



Citation: *DD v Minister of Employment and Social Development and DD*, 2022 SST 143

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: D. D.
Representative: Cheryl Neutt

Respondent: Minister of Employment and Social Development

Added Party: D. D.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 30, 2020
(issued by Service Canada)

Tribunal member: Connie Dyck

Type of hearing: On the Record

Decision date: January 17, 2022

File number: GP-20-2059

Decision

[1] The appeal is allowed.

[2] The Appellant, D. D., is eligible for a *Canada Pension Plan* (CPP) death benefit.

Overview

[3] On October 16, 2017, the Minister received the Appellant's application of behalf of the estate of A. D. (father) for a CPP death benefit. The Minister denied the application initially and on reconsideration because it was past the 60-day deadline. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[4] In submissions to the Tribunal, the Minister acknowledged they made an error when they denied the Appellant the death benefit the Minister. The Minister said that the Appellant was the executrix and she did submit a death benefit application prior to the expiration of 60 days after the death of her father.

What the Appellant must prove

[5] For the Appellant to succeed, she must prove she is entitled to the CPP death benefit.

[6] The *Canada Pension Plan* says when approved, a death benefit is paid to the estate of the contributor. The only exceptions are:

- a) if the Minister, after making reasonable inquiries, is satisfied that there is no estate; and
- b) if the estate has not applied for the death benefit within 60 days of the death of the contributor.¹

¹ This is found in the CPP at Section 71.

Matters I have to consider first

A Pre-hearing Conference was held

[7] The Appellant, Appellant's representative and the Added Party attended the Pre-hearing Conference.

[8] The parties agreed on the following facts:

- a) A. D. passed away on August 28, 2017.
- b) The Added Party applied for the CPP death benefit on September 7, 2017.² It was approved October 10, 2017. In his application he said there was a Will and the Appellant was the executrix.
- c) The Appellant applied for the death benefit on October 16, 2017 as the executrix of the Will.³ An estate must apply for the death benefit within 60 days of the date of death. In this case, the application was made 49 days after the death.
- d) The Minister had already paid the death benefit to Added Party, so in November 2017, they denied the Appellant's application.⁴

Reasons for my decision

[9] I find that the Appellant is entitled to the CPP death benefit.

[10] On August 1, 2019, the Appellant asked the Minister to reconsider their decision of November 2017. This was based on their decision of her application of October 16, 2017.⁵

² This application is at GD 2-22.

³ The Appellant's application is at GD 2-4.

⁴ This information is at GD 2-6.

⁵ The reconsideration request is at GD 2-17.

[11] On September 9, 2019, the Minister said she was past the 90-day deadline to ask for a reconsideration. The file would remain closed until she provided reasons why it was late.⁶

[12] In October 2019, the Appellant explained why her reconsideration request was late.⁷ The Minister accepted these reasons and made a reconsideration decision.

[13] The reconsideration decision was made one year later on September 30, 2020. The Minister maintained their original decision and said the Appellant was not entitled to the death benefit because the application was received more than 60 days after the death of her father.⁸

[14] However, the Appellant's application as executrix of the Will was in fact made before the 60-day deadline. It was made 49 days after the death of her father.

[15] Unfortunately, the Minister made a mistake when they said it was not filed in time. When the CPP death benefit was received from the Added Party, it was the responsibility of the Minister to make reasonable enquiries about the Estate and determine if an Estate and Executor existed. I note that in his application, the Added Party did acknowledge that there was an Estate and he identified his sister as the Executrix. He was very clear in providing this information to the Minister.

[16] Only if there is no Estate and this has been established after making reasonable enquiries, or if the Estate has not applied for the death benefit within 60 days of the date of death of the contributor, would the Minister be able to pay the death benefit to the Added Party. Unfortunately, the Minister did not make the necessary enquiries. As this did not take place and the Appellant has established that she is the Executrix for the estate of her father, and submitted an application within 60 days of her father's death, she is entitled to receive the CPP disability benefit.

⁶ This is at GD 2-17.

⁷ This information is at GD 2-9.

⁸ The reconsideration decision is at GD 2-10.

[17] I am sympathetic to the Added Party. He acknowledged in his application that there was an Estate and an Executor. It is through no fault of his own that he received the death benefit in error. However, the law says that the Tribunal must interpret and apply the provisions as they appear in the CPP.⁹ I cannot change them on compassionate grounds.

Conclusion

[18] I find that the Appellant is eligible for a CPP death benefit. She applied as executrix of the estate according to the Will within the 60-day deadline.

[19] This means the appeal is allowed.

Connie Dyck
Member, General Division – Income Security Section

⁹ See *R. v. Conway*, 2010 SCC 22 (CanLII)