



Citation: *MS v Minister of Employment and Social Development*, 2021 SST 546

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant/Claimant: M. S.
Representative: L. F. (Claimant's daughter)

Respondent: Minister of Employment and Social Development (Minister)
Representative: Ian McRobbie

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 12, 2020 (issued by
Service Canada)

Tribunal member: Anne S. Clark

Type of hearing: Teleconference

Hearing date: June 22, 2021

Hearing participants: Claimant
Minister's Representative
Minister's Observers

Decision date: August 30, 2021

File number: GP-20-1009

Decision

[1] The appeal is dismissed.

[2] The Claimant, M. S., is not eligible for a *Canada Pension Plan* (CPP) survivor's pension. This decision explains why I am dismissing the appeal.

Overview

[3] This appeal involves facts and application/appeal processes that happened over many years. They can be complicated and it is important to provide a clear history of the facts and procedures to help explain the parties' positions and my reasons for the decision. The facts and procedural history are not in dispute.

Facts

- F. F. (the Contributor) was married to the Claimant.
- **August 7, 2001** – The Contributor was murdered on this day.
- **December 28, 2001** – The Claimant applied for a CPP survivor's pension and it was approved effective September 2001.
- **May 2006** – The Claimant was convicted of first degree murder of the Contributor.
- **May 2006** – The Minister stopped the CPP survivor's pension and demanded the Claimant repay the pension payments she received from September 2001 to May 2006.
- **June 2011** – The Claimant appealed the criminal conviction and it was overturned.
- **October 2013** – The Claimant was retried and convicted of first degree murder of the Contributor. She continues to serve the sentence for the conviction.

Application and appeal process

[4] In the years after May 2006, the Claimant disputed the Minister's decision to stop the CPP survivor's pension and to demand repayment of the amount paid between September 2001 and May 2006. Here is a summary of the decisions and the appeals to the Social Security Tribunal's General Division (GD) and Appeal Division (AD).

- **October 1, 2017** - The Claimant requested the Minister reconsider its May 2006 decision to stop the CPP survivor's pension.¹ The Minister did not reconsider the May 2006 decision until March 2020.
- **January 21, 2020** – The Claimant appealed to the GD to have the CPP pension reinstated.²
- **March 11, 2020** – The GD denied the Claimant's appeal and said she was not entitled to more time to appeal a decision for an allowance under the *Old Age Security (OAS) Act*. The GD decision did not address the Claimant's entitlement to a CPP survivor's pension.
- **March 12, 2020** – The Minister issued a Reconsideration Decision Letter about the Claimant's entitlement to a CPP survivor's pension. The Minister confirmed the decision to stop the CPP survivor's pension in May 2006 and to demand the Claimant repay all amounts she received as the Contributor's survivor.³
- **May 4, 2020** – The Claimant applied for Leave to Appeal to the AD.⁴
- **July 3, 2020** – The AD granted leave and allowed the Claimant's appeal from the GD decision dated March 11, 2020. The Claimant and the Minister agreed the GD made an error because the GD did not consider the CPP benefits the Claimant requested in her appeal. The AD accepted the parties' agreement and returned the matter to the GD to consider the Claimant's entitlement to a CPP survivor's pension and, specifically, the Minister's decision dated March 12, 2020.

Procedures at the GD after the AD decision

[5] The Claimant represented herself at the hearing. Her daughter is the designated representative but she did not attend the hearing. The Claimant testified about the challenges she had with obtaining evidence and making submissions to support her position.⁵ I arranged prehearing conferences to allow the parties to discuss appeal procedures and requirements. I also allowed the Claimant additional time to ask

¹ GD2R-12

² GD1-2

³ IS01

⁴ AD1

⁵ In *Pintea v. Johns*, 2017 SCC 23 the Supreme Court of Canada endorsed the *Statement of Principles on Self represented Litigants and Accused Persons* issued by the Canadian Judicial Council. These principles recommend case management activities to protect the interests of participants who represent themselves.

questions about the law and the appeal process and to prepare her evidence and submissions.

[6] The Claimant first said she wanted to challenge the legislation under the *Canadian Charter of Rights and Freedoms* (Charter). After prehearing conferences to discuss the requirements of a Charter challenge, she said she was not in a position to pursue a Charter challenge and wanted her appeal to proceed as a regular appeal.⁶

[7] The appeal proceeded as a regular appeal and the Claimant attended on her own behalf. The Minister was represented and three other Ministry employees or representatives observed the hearing.

The Parties agreed to the issues to be decided on appeal

[8] The parties agreed that I have to decide two questions:

1. Did the Minister have the authority to stop paying the CPP survivor pension to the Claimant and recover the amount previously paid?
2. Is the Claimant entitled to a survivor's pension under the CPP?

[9] The Claimant said I should allow her appeal because the Minister did not have the legal authority to "claw back" benefits she received from September 2001 to May 2006. She said the law the Minister relies on did not exist until 2015 and the Minister cannot use it to justify the May 2006 decision.

[10] The Claimant also said she should be entitled to a survivor's pension because it is a contributory benefit and not a matrimonial asset. She says the CPP is funded by contributors and not by the public. Therefore, since she was held accountable for the Contributor's debts, she believes she should also benefit from his contributions to the CPP.

⁶ The parties attended pre-hearing conferences on October 21, 2020 and February 23, 2021. A summary of the outcome of the conferences is at IS09. The Claimant's letter is at IS10.

[11] The Minister argues the Claimant is not entitled to any CPP benefits resulting from the Contributor's murder.

[12] The Minister said the CPP gives the Minister the authority to deny the survivor's pension because the Claimant was convicted of the Contributor's first degree murder in 2006 and again in 2013. The Minister said the law in 2006 allowed the Minister to stop paying benefits to the Claimant so she would not benefit from her criminal act. In any event, the Minister says the current law is retroactive and applies to decisions made before the current law came into force and effect. The Minister says the current law authorizes the Minister to change an earlier decision and requires the Minister to recover any amounts paid to the Claimant as a survivor benefit.

Matters I have to consider first

- **Not all of the Claimant's questions can be answered in the appeal.**

[13] The Claimant asked some questions that are not a part of this appeal and I cannot answer them or give her guidance on how to proceed. She raised questions about the repayment schedule. I explained it is not a question on appeal. I noted the Minister encouraged her to contact the department to discuss repayment. Also, repayment schedules are within the Minister's sole jurisdiction to decide.

[14] The Claimant asked what would happen to the overpayment if she declares bankruptcy or if she successfully appeals the conviction again. I explained I cannot address the possible outcome of future events or the potential impact they may have on her entitlement to benefits under the CPP.

- **I denied the Minister's request to summarily dismiss the appeal**

[15] On April 14, 2021, the Minister submitted that the law disqualifies the Claimant from receiving survivor's benefits because she was convicted of murdering her spouse. The Minister said the law has unlimited retroactivity and the Claimant's appeal has no

reasonable chance of success. Therefore, the Minister said I must summarily dismiss the appeal.⁷

[16] I did not summarily dismiss the appeal. This file was the subject of an appeal to the AD. The parties reached an agreement and the AD accepted the agreement. Based on the agreement the AD returned the appeal to the GD to consider the Claimant's entitlement to a CPP survivor's pension.

[17] I am required to summarily dismiss an appeal if I am satisfied that the appeal has no reasonable chance of success.⁸ When deciding whether an appeal has a reasonable chance of success, I must ask myself if it is plain and obvious on the record that the appeal is bound to fail, regardless of the evidence and/or arguments that the Claimant may make at a hearing.⁹

[18] I find it is not plain and obvious from a review of the file that the appeal is bound to fail. The Claimant is appealing whether it is fair and legal for the Minister to go back and change a decision already made. She also questions the Minister's authority to require her to repay benefits she was entitled to when they were paid. I find it is not plain and obvious from the file that the appeal is bound to fail.

[19] In addition, the Minister agreed to the Claimant's appeal at the AD and was represented at the prehearing conferences at the GD. The Claimant had every reason to expect a hearing because the parties agreed to that and the AD allowed the appeal based on the agreement. The Minister did not raise the question of a summary dismissal at any time during the settlement process at the AD or the prehearing conferences at the GD. Our discussions were about how the appeal would proceed as a regular appeal. Considering that, it would have been unfair to dismiss the appeal without a hearing. This appeal progressed through many different steps and was before the GD by the agreement of the parties. In consideration of fairness and natural justice,

⁷ To summarily dismiss an appeal means the appeal is dismissed without a hearing. The Minister's submission is at IS11

⁸ Subsection 53(1) of the DESD Act

⁹ For a discussion of this principle see *A.Z. v. Minister of Employment and Social Development*, 2018 SST 298

I decided the appeal should proceed to a hearing by teleconference and written submissions.

Reasons for my decision

[20] The Minister submitted there was legal authority to change the decision to award the Claimant a survivor's pension when she was convicted of first degree murder in May 2006. The Minister relied on the legal principle called *ex turpa causa officio*. That principle means that a person cannot profit from their own crimes.

[21] The Minister also submitted that there is now clear authority under the CPP for the Minister to retroactively change the decision to award the Claimant a CPP survivor's pension because she was convicted of murdering the Contributor.¹⁰

Does the CPP give the Minister authority to change its previous decision?

[22] For the reasons that follow I find the CPP gives the Minister the clear authority to revisit and change a decision on eligibility. I also find, that because the Claimant was convicted of first degree murder of the Contributor, the CPP requires the Minister to recover any benefits paid to the Claimant no matter when the conviction happened or when the benefits were paid.

[23] Since there is clear authority for the Minister to retroactively change the earlier decision it is not necessary to consider the law that existed in 2006 including the principle of *ex turpa causa officio*.

- **Statutory Interpretation**

[24] The Tribunal is created by legislation. This means I have to follow the rules set out in the CPP. I must also consider whether decisions in other Tribunal appeals apply to this appeal. I am not required to follow what other Tribunal Members decide but I must consider the approach others take and decide if that approach applies to the case

¹⁰ Subsections 44.1(4) and (5) of the CPP

before me. I am required to follow the rulings of the courts such as the Federal Court (FC), Federal Court of Appeal (FCA) and the Supreme Court of Canada (SCC).

[25] There are court decisions that say decision-makers must read the words in legislation and give them ordinary meaning so the law meets the purpose Parliament intended. This means I must read the CPP using ordinary meaning for its words. Also, if the language is clear I must not assume another meaning that is inconsistent with the purpose of the law. The sense and meaning I give words in the CPP must be consistent with the intended purpose of the CPP. I must consider what Parliament intended the law to address or accomplish. The *Interpretation Act* requires me to interpret the law fairly and broadly to make sure the meaning I give a word or section allows the law to meet or attain its objective.¹¹

The CPP gives the Minister the authority to stop the Claimant's pension

[26] Under the CPP, there are circumstances where the Minister has specific authority to revisit and change earlier decisions. For example, the Minister can rescind or amend an earlier decision based on new facts.¹²

[27] The Federal Court held that the Minister could vary a decision regarding eligibility for a CPP disability pension.¹³ However, the Minister could terminate a disability pension only as far back as the last standing decision¹⁴ confirming eligibility.

[28] As noted above, the CPP also gives the Minister specific authority to deny benefits if a person is convicted of first or second degree murder or manslaughter of a contributor. Any money the person received in respect of the contributor's death is considered a debt and must be repaid. This applies to all payments including payments

¹¹ The *Interpretation Act* says this at section 12

¹² The CPP says this in subsection 81(3)

¹³ The Federal Court said this in *Kinney v. Canada (Attorney General)*, 2009 FCA 158

¹⁴ The last standing decision is the most recent decision, typically in a series of decisions

made before the person was convicted¹⁵ and before the law came into force and effect.¹⁶

[29] The Claimant argued that it would be unfair for the Minister to change a decision and require her to repay benefits she received after so many years have passed. She also argued that she should be entitled to benefits in respect of the Contributor's death because she was held accountable for his debts. However, the CPP is clear that despite other sections that grant entitlement, the Claimant is not entitled to benefits in respect of the Contributor's death because she was convicted of his first degree murder.¹⁷

The principles set out by the AD in BR do not apply to this appeal

[30] There are recent decisions from the AD about whether the Minister has the authority to revisit and change previous decisions under the OAS Act and/or the CPP. The first was about the OAS Act and some later decisions applied the same principles.¹⁸

[31] There are significant differences between the facts and law in BR and this appeal. In BR the AD could not identify clear authority under the OAS Act for the Minister to retroactively change previous decisions and creating debt for claimants. Further, the AD found the rules of statutory interpretation would not allow the AD to conclude that the purpose and intent of the legislation was to give the Minister the authority to revisit and change previous decisions.

[32] I find there was clear authority for the Minister to revisit and change the decision to award a survivor's pension to the Claimant.

[33] I have to follow the rules set out in the CPP that determine whether a claimant qualifies for a CPP survivor's pension. Under the CPP, the Claimant is not and was never entitled to benefits as a result of the Contributor's death because she was

¹⁵ The CPP says this in subsection 44.1(4)

¹⁶ The CPP says this in subsection 44.1(5)

¹⁷ The CPP says this in paragraph 44.1(1)(a)

¹⁸ There is a recent decision from the Tribunal's Appeal Division and later decisions from the Appeal Division and General Division. The first decision was *B.R. v. Minister of Employment and Social Development*, 2018 SST 844. I will refer to it as BR.

convicted of his first degree murder. The language in the current legislation is very clear. The CPP prevents the Claimant from receiving any benefits as a result of the Contributor's death and requires her to repay any amounts she received.

[34] The Claimant submitted that the law does not allow the Minister to "claw back" benefits the Minister paid her from September 2001 to May 2006. She says I must base my decision on the law that existed when the Minister paid the pension and not on the law that exists now. I do not agree with the Claimant.

[35] The CPP states a survivor's pension is not payable to a person who was convicted of the first or second degree murder or manslaughter of the contributor.¹⁹ The Minister is required to recover any amounts paid to the convicted person even if they were paid before the conviction.²⁰ Finally, the rules apply to convictions that happened before this rule came into effect.²¹ This law means no one who is convicted of first or second degree murder or manslaughter of a contributor may receive or keep any benefits received as a result of the death of that contributor.

Conclusion

[36] I find that the Claimant is not entitled to a survivor's pension under the CPP and the Minister has the authority to recover the amounts she was paid before the conviction in May 2006 specifically benefits paid from September 2001 to May 2006.

[37] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section

¹⁹ The CPP says this in paragraph 44.1(1)(a)

²⁰ The CPP says this at subsection 44.1(4)

²¹ The CPP says this at subsection 44.1(5)