



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DS v Minister of Employment and Social Development*, 2021 SST 910

Tribunal File Number: GP-21-1678

BETWEEN:

D. S.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Tyler Moore

DATE OF DECISION: November 3, 2021

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a Canada Pension Plan (CPP) Survivor's pension and Orphan's benefit on October 9, 2020. The Respondent granted the application and the benefits became payable as of November 2019. The Appellant subsequently requested additional benefit retroactivity. That request was denied by the Respondent. The Appellant appealed the Respondent's reconsideration decision to the Social Security Tribunal (Tribunal) on August 5, 2021.

[2] This appeal involves whether or not the Appellant is entitled to additional CPP Survivor's pension and Orphan's benefit payment retroactivity.

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[4] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[5] The Contributor passed away on June 20, 2013.

[6] The Appellant's application for a CPP Survivor's pension and Orphan's benefit was received on October 9, 2020.

[7] A CPP Survivor's pension and Orphan's benefit was paid to the Appellant starting November 2019. That was 11 months prior to the date of his application.

SUBMISSIONS

[8] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations).

[9] The Appellant submitted that:

- a) The Appellant's accountant provided him with incorrect advice. He advised the Appellant that he did not qualify for CPP benefits after the Contributor passed away. That, in addition to the traumatic shock of losing his wife, being the primary care provider for two young daughters, losing the family business, and undue financial hardship, is why he did not apply earlier.
- b) The Appellant's accountant also failed to roll over the spousal RRSP in the correct tax year, which has contributed to the Appellant being double taxed by the Canada Revenue Agency for over \$200k. This has contributed to the Appellant's continued severe mental stress.

[10] The Respondent submitted that:

- a) There is no issue for determination, as the Appellant is already in receipt of the maximum retroactive amount for a Survivor's pension and Orphan's benefit allowed under the CPP.
- b) The case around the Estate's RRSP is outside the scope of the CPP. The Appellant should direct that issue to the Canada Revenue Agency.

ANALYSIS

[11] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. As a tribunal member, I am required to interpret and apply the provisions as they are set out in the CPP.

[12] I find that the Appellant has already received the maximum retroactivity for the CPP Survivor's pension and Orphan's benefit, based on his application date of October 9, 2020.

[13] Section 72 and 74 of the CPP limit the retroactive amount of the Survivor's pension and Orphan's benefit to 11 months from the date of application. While it is unfortunate that the Appellant's accountant advised him incorrectly, I do not have the authority to make case-by-case exceptions. I find that the Appellant's benefits have already been paid at the earliest possible date of November 2019.

[14] With respect to the Estate's RRSP taxation, it is beyond the scope of what can be appealed to this Tribunal. It is a matter that can only be dealt with by the Canada Revenue Agency.

[15] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[16] The appeal is summarily dismissed.

Tyler Moore
Member, General Division - Income Security