



Citation: *AM v Minister of Employment and Social Development and SR*, 2021 SST 796

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: A. M.

Respondent: Minister of Employment and Social Development

Added Party: S. R.

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated August 13, 2020 (issued by Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Teleconference

Hearing date: November 1, 2021

Hearing participant: Appellant

Decision date: December 2, 2021

File number: GP-20-1242

Decision

[1] The appeal is dismissed.

[2] The Canada Pension Plan (CPP) Division of Unadjusted Pensionable Earnings (also known as the CPP Credit Split) cannot be reversed. This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant, A. M., and the Added Party, S. R., were married in May 1974. They separated in February 1997 and divorced in February 2002.

[4] The Added Party applied for a CPP Credit Split in July 2019. She subsequently provided a copy of the judgement granting their divorce. In January 2020, she asked to withdraw her application. However, the Minister performed the CPP Credit Split in January 2020 on the basis that it was mandatory in the circumstances of this case.

[5] The Claimant says that the CPP Credit Split should be reversed. The separation agreement between the Claimant and the Added Party has a provision regarding CPP Credit Splitting. Also, the Added Party asked to withdraw her application. Both the Claimant and the Added Party signed a letter stating that we do not wish to proceed with the CPP Credit Split. Their wishes should be honoured. The Claimant depends on his pension to support his family.

[6] The Added Party did not attend the hearing or provide written submissions. She did, however, write in her most recent correspondence to the Tribunal dated July 15, 2021 that she wishes to withdraw her application for CPP credit splitting.

[7] The Minister says that the CPP Credit Split is mandatory in cases of divorce after January 1, 1987. Even though the Claimant and Added Party requested a withdrawal of the Added Party's application, the Minister was required to perform the CPP Credit Split upon receiving sufficient proof that a divorce has taken place. The separation agreement between the Claimant and the Added Party was signed in Ontario. The province of Ontario has not enacted legislation that would allow the waiver of a CPP Credit Split.

The issue in this appeal

[8] I must decide whether the CPP Credit Split performed by the Minister should be reversed. In making this decision, I must consider whether the Added Party could withdraw her application after it was made and whether the separation agreement between the Claimant and the Added Party prevents credit splitting.

Reasons for my decision

The Claimant's testimony at the hearing and the relevant documents on file

[9] The Claimant submitted at the hearing that the CPP Credit Split should be reversed. He stated that the Added Party applied for the CPP Credit Split by mistake. She thought her pension would increase without decreasing the Claimant's pension. She attempted to withdraw her application by calling Service Canada and by writing several letters. The Claimant submits that their wishes should be honoured.

[10] The Claimant also submits that the separation agreement between the Claimant and the Added Party precludes credit splitting. He states that he gave the Added Party more than a fair settlement when they divorced, including a down payment for a house and a car.

[11] I considered all of the documents on file. In particular, I considered the following:

- Separation Agreement dated August 8, 2001 stating that “neither party will apply for (and both parties agree there will not be) a division of unadjusted pensionable earnings... whether or not the right to apply for a division of Canada Pension Plan credits can be waived, each agrees not to make such application and they promise to remain honour-bound to do nothing that would lead to such a division.”¹

¹ Paragraph 8(1) of the Separation Agreement at GD2-22

- Divorce Judgement from the Ontario Superior Court of Justice dated January 18, 2002 stating that the Claimant and the Added Party were married on May 5, 1974 and their divorce takes effect on February 18, 2002.²
- The Added Party's application for CPP Credit Split dated July 3, 2019, noting that the Claimant and the Added Party were married on May 5, 1974, separated in February 1997, and divorced on February 18, 2002.
- Letter dated December 30, 2019 signed by the Added Party stating that she wants to withdraw her application for CPP Credit Splitting.
- Letter dated January 15, 2020 signed by the Claimant and the Added Party stating that they agree that their estate and assets were settled fairly at the time of their separation. They both requested a withdrawal of the Added Party's application for CPP Credit Splitting.
- Letter dated July 15, 2021 signed by the Added Party stating that she continues to want to withdraw her application for the CPP Credit Split. She made a mistake and would like the CPP Credit Split to be stopped.

The CPP Credit Split was mandatory and cannot be reversed

[12] The Claimant explained at the hearing that the Added Party made a mistake in applying for the CPP Credit Split and wanted to withdraw her application. The documents on file support what he says. In particular, the letters dated December 30, 2019, January 15, 2020, and July 15, 2021 all indicate that the Added Party changed her mind and wanted to withdraw her application.

[13] However, I reviewed the relevant provisions of the CPP and the CPP Regulations. I agree with the Minister that the CPP Credit Split was mandatory in this case and cannot be reversed.

² GD2-39

[14] The Minister is required by the CPP to perform a credit split following a judgement granting a divorce upon being informed of the judgement and receiving the prescribed information.³ The prescribed information is set out in the CPP Regulations. It includes information such as the name, address, and social insurance number of the former spouses, date and place of marriage, date and place of dissolution of marriage, copy of judgement granting divorce, the dates the former spouses began living separate and apart, and a copy of any written agreement.⁴

[15] The Minister received the required information, including a copy of the judgment granting a divorce. Therefore, even though the Added Party subsequently changed her mind, the Minister was required to perform the Credit Split. There is no provision in the CPP that would allow the Minister to accept a withdrawal of an application once it has been notified of the judgement granting a divorce and has received the required information.

[16] I also considered that there is a separation agreement between the parties that states that neither party will apply for a CPP Credit Split.

[17] A spousal agreement entered into on or after June 4, 1986 is binding on the Minister if:

- (i) It contains a provision that expressly mentions the *Canada Pension Plan* and the intention of the parties that there be no division of pension credits;
- (ii) It was entered into before a divorce occurred;
- (iii) The provision has not been invalidated by a court order; and
- (iv) That provision of the agreement is expressly permitted under the provincial law governing the agreement.⁵

³ Section 55.1(1)(a) of the *Canada Pension Plan*

⁴ Subsection 54(2) of the CPP Regulations

⁵ Subsections 55.2(2) and (3) of the *Canada Pension Plan*

[18] The conditions required to opt out of credit splitting have not been met. In particular, the province of Ontario does not expressly permit the waiver of CPP credit splitting in spousal agreement. Currently, such waivers are only permitted in the provinces of Quebec, Saskatchewan, Alberta, and British Columbia. Therefore, the Claimant and the Added Party could not agree to waive the CPP Credit Split by spousal agreement.

[19] The Claimant submitted that the Added Party made a mistake when she applied for the CPP Credit Split. He also submits that their wishes should be honoured.

[20] While I am sympathetic to this situation, the Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. I am required to interpret and apply the provisions as they are set out in the CPP. I cannot use the principles of equity or consider extenuating circumstances in respect of appeals.

[21] The Minister was required by the CPP to perform a credit split in this case.

Conclusion

[22] I find that the CPP Credit Split performed by the Minister was mandatory and cannot be reversed.

[23] This means the appeal is dismissed.

Lianne Byrne
Member, General Division – Income Security Section