



Citation: *IS v Minister of Employment and Social Development*, 2022 SST 105

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: I. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated December 17, 2020
(GP-20-596)

Tribunal member: Neil Nawaz

Decision date: March 1, 2022

File number: AD-21-39

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant is seeking to appeal the Minister's decision to terminate her son's Disabled Contributor's Child's Benefit (DCCB) after his father returned to work.

[3] The Claimant was married to R. S.. After their divorce, the Claimant took custody of their son, born X.

[4] R. S. was diagnosed with a heart condition and the Minister, through her Service Canada arm, granted him a Canada Pension Plan disability pension, effective February 2017. Later, The Minister also approved the Claimant's application for the DCCB on behalf of their son.

[5] In May 2018, the Minister learned that R. S. had returned to work.¹ As a result, The Minister decided that R. S. was no longer disabled and terminated his CPP disability pension as of July 2017. In October 2018, the Minister informed the Claimant that her son had lost his eligibility for the DCCB from July 2017 to January 2018, the month he turned 18.² The Minister assessed the Claimant with overpayments totaling \$1,450.

[6] The Claimant appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by videoconference and dismissed the appeal. It found that the Claimant's son was not entitled to the DCCB under the law. It also found that the Minister had the authority to terminate payment of the benefit and to demand repayment of money paid to the Claimant from July 2017 to January 2018.

[7] The Claimant has asked the Appeal Division for permission to appeal the General Division's decision.³ She suggests that the Minister's officials offered her false

¹ See telephone memo dated May 11, 2018, GD2-98.

² See Minister's letter to the Claimant dated October 29, 2018, GD2-19.

³ See Claimant's application for leave to appeal to the Appeal Division dated February 8, 2021. After the Claimant submitted this application, this proceeding was placed on hold while she attempted to negotiate

assurances that it was safe for her to cash DCCB cheques. She says that she and her son will suffer financial hardship if they are required to repay some of the DCCB that they received.

[8] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant's appeal does not have a reasonable chance of success.

Issue

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

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.⁴

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.⁵ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁶ This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.⁷

Analysis

[10] This is a hard case. The Claimant is being forced to pay back benefits that she accepted in good faith, possibly with the approval, or on the advice of, the Minister's

a settlement with the Minister. Following a case conference late last year, the Appeal Division gave the Claimant a deadline, later extended to February 21, 2022, to either withdraw her appeal or provide more detailed reasons for pursuing it. On February 8, 2022, the Claimant sent an email to the Tribunal that detailed an offer that the Minister had presented to her. As of the decision date, it is not known whether she accepted the offer.

⁴ *Department of Employment and Social Development Act* (DESDA), section 58(1).

⁵ DESDA, sections 56(1) and 58(3).

⁶ DESDA, section 58(2).

⁷ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

staff. Without her knowledge, the benefits were placed under review because of an event—her ex-husband’s return to work—that she had nothing to do with.

[11] Although I sympathize with the Claimant, I don’t see a reasonable chance of success for her appeal.

[12] As the General Division correctly noted, the DCCB is governed by sections 74 to 76 of the *Canada Pension Plan*. Section 76(1) outlines the circumstances under which the benefit can be terminated:

A disabled contributor’s child’s benefit ceases to be payable with the payment for the month in which

- (a) The child ceases to be a dependent child;
- (b) The child dies;
- (c) The **contributor’s disability pension** or post-retirement disability benefit **ceases to be payable** [emphasis added]...

[13] No one disputes that the Claimant’s ex-husband returned to work and had his disability pension terminated as of July 2017. That meant the Claimant’s son had his DCCB terminated as of the same month.

[14] The problem is that none of this was communicated to the Claimant until late October 2018. In the meantime, the Minister kept on paying her the DCCB, despite the fact that her ex-husband’s disability pension had been under review since as early as May 2018. The Claimant continued to accept payment without knowing that her son’s DCCB was under threat. This went on for six months, until her son turned 18 in January 2018.

[15] Along the way, the Claimant ended up in an impossible position. She had come to rely on regular payments that were no longer hers to keep, yet she had no way of knowing that she had lost entitlement to them. Despite this inequity, the Minister could still demand the return of the excess DCCB. That is because the Minister has broad powers to recover overpayments. Under the *Canada Pension Plan*, a person who has

received a benefit to which they are not entitled must immediately return that benefit to the Minister.⁸ Any amount that is not returned is a debt to the Crown.⁹

[16] That said, the Minister also has the power to forgive debts to the Crown. The Minister can waive repayment if she is satisfied that doing so would cause undue hardship to the debtor.¹⁰ She can also take “remedial action” if she is satisfied an excess payment was the result of erroneous advice from the Minister or one of her officials.¹¹

[17] These powers are voluntary, and I have no power to compel the Minister to use them.¹² However, I would encourage the Claimant to continue her efforts to seek forgiveness from the Minister. I would even more strongly urge the Minister to offer relief to this Claimant, who finds herself with a significant debt to the Crown through no fault of her own.

Conclusion

[18] The Claimant has not identified any grounds of appeal that have a reasonable chance of success.

[19] Permission to appeal is therefore refused.



Member, Appeal Division

⁸ *Canada Pension Plan*, section 66(1).

⁹ *Canada Pension Plan*, section 66(2).

¹⁰ *Canada Pension Plan*, section 66(3)(c).

¹¹ *Canada Pension Plan*, section 66(3)(d).

¹² *Lee v Canada (Attorney General)*, 2019 FC 1189.