



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *LM v Minister of Employment and Social Development*, 2021 SST 220

Tribunal File Number: GP-20-500

BETWEEN:

**L. M.**

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: Virginia Saunders

Teleconference hearing on: March 18, 2021

Date of decision: May 7, 2021

## Decision

[1] The appeal is allowed.

[2] The Claimant, L. M., is entitled to a Canada Pension Plan (CPP) orphan's benefit from October 2018 to April 2019. This decision explains why I am allowing the appeal.

## Overview

[3] The Claimant's father died in 2008. As a result, she received an orphan's benefit from the Minister of Employment and Social Development (Minister).<sup>1</sup>

[4] The Claimant turned 18 in July 2014. This meant she could receive an orphan's benefit only if she was in school or university full-time.<sup>2</sup>

[5] The Claimant was in a car accident in November 2012. As a result, she has post-traumatic stress disorder (PTSD) and other mental health issues. She also has weekly medical appointments to treat her injuries. These medical appointments make it hard for her to go to school in person, so she takes correspondence courses.

[6] In the fall of 2018, the Claimant enrolled in one correspondence course at the X. The X lets students take only one correspondence course at a time.<sup>3</sup>

[7] In May 2019, the Claimant changed schools. Since then, she has been enrolled in two or three correspondence courses that take up about 20 hours per week.

[8] The Minister stopped paying the orphan's benefit to the Claimant from October 2018 to April 2019. The Minister says the Claimant wasn't in school full-time during this period.

[9] The Claimant appealed to the Tribunal's General Division. She says she has met the requirements under the *Canada Pension Plan* to receive an orphan's benefit.

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<sup>1</sup> An orphan's benefit is for a dependent child of a contributor who has died. See section 44(1)(f) of the *Canada Pension Plan*.

<sup>2</sup> To receive an orphan's benefit, a dependent child must be less than 18 years old or between the ages of 18 and 25 and in school or university full-time. See section 42(1) of the *Canada Pension Plan*.

<sup>3</sup> See GD1-2.

## What the Claimant has to prove

[10] For the Claimant to succeed, she has to prove she was in school full-time from October 2018 to April 2019.

## Reasons for my decision

[11] I find that the Claimant was entitled to an orphan's benefit from October 2018 to April 2019. I reached this decision by considering the following issues:

- What are the rules for full-time attendance at school?
- Was the Claimant a full-time student at the beginning of the 2018–2019 academic year?
- Was the Claimant absent during the 2018–2019 academic year because of her illness?
- If so, was the Claimant still a full-time student under the *Canada Pension Plan*?

## The rules for full-time attendance at school

[12] A claimant who is between the ages of 18 and 25 can receive an orphan's benefit only if they are "in full-time attendance at a school or university."<sup>4</sup>

[13] The *Canada Pension Plan* doesn't say what "full-time attendance" means. But, to receive an orphan's benefit, a claimant has to send the Minister a declaration signed by their school to prove they are enrolled as a full-time student.<sup>5</sup>

[14] But, in some cases, a school's definition of full-time attendance can be ignored.<sup>6</sup> The CPP provides social benefits, so I have to interpret the law that governs it broadly and

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<sup>4</sup> See section 42(1) of the *Canada Pension Plan*.

<sup>5</sup> See section 67 *Canada Pension Plan Regulations*.

<sup>6</sup> I agree with the Pension Appeals Board in *Minister of Human Resources Development v Attewell* (January 15, 1999), CP 9435, which says that section 67(a) of the Regulations is a procedural and not a substantive requirement. This means that a claimant has to send a completed declaration to the Minister. The Minister will consider what the declaration says, but it doesn't have to accept it. The Minister has to make its own decision about whether a claimant is a full-time student. The Tribunal has to do this too.

generously. If I have any doubts about the wording of the law, I have to interpret it in the Claimant's favour.<sup>7</sup>

[15] Full-time course loads are designed for students who don't have health issues. A claimant who is ill might never be able to go to school full-time, according to their school's definition. I don't think the Government of Canada meant to discriminate against claimants who are ill. So, interpreted generously, what is full-time for one student might not be full-time for another. I think a claimant is a full-time student if they are spending as much time on their schooling as their illness allows.

[16] Even with a generous definition of "full-time," there are still times when a claimant can't go to school. The *Canada Pension Plan Regulations* (Regulations) say that a claimant who is absent or can't go to school full-time because they are ill can still be considered a full-time student and receive an orphan's benefit. To still be considered a full-time student, the Claimant has to meet these requirements:<sup>8</sup>

- She was in school full-time at the beginning of an academic year.
- She became absent or could not go back to school full-time because of her illness.
- Right after her illness, she went back to school full-time in the same academic year.
- If she could not go back to school full-time in the same academic year, she went back to school full-time in the "next ensuing academic year"—that is, the academic year right after the one in which she became absent.

[17] The Regulations don't say what "academic year" means. In Canada, the academic year usually runs from September to May.

[18] The Regulations say the academic year includes the normal vacation periods.<sup>9</sup> So, including the summer vacation period, the academic year would run from September to August.

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<sup>7</sup> See *Villani v Attorney General of Canada*, 2001 FCA 248.

<sup>8</sup> Section 66(2) of the *Canada Pension Plan Regulations* sets out these rules.

<sup>9</sup> See sections 66(1) and 66(2) *Canada Pension Plan Regulations*.

[19] Based on a generous interpretation of “academic year,” a claimant who starts a course at any time in the fall is a full-time student at the beginning of an academic year.

### **The Claimant was a full-time student**

[20] The Claimant was a full-time student at the beginning of the 2018–2019 academic year.

[21] In October 2018, the Claimant was enrolled in one correspondence course at the X. This meant she wasn’t a full-time student according to her school’s declaration.<sup>10</sup>

[22] But I find that she was a full-time student because she was taking as many courses as her illness allowed.

[23] At the hearing, the Claimant answered my questions spontaneously and in a straightforward way. She said that, since 2012, she has struggled with school because of her health issues and her medical appointments. If she didn’t finish a course any time after November 2012, it was because of her illness.

[24] I accept her evidence about this.

[25] Illness certificates from the Claimant’s family doctors support what the Claimant says about her illness. The certificates say that the Claimant could not go to school from November 2012 to March 2019 (later extended to February 2020) because of “ongoing risk issues/PTSD/mental stressors.”<sup>11</sup>

[26] The certificates don’t say that the Claimant could not go to school at all. They say that her illness was likely to interrupt her schooling at times.

[27] Because of her school’s policy, the Claimant could take only one correspondence course at a time. She had to take correspondence courses because of her illness. So her illness was the reason she could take only one course at a time.

[28] This means that being enrolled in one correspondence course in the fall of 2018 made the Claimant a full-time student at the beginning of the 2018–2019 academic year.

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<sup>10</sup> See GD2-17-18.

<sup>11</sup> See GD2-19, 20.

### **The Claimant was absent because of her illness**

[29] The Claimant became absent during the 2018–2019 academic year because of her illness.

[30] The Minister decided that the Claimant wasn't a full-time student at the beginning of the 2018–2019 academic year. This meant it didn't need to decide whether she then became absent.

[31] The Claimant's school said she didn't complete her course.<sup>12</sup> She didn't submit any assignments after December 2018.<sup>13</sup>

[32] By not submitting her assignments, the Claimant became absent during the 2018–2019 academic year. Based on the evidence above, I find that she became absent because of her illness.

### **The Claimant was still a full-time student under the *Canada Pension Plan***

[33] Even though she became absent during the 2018–2019 academic year, the Claimant is still considered to have been in school full-time from October 2018 to April 2019 under the *Canada Pension Plan*. This is because she meets the requirements set out in the Regulations.<sup>14</sup>

[34] The first requirement is that you are in school full-time at the beginning of an academic year. The Claimant was in school full-time at the beginning of the 2018–2019 academic year.

[35] The second requirement is that you became absent or could not go back to school full-time because of your illness. The Claimant became absent during the 2018–2019 academic year because of her illness.

[36] The third requirement is that you go back to school full-time in the same academic year. In May 2019, the Claimant enrolled in a correspondence course at a new school. Since then, she has been in school about 20 hours per week. I find that this course load is all the Claimant can manage because of her illness.

[37] This makes her a full-time student.<sup>15</sup>

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<sup>12</sup> See GD1-2.

<sup>13</sup> See GD2-51.

<sup>14</sup> Paragraph 16 of this decision sets out the requirements.

## **Conclusion**

[38] I find that the Claimant is entitled to an orphan's benefit from October 2018 to April 2019.

[39] This means that the appeal is allowed.

Virginia Saunders  
Member, General Division - Income Security

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<sup>15</sup> The school also said she was a full-time student. See GD2-10-12.