



Citation: MR v *Minister of Employment and Social Development*, 2022 SST 192

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: M. R.

Respondent: Minister of Employment and Social Development

Added Party: The Estate of N. R.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 27, 2020 (issued by
Service Canada)

Tribunal member: Pierre Vanderhout

Type of hearing: Teleconference

Hearing date: February 2, 2022

Hearing participant: Appellant

Decision date: February 4, 2022

File number: GP-20-1613

Decision

[1] The appeal is dismissed.

[2] The Claimant, M. R., cannot prevent or undo the Canada Pension Plan (“CPP”) credit split¹ for which his ex-wife N. R. applied. This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant married N. R. on June 21, 1986. They separated on September 1, 2014. They signed a separation agreement on April 10, 2015 (the “Separation Agreement”) and signed a joint application for divorce on April 30, 2018.² The divorce order was made on June 13, 2018, and took effect on July 14, 2018.³ In June 2019, N. R. applied for a CPP credit split with respect to the Claimant.⁴

[4] The Minister says it approved N. R.’s CPP credit split application on October 7, 2019.⁵ The Minister’s decision was sent out on October 18, 2019.⁶ However, N. R. died on October 11, 2019.⁷ The credit split reduced the Claimant’s overall CPP credits.

[5] The Added Party is the Estate of N. R. (the “Estate”). O. R., the younger son of the Claimant and N. R., was the estate representative for this appeal.⁸

[6] The Claimant has made many submissions on why the CPP credit split should not be maintained. He says the split is invalid because it was not processed until after N. R. died. In the alternative, it should not be maintained because N. R. died before she could receive any increased CPP amount. He also says the application is invalid

¹ Formally known as a “Division of Unadjusted Pensionable Earnings”, or “DUPE”. For clarity, I will refer to it as a “CPP credit split”.

² See GD2-14 to GD2-18.

³ GD2-12

⁴ See GD2-7 to GD2-10.

⁵ See GD2-36, GD2-10, and GD4-3.

⁶ GD2-29

⁷ GD2-30

⁸ Based on N. R.’s will (dated September 4, 2018) and the codicil (dated September 25, 2019). See GD3-5 to GD3-13.

because N. R. filed it more than 36 months after their marriage ended, and he never waived that rule. He further suggests that N. R. was not competent when she applied for the CPP credit split, as she made other irrational decisions shortly before her death. Alternatively, he suggests that spite motivated her CPP credit split application.

[7] The Claimant also submits that N. R. agreed not to pursue his CPP pension. He says N. R. agreed to receive support of \$500.00 per month instead. Finally, the Claimant says the Separation Agreement bars any CPP credit split.

[8] The Minister says it must perform a CPP credit split upon being informed of a divorce and receiving the prescribed information. The Minister says the credit split is mandatory and none of the potential exceptions apply to this case. The Minister also says credit splits are permanent and cannot be undone if one of the spouses dies.

What the Claimant must prove

[9] For the Claimant to succeed, he must prove that the *Canada Pension Plan's* mandatory CPP credit split provisions do not apply to his situation.

Matters I must consider first

The Added Party wasn't at the hearing

[10] A hearing can go ahead without the Added Party if the Added Party got the notice of hearing.⁹ I decided that the Added Party got the notice of hearing because the Tribunal sent it to the Added Party by e-mail on January 24, 2022. The Tribunal also advised the Added Party of the hearing by telephone on January 24, 2022. The Tribunal had previously tried to send the notice of hearing to the Added Party by registered mail, but delivery was not successful at the address provided by the Added Party.

[11] Tribunal documents sent by e-mail are deemed to have been communicated on the next business day after they are sent.¹⁰ This means the notice of hearing was

⁹ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

¹⁰ Section 19 of the *Social Security Tribunal Regulations* sets out this rule.

communicated to the Added Party on January 25, 2022. As a result, the hearing took place when it was scheduled, but without the Added Party.

Reasons for my decision

[12] Most of the facts are not in dispute. The Claimant agreed that he lived with N. R. from June 1986 to September 2014.¹¹ He has not taken issue with the CPP credit split dates being January 1986 to December 2013.¹² Instead, he argues that the credit split should never have happened. In the alternative, he argues that the credit split should be undone.

Was the Minister compelled to perform a credit split?

[13] For the reasons set out below, I find that the Minister was compelled to perform a credit split with respect to N. R. and the Claimant.

[14] The law makes it mandatory for the Minister to do a CPP credit split in certain circumstances. For spouses, the Minister must do a credit split once it (1) is informed of a judgment granting a divorce, and (2) receives the prescribed information.¹³

[15] I find that the Minister was informed of the divorce judgment by October 7, 2019. This is evident from N. R.'s CPP credit split application. She made the application in June 2019 and referred to the divorce. A Minister's employee noted the divorce judgment directly on the application.¹⁴

[16] The "prescribed information" essentially consists of the information and documents requested on the CPP credit split application.¹⁵ For privacy reasons, the Minister has redacted much of the information on N. R.'s application form. However, I find it likely that N. R. provided the prescribed information. The form shows that N. R. provided a lot of information, although much of it was later redacted.¹⁶ I also see that

¹¹ GD2-13

¹² The dates are at GD2-29. The rules are in s. 55.1(4) of the *Canada Pension Plan* and s. 78.1(1) of the *Canada Pension Plan Regulations*.

¹³ See s. 55.1(1)(a) of the *Canada Pension Plan*. See also s. 55.11(a) of the *Canada Pension Plan*.

¹⁴ See GD2-7 to GD2-10.

¹⁵ See ss. 52 and 54 of the *Canada Pension Plan Regulations*.

¹⁶ See GD2-7 to GD2-10.

documents such as the marriage certificate appear to have been filed before approval of the credit split.¹⁷ The credit split was performed within four months of N. R.'s application. The Minister also requested and received confirmation of the relevant dates from the Claimant during that time.¹⁸

[17] There is a limited exception to this rule. The Minister has the discretion not to perform a credit split if the Minister is satisfied that the split would leave both spouses worse off.¹⁹ However, I see no evidence that N. R. (or her Estate) is worse off due to the credit split.²⁰ At the hearing, the Claimant admitted that the split would have been to N. R.'s benefit. His credit split details also show that the credit split reduced his pensionable earnings for every year of the split (besides 1991), but likely increased N. R.'s earnings for every year of the split (besides 1991).²¹ I find it highly unlikely that the credit split left N. R. worse off.

[18] I am satisfied that the Minister appears to have acted correctly in performing the CPP credit split in October 2019. However, the Claimant raised several concerns about that credit split. I will now look at those concerns.

– **Does it matter that N. R. passed away in October 2019?**

[19] The Minister's letter informing the Claimant of the credit split was dated October 18, 2019.²² This was one week after N. R. died. The Minister suggests that the credit split was actually performed on October 7, 2019, four days before N. R. died.²³

[20] The Claimant says the credit split is invalid because it was performed after N. R. died. In the alternative, he says it should be revoked because she never received any benefit from the split.

¹⁷ See, for example, GD2-11 to GD2-18.

¹⁸ GD2-13

¹⁹ See s. 55.1(5) of the *Canada Pension Plan*.

²⁰ *Dela Cruz v. Canada (Attorney General)*, 2020 FC 744, at paragraph 27.

²¹ GD2-29

²² GD2-29

²³ See GD2-36, GD2-10, and GD4-3

[21] I acknowledge that the CPP credit split had little practical benefit for N. R., as she died in the same month that it was performed. However, the conditions for granting a CPP credit split for divorced spouses make no reference to whether either of the spouses is alive.²⁴ The conditions are slightly different for common-law partners and for spouses who are not divorced.²⁵ Alas, those conditions do not apply to the Claimant. Nor is there any 36-month deadline for divorced spouses, as suggested by the Claimant. Such a deadline may have applied to other situations or at other times. I further note that any delay by the Minister in processing the application is irrelevant.²⁶

[22] Federal Court decisions are binding on the Tribunal. This is important because the Federal Court recently considered whether the death of a spouse affected a CPP credit split application. The Federal Court confirmed that the Minister must perform the credit split even if one of the spouses is deceased and the split results in a disadvantage and a reduced pension to the living spouse.²⁷

[23] Given the *Canada Pension Plan's* provisions and the Federal Court's position, N. R.'s death does not affect the CPP credit split. It does not matter if the split was done before or after N. R.'s death.

[24] The Claimant suggests that this is unfair. However, the Tribunal cannot disregard the *Canada Pension Plan*. The Tribunal is created by statute. The Tribunal can only grant remedies that it has the specific statutory authority to grant.²⁸ The Tribunal cannot waive or amend the *Canada Pension Plan* provisions even if the result may appear to be unfair. The Tribunal cannot ignore Federal Court decisions either.

– **Do N. R.'s motivations or state of mind matter?**

[25] I find that N. R.'s motivations and state of mind do not matter.

²⁴ See s. 55.1(1)(a) of the *Canada Pension Plan*.

²⁵ See s. 55.1(1)(b) and (c) of the *Canada Pension Plan*.

²⁶ *Dominie v. MSD*, (2004) CP 21228 (Pension Appeals Board); application for judicial review dismissed 2005 FCA 242.

²⁷ *Dela Cruz v. Canada (Attorney General)*, 2020 FC 744, at paragraph 24.

²⁸ *R. v. Conway*, 2010 SCC 22, at paragraph 82.

[26] N. R.'s September 2018 will appointed her son B. as her estate trustee. Her will split her estate between her sons B. and O. R.²⁹ However, barely two weeks before her death, N. R. signed a codicil removing B. as executor and appointing O. R. as one of two new co-executors. The codicil also appears to grant O. R. most of N. R.'s estate.³⁰ At the hearing, the Claimant said O. R. ended up with about \$70,000.00 from N. R.'s estate, while B. received about \$20,000.00. The Claimant added that B. had been very close to N. R. and spent a lot of time with her.

[27] The Claimant suggested that N. R.'s codicil and her application for the CPP credit split showed spiteful, irrational, or incompetent behaviour. The Claimant said N. R. had terminal cancer and had already decided to die by lethal injection when she applied for the credit split.

[28] The *Canada Pension Plan* says nothing about the intentions or motivations of an applicant. As for irrational behaviour, the law does forgive certain delays caused by a lack of capacity.³¹ However, delay is not the issue in this case. The Claimant seeks to make N. R.'s application void because of a lack of capacity. In a persuasive 2003 decision, the Pension Appeals Board confirmed that the *Canada Pension Plan's* capacity provisions can only help establish an earlier application date. They cannot be used to void an application because of incapacity.³²

[29] As noted above, CPP credit splits are mandatory once the Minister learns of the divorce and receives the prescribed information. The focus is on the divorce itself, rather than the reasoning behind the divorce or the application. Circumstantial evidence about N. R.'s actions at the end of her life does not change the divorce or the length of her relationship with the Claimant. I note that the Claimant had agreed with those key facts.³³

²⁹ GD3-7 to GD3-13

³⁰ GD3-6

³¹ S. 55.3 of the *Canada Pension Plan*.

³² See *MHRD v. Balding*, (2003) CP 17439.

³³ See GD2-13 to GD2-18.

- **Do the terms of the Separation Agreement affect the credit split?**

[30] In certain limited situations, spouses can make a written agreement that prevents the Minister from performing a CPP credit split.³⁴ The Claimant suggests that the Separation Agreement is such an agreement. However, the Separation Agreement does not meet the requirements to prevent a CPP credit split.

[31] A written agreement must meet four requirements to prevent a CPP credit split. One requirement is that the agreement provision is “expressly permitted under the provincial law that governs such agreement.”³⁵ However, Ontario law does not permit such an agreement.³⁶ The marriage, separation, and divorce in this case all took place in Ontario.³⁷ As a result, I do not need to consider whether the Separation Agreement meets the other three requirements.

[32] The Claimant also suggested that he paid N. R. \$500.00 per month on the condition that she not access his CPP credits.³⁸ I note that the Separation Agreement does not link the \$500.00 to his CPP credits.³⁹ In any case, the relevant jurisdiction is still Ontario. A purported oral agreement cannot prevent a CPP credit split if a signed written agreement cannot prevent that same credit split.

Conclusion

[33] I find that the Claimant cannot prevent or undo the CPP credit split for which N. R. applied.

[34] This means the appeal is dismissed.

Pierre Vanderhout

Member, General Division – Income Security Section

³⁴ See ss. 55.2(2) and (3) of the *Canada Pension Plan*.

³⁵ See s. 55.2(3)(b) of the *Canada Pension Plan*.

³⁶ The Federal Court recently affirmed this in *Dela Cruz v. Canada (Attorney General)*, 2020 FC 744.

³⁷ GD2-11, GD2-12, GD2-14, and GD2-21.

³⁸ GD2-13

³⁹ GD2-21