable up to the cap, in respect of the Deceased, B. D. (B. D.). The Claimant is entitled to 75% of the maximum CPP death benefit and O. D. is entitled to the remaining 25%.

OVERVIEW

[2] B. D. passed away on June 23, 2018. Both O. D., the mother of B. D., and the Claimant, R. H., the common-law spouse of B. D., applied for the death benefit following B. D.'s passing. In the absence of an estate, the Minister recognized both O. D. and the Claimant as eligible individuals for the death benefit and split the death benefit of \$2500 equally between the two. The Minister received O. D.'s application for the death benefit on June 27, 2018 and the Claimant's application for the death benefit on July 6, 2018. Both parties submitted certified copies of the same invoice for funeral expenses in the amount of \$9,937.38. As there was no estate and proof of the funeral expenses was shown to be invoiced to each, the death benefit was paid in equal portions to both the Claimant and O. D. in 2019. The Minister denied the Claimant's request that he be the sole payee to the death benefit on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] Upon receiving documentation proving that the Claimant had been the sole payer of \$10,315.13 in respect of funeral costs for B. D., the Minister changed its position on the payment of the CPP death benefit. In its submissions dated November 1, 2019, the Minister submitted that the Claimant was entitled to 100% of the death benefit in the amount of \$2500 and O. D. was not entitled to any portion of the benefit.¹

ISSUE(S)

[4] Is either the Claimant and/or O. D. entitled to the CPP death benefit in respect of the Deceased, B. D.?

¹ GD4-1

[5] If both parties are entitled to a portion of the death benefit, what is the appropriate proportion?

ANALYSIS

Both the Claimant and O. D. are entitled to the CPP death benefit

[6] Payment of the CPP death benefit is paid to the estate of the deceased with 2 exceptions. Where there is no estate or where the estate does not apply within the prescribed time, the Minister may pay the death benefit in accordance with s. 64 of the CPP Regulations. S. 64 permits the Minister to pay an individual or an institution who has paid the funeral expenses or who is responsible for the payment of the deceased's contributor's funeral expenses.

[7] In the within matter, both the Claimant and O. D. qualified as individuals under the regulations and both were determined to be equally entitled to the CPP death benefit, having shown responsibility for payment of the original funeral expenses for B. Dawe. In such instances, the CPP death benefit is prorated between individuals according to the amount of funeral expenses that each is responsible for. There were no submissions in advance of the hearing or at the hearing by either party that the Claimant or O. D. were not individuals within the CPP Regulations relating to the death benefit.

[8] At the hearing the legal representatives made submissions and the facts are not in dispute. Those facts are that although both the Claimant and O. D. had been invoiced for the original funeral expenses for B. D., in fact, it was the Claimant who was taken to court by the funeral home and who ultimately paid for the funeral and additional court expenses. O. D. was not pursued by the funeral home for payment and did not pay any amounts towards the original funeral expenses. Accordingly, the Claimant paid the entirety of the original funeral expenses and court expenses amounting to \$10,315.13.

[9] In June 2020, legal counsel for O. D. submitted an additional invoice showing proof of payment by O. D. in the amount of \$3,411.60 that reflects payment for a cremation plot and an engraved headstone for B. D. ² During the hearing legal counsel to O. D. submitted that the

² GD6-1

benevolent nature of the CPP legislation lent itself to broad interpretation of the term within the Regulations of “funeral expenses” such that O. D.’s expenses for a plot and headstone fell within the meaning.

[10] The legal representative for the Claimant did not dispute that the amount paid by O. D. was part of the funeral expenses within the meaning of the Regulations. However, the legal representative for the Claimant did take some issue with the fact that the amount paid by O. D. included payment for the plot to be shared with O. D. with B. D.. At the hearing I asked the Claimant’s legal representative to provide submissions on the amount of the funeral expenses submitted by O. D. that were for O. D.’s plot and therefore not properly part of the funeral expenses for B. D.. No submissions were provided by the Claimant’s representative on this issue. Legal counsel to O. D. submitted that the amount for O. D. to share the plot with B. D. was minimal, if any additional amount, and ought not to be factored into my consideration. Upon reviewing the invoice submitted by O. D., there was no indication that the amount of the funeral expenses was increased as a result of O. D.’s shared plot with B. D.. I find that the amount submitted by O. D. is not inflated as a result of her shared plot with B. D.

[11] There is no definition of “funeral expenses” found in the CPP Regulations. I invited the parties to direct me to any relevant case law that could provide a definition and they were unaware of any case law on point. I located a 2016 decision of this Tribunal, the General Division, Income Section, dealing with the same issue of payment of the death benefit where two individuals claimed entitlement. Importantly, this decision addresses the lack of a definition of “funeral expenses”. At paragraph 16 the member provided that she finds that the definition should include all expenses paid for the final arrangements after a person has passed away.³ Although I am not bound by another Tribunal member’s decision, I find the member’s finding in this respect compelling, particularly as the CPP legislation is noted to be benevolent legislation.

[12] I find that the invoice submitted by O. D. in June 2020 in the amount of \$3,411.60 also falls within the definition of funeral expenses for the purposes of the CPP death benefit, having been part of the final arrangements after the passing of B. D..

³ *K. S. v Minister of Employment and Social Development*, 2016 CanLII 96182 (SST), paragraph 16

Both Parties are entitled to a prorated payment of the CPP death benefit

[13] Having found that both parties have submitted invoices for amounts they have paid that are “funeral expenses” in respect of B. D., I must now consider the appropriate payment of the CPP death benefit to each. Both legal representatives submitted that they accepted a split on a prorated basis with the Claimant having paid the largest portion of the funeral expenses.

[14] Legal counsel to O. D. submitted that the funeral costs should be equally split between the Claimant and O. D. He submitted alternatively that the court costs paid by the Claimant when he was taken to court by the funeral home for payment, should not be included in the calculation of the funeral costs paid by the Claimant. In that case, legal counsel to O. D. submitted that the Claimant had paid 74% of the funeral expenses and O. D. had paid 26%. In the further alternative, legal counsel to O. D. agreed that if the court costs were included in the calculation of funeral expenses, the Claimant had paid 75% of the funeral expenses and O. D. had paid 25%.

[15] Although I appreciate that the Claimant paid the court costs above the original amount of the funeral expenses invoiced to both him and O. D. by the funeral home, I find that these costs form part of the funeral expenses. Just as I interpreted the legislation broadly taking into account the benevolent nature of the legislation in respect of O. D.’s funeral expenses, I have applied the same reasoning to include the court costs paid by the Claimant as part of the costs paid to the funeral home. As a result, I calculate the proportion of the total funeral costs paid by the parties to be: 75% by the Claimant and 25% by O. D.

CONCLUSION

[16] The amount paid by the Claimant including court costs for the total original funeral expenses was: \$10,315.13. O. D. paid subsequent funeral expenses of: \$3,411.60. Accordingly, the Minister is directed to allocate the CPP death benefit in the amount of \$1,875 to the Claimant and the remaining portion of \$625 to O. D. As O. D. was overpaid having received \$1250 in respect of the CPP death benefit at issue in 2019, the overpayment must be returned by O. D. to the Minister.

Nicole Zwiers
Member, General Division - Income Security