



Citation: *JN v Minister of Employment and Social Development*, 2022 SST 337

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

Decision

Appellant: J. N.
Representative: Steven Sacco

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 30, 2021 (issued by
Service Canada)

Tribunal member: George Tsakalis

Type of hearing: Teleconference

Hearing date: March 10, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: March 14, 2022

File number: GP-21-1598

Decision

[1] The appeal is dismissed.

[2] I cannot award the Appellant, J. N., a Disabled Contributor's Child Benefit (DCCB) on behalf of her child, A. N., before April 2020. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a Canada Pension Plan (CPP) disability pension in October 2017. The Minister of Employment and Social Development (the Minister) denied her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division (the Tribunal).

[4] The Tribunal awarded the Appellant a CPP disability pension in a decision released on May 25, 2020.

[5] The Appellant says she contacted the Minister on November 24, 2020, after receiving a letter from the Minister with her first disability pension payment and DCCB payment for her other child, Z. N.. She called the Minister because she had not received a DCCB for A. N.. The Appellant says a Minister's representative told her that if she completed a new application, she would receive a DCCB for A. N., starting the month after A. N. was born. She says she completed the application in January 2021, but the Minister says it did not receive the application form until March 2021.

[6] The Minister awarded the Appellant a DCCB for A. N. starting in April 2020. The Minister says it cannot award a DCCB for A. N. before April 2020. This is because the law says that DCCB benefits can start no earlier than 11 months before the Minister received the DCCB application.

[7] The Appellant disagreed with the Minister's decision. She asked the Minister to reconsider its decision. But the Minister maintained its position that it could not pay her

a DCCB for A. N. before April 2020.¹ The Appellant appealed this decision to the Tribunal.

[8] The Appellant and her legal representative say that the DCCB for A. N. should be paid as of August 2019, the month after A. N. was born. A. N. was born after the Appellant's October 2017 CPP disability application. The Appellant could not have possibly included A. N. in her original CPP disability application. A Minister's representative told her on November 24, 2020 that she would receive a DCCB for A. N. the month after A. N. was born, after she filled out the application. The Minister was also aware of A. N.'s birth. This is because the Tribunal mentioned A. N. in its May 25, 2020 decision awarding the Appellant a CPP disability application, and the Minister was a party to that appeal.²

[9] The Appellant and her legal representative made an alternative argument. They said that the DCCB for A. N. should be paid as of February 2020. This is because the Appellant completed the application form and sent it out in January 2021 and the law says a DCCB can be awarded 11 months before the Minister received the application. However, the Minister delayed processing her application until March 2021. It would only be fair to award the Appellant a DCCB for A. N. beginning in February 2020 because she mailed out her application in January 2021.

[10] After considering the evidence, I agree with the Minister that I cannot award the Appellant a DCCB on behalf A. N. before April 2020.

Reasons for my decision

[11] The DCCB is a flat-rate monthly benefit that is paid for each child of a person receiving the CPP disability benefit.³

¹ See GD2-10

² See GD2-27

³ See paragraph 44(1)(e) of the *Canada Pension Plan*

[12] A DCCB for children under 18 is made to the person having custody and control of the child.⁴

[13] The payment of the DCCB can start no earlier than 11 months before the Minister received the DCCB application.⁵

[14] The Appellant argues that the 11 month maximum retroactive rule should not apply in this case on the basis of fairness, and because the Minister gave her erroneous advice and made an administrative error in dealing with the DCCB application.

[15] The Appellant argues that her situation is unfair because A. N. was not born when she applied for a CPP disability pension. She could not possibly have named her in the disability application. Had A. N. been born when she applied for the CPP disability, she would have been able to receive a DCCB on her behalf the month after her birthday.⁶

[16] The Appellant argues she received erroneous advice from the Minister. A Minister's representative told her that she would receive a DCCB the month after A. N.'s birth.

[17] The Appellant also argues that the Minister made an administrative error in dealing with the DCCB application. She sent out the application in January 2021. But the Minister mishandled her application and it did not receive it until March 2021. The Appellant and her legal representative believe this delay was due to the COVID-19 pandemic.

[18] The problem with the Appellant's arguments is that the Tribunal is created by law. I must interpret and apply the law as it is set out in the CPP. I cannot make decisions based on whether the law is fair or not.⁷

⁴ See section 75 of the *Canada Pension Plan*

⁵ See subsection 74(2) of the *Canada Pension Plan*

⁶ See paragraph 74(2)(a) of the *Canada Pension Plan*.

⁷ See *R. v. Conway*, 2010 SCC 22 and *Canada (MSD) v. Kendall* (June 7, 2004), CP 21960 (PAB)

[19] I also do not have jurisdiction to deal with issues of administrative error or any erroneous advice on the part of the Minister.⁸ The Tribunal has ruled that any allegations related to the mishandling of an application by the Minister is an administrative error, which means that the Tribunal has no jurisdiction to deal with this issue.⁹

[20] The Appellant argued that the Minister knew about A. N.'s birth before she applied for a DCCB on her behalf. But the Federal Court of Canada has ruled that there is no legal obligation on the part of the Minister to inform Appellants of their entitlement to a benefit, including the DCCB.¹⁰

[21] I have to apply the law as it is written in the CPP. The law says that payment of the DCCB can start no earlier than 11 months before the Minister received the DCCB application. The Minister received the Appellant's DCCB application on behalf of A. N. in March 2021. This means that the start date for payment of the DCCB to the Appellant for her child A. N. began in April 2020.

Conclusion

[22] I cannot award the Appellant a DCCB for her child A. N. before April 2020.

[23] This means the appeal is dismissed.

George Tsakalis

Member, General Division – Income Security Section

⁸ See subsection 66(4) of the *Canada Pension Plan*, *Bartlett v. Canada (Attorney General)*, 2012 FCA 230, and *Stenger v. Canada (Attorney General)*, 2019 FC 1561

⁹ See *Minister of Employment and Social Development v. G.C.*, 2021 SST 301

¹⁰ See *Bessette v. Canada (Attorney General)*, 2011 FC 176 and *Consiglio v. Canada (Attorney General)*, 2016 FC 1123