



Citation: *MM v Minister of Employment and Social Development and Executor for the Estate of LM*, 2022 SST 42

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. M.

Respondent: Minister of Employment and Social Development

Added Party: Executor for the Estate of L. M.

Decision under appeal: General Division decision dated November 4, 2021
(GP-21-602)

Tribunal member: Neil Nawaz

Type of hearing: On the Record

Decision date: February 2, 2022

File number: AD-21-431

Decision

[1] The appeal is dismissed.

Overview

[2] This appeal involves competing claims for the Canada Pension Plan (CPP) death benefit.

[3] L. M. was a contributor to the CPP. He passed away on September 13, 2018. L. M.'s estate (the Added Party) applied for the death benefit on November 5, 2018. The Minister approved the application and paid the death benefit to the executor of the deceased contributor's estate.

[4] M. M. (the Appellant) is the deceased contributor's brother. He applied for the CPP death benefit on February 17, 2020. The Minister refused the application because it had already awarded the benefit to the estate.

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. On November 4, 2021, the General Division summarily dismissed the Appellant's appeal because it was not satisfied that the appeal had a reasonable chance of success.

[6] The Appellant is now appealing the summary dismissal to the Tribunal's Appeal Division. He makes the following points:

- He was the one who accommodated the deceased contributor in his last years. He was the one who paid for his funeral.
- In December 2018, he wrote to the Canadian Embassy in Belgrade and requested information about a potential refund for funeral expenses. That request was ignored.
- Meanwhile, the Minister had already paid the death benefit to B. M. as executor of the estate, even though she had little to do with the deceased contributor in his final years and did not bear his funeral expenses.

- It would be unjust if the death benefit were paid to a person who did not actually incur the expense of burying the deceased contributor.

[7] I have decided that there is no need for an oral hearing in this case. The issues are clear, and so are the relevant facts and the applicable law. This decision is based on my review of the documents already on file—the Appellant’s submissions, as well as the information that was available to the General Division.

Issues

[8] Here are the issues as I see them:

- Did the General Division apply the correct test for summary dismissal?
- Do any of the Appellant’s reasons for appealing have merit?

Analysis

[9] There are four grounds of appeal to the Appeal Division. An appellant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹

[10] In my view, none of the Appellant’s complaints fall into the above grounds of appeal.

The General Division applied the correct test for summary dismissal

[11] The General Division disposed of the Appellant’s appeal in an appropriate way. In its decision, the General Division correctly stated that it could summarily dismiss an

¹ *Department of Employment and Social Development Act (DESDA)*, section 58(1).

appeal if it had no reasonable chance of success.² I am satisfied that the General Division understood the legal test and properly applied it to the facts.

[12] The threshold for summary dismissal is high.³ It is not enough to consider the merits of a case in the parties' absence and then find that the appeal cannot succeed. A decision-maker must determine whether it is **plain and obvious** on the record that the appeal is bound to fail.⁴ The question is **not** whether the decision-maker must dismiss the appeal after giving full consideration to the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is **destined to fail**, regardless of whatever evidence or arguments might be submitted at a hearing.

[13] In this case, the General Division dismissed the Appellant's appeal because the law required the Minister to pay the death benefit to the estate. The General Division found that the estate met the conditions required to qualify for the benefit. It also found no exception that would have allowed the Appellant to take precedence over the estate.

[14] When making these determinations, the General Division correctly applied a high threshold, concluding that the appeal had "no reasonable chance of success." For reasons that I will explain in more detail, it was plain and obvious on the record that the Appellant was bound to fail.

None of the Appellant's reasons for appealing have merit

[15] I don't see how the General Division made any errors in coming to its decision. The General Division reviewed the file and concluded that the Appellant was ineligible for the CPP death benefit. I see no reason to interfere with this conclusion.

² General Division decision, paragraphs 3 and 4, citing DESDA section 53(1).

³ *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v Canada (Attorney General)*, 2004 FCA 264.

⁴ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

– **The Minister had no choice but to grant the death benefit to the estate**

[16] Section 71 of the *Canada Pension Plan* makes it clear that the estate of the deceased contributor has priority, subject to certain exceptions, over all other potential claimants:

- 71 (1) Where payment of a death benefit is approved, the Minister **shall**, except as provided in subsections (2) and (3), pay the death benefit to the estate of the contributor.
- (2) The Minister **may** direct payment of a death benefit in whole or in part to such person or body as is prescribed where
- (a) he is satisfied, after making reasonable inquiries, that there is no estate;
 - (b) the estate has not applied for the death benefit within the **prescribed time interval** following the contributor's death; or
 - (c) the amount of the death benefit is less than the prescribed amount [emphasis added].

[17] The "prescribed time interval" in section 71(2)(b) is defined in section 64(1) of the *Canada Pension Plan Regulations*:

- 64 (1) When paragraph 71(2)(a) of the Act applies or **when the estate of a deceased contributor has not applied for the death benefit within the interval of 60 days after the contributor's death**, or when the amount of the death benefit is less than two thirds of 10% of the Year's Maximum Pensionable Earnings for the year in which the contributor died, in the case of a death that occurred before January 1, 1998, or less than \$2,387, in the case of a death that occurred after December 31, 1997, **a direction under subsection 71(2) of the Act may, subject to subsections (2) and (3), be given for payment of the death benefit**
- (a) **to the individual or institution who has paid or is responsible for the payment of the deceased contributor's funeral expenses;**

- (b) in the absence of an individual or institution described in paragraph (a), to the survivor of the deceased contributor; or
- (c) in the absence of an individual or institution referred to in paragraph (a) and a survivor referred to in paragraph (b), to the next of kin of the deceased contributor [emphasis added].

[18] In this case, the estate applied for the death benefit within the prescribed time interval—60 days of the contributor’s death. Accompanying the estate’s application was a certified copy of the deceased contributor’s will, which named B. M. as executor.⁵ Having satisfied itself that (i) there was an estate and that (ii) B. M. was authorized to act on behalf of the estate, the Minister paid her the death benefit.

[19] On appeal, the General Division found that B. M., as executor of the estate, had met all the conditions necessary to qualify for the death benefit. I see no reason to overturn this finding.

– **The Minister had no discretion to grant the death benefit to the Appellant**

[20] The *Canada Pension Plan* is clear. If there is an estate, then the Minister **must** pay it a death benefit if it submits an application within 60 days of the contributor’s death. If there is no estate or if the estate misses the 60-day deadline, only then can the Minister consider alternative beneficiaries, such next of kin or the person who may have actually paid for the funeral.

[21] In this case, the deceased contributor’s will clearly identified B. M. as executor. She applied for the death benefit within 60 days of the contributor’s death. In those circumstances and, given the wording of the legislation, the Minister could not consider granting the death benefit to any party other than the estate.

[22] According to a case called *Cormier*,⁶ “The only statutory liability of the Minister to pay a death benefit is owed to the estate.” By implication, everything else is left to the

⁵ See Last Will and Testament of L. M. dated April 8, 2015, GD2-58.

⁶ *Cormier v Canada (Minister of Human Resources Development)*, 2002 FCA 514.

Minister's discretion, as indicated by use of the word "may" in section 71(2) of the *Canada Pension Plan* and again in section 64(1) of the CPP Regulations. But that discretion only becomes operational if there is no estate or if the estate misses the deadline.

[23] As the General Division correctly recognized, the Minister was required to pay the death benefit to the estate and had no discretion to direct it to the Appellant or anyone else.

– **Both the General and Appeal Divisions must follow the letter of the law**

[24] The Appellant argues that it is unfair to award the death benefit to a party that did not pay for the deceased contributor's funeral expenses.

[25] I can understand the Appellant's frustration. Unfortunately, his argument cannot succeed.

[26] The Appellant provided evidence that he paid for his brother's funeral. He also submitted a letter showing that he made an early attempt to find out whether the Canadian government might defray the cost of the funeral. However, none of that matters if the estate applied for the death benefit within 60 days of the deceased contributor's death. The record shows that it did, and the Appellant did not submit any evidence otherwise.

[27] The General Division was not permitted to consider any extenuating circumstances around the Appellant's application, and neither am I. We can't simply ignore the explicit terms of the *Canada Pension Plan* and give the Appellant what he wants, no matter how much we might sympathize with him.⁷

⁷ *Minister of Human Resources Development v Tucker*, 2003 FCA 278.

Conclusion

[28] The Appellant has not shown that the General Division erred when it found that he was not entitled to the CPP death benefit.

[29] The appeal is therefore dismissed.



Member, Appeal Division