



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *DP v Minister of Employment and Social Development*, 2022 SST 943

Tribunal File Number: GP-21-2384

BETWEEN:

D. P.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

DATE OF DECISION: April 5, 2022

Decision

The appeal has no reasonable chance of success and is, therefore, summarily dismissed.

Overview

[1] The Appellant applied for a Canada Pension Plan (CPP) credit split.¹ The Minister of Employment and Social Development (Minister) refused the application initially and on reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on November 16, 2021.

[2] The appeal concerns the right to the credit split under the CPP.

[3] I must summarily dismiss an appeal if I am satisfied that it has no reasonable chance of success.²

Analysis

[4] The Appellant received a written notice about the intention to summarily dismiss the appeal, and she was allowed a reasonable period to make submissions.³

[5] She made submissions in response to the notice of intention to summarily dismiss.⁴ She says that she obtained a Court ruling giving her the right to the credit split and that there was no expiration date.

[6] The Minister says that, according to the CPP provisions, it cannot go ahead with the credit split because the Appellant does not meet the eligibility requirements. Given that the Appellant separated from her common-law spouse on **October 1, 2013**, the credit split application, in the absence of a written agreement, had to have been received by **September 30, 2017**. Since the Appellant's initial application was received

¹ GD2-4.

² Section 53(1) of the *Department of Employment and Social Development Act*; and *Miter v Canada (Attorney General)*, 2017 FC 262.

³ Section 22 of the *Social Security Tribunal Regulations*.

⁴ GD4 and GD5.

on **March 26, 2020**, after the deadline, the CPP pension credit split application cannot be approved.

[7] According to the CPP, the credit split is mandatory:

55.1 (1) Subject to this section and sections 55.2 and 55.3, a division of unadjusted pensionable earnings shall take place in the following circumstances:

[...]

(c) in the case of common-law partners, following the approval by the Minister of an application made by or on behalf of either former common-law partner, by the estate or succession of one of those former common-law partners or by any person that may be prescribed, if:

(i) the former common-law partners have been living separate and apart for a period of one year or more, or one of the former common-law partners has died during that period, and

(ii) the application is made within four years after the day on which the former common-law partners commenced to live separate and apart or, if both former common-law partners agree in writing, at any time after the end of that four-year period.

[8] So, the CPP indicates that, in the absence of a written agreement, the credit split application must have been received within four years after the day the former common-law partners started living separately.

[9] According to the evidence on file, the Appellant separated from her common-law spouse on October 1, 2013. The Appellant applied for a credit split on March 26, 2020.⁵ The Appellant also argues that she was not informed that there was a deadline to apply.

[10] The New Brunswick Court of Queen's Bench, Family Division, issued an order on February 21, 2017,⁶ about the separation of the Appellant and her common-law spouse. Section 11 of the order says that [translation] "Each of the parties may **apply to split**

⁵ GD2-4.

⁶ GD2-10.

pensionable credits] under the *Canada Pension Plan* with respect to accumulated credits.”

[11] In this case, the application had to have been received by **September 30, 2017**, because the Appellant started living separately from her common-law spouse on October 1, 2013.

[12] To clarify, even though the Appellant obtained an order granting the credit split, this split was to be done under the CPP, as section 11 of the order indicates. In other words, to get the credit split, an application had to be made in accordance with the CPP. Additionally, according to the CPP, this split was mandatory, so she could apply had [sic] obtaining an order because she was entitled to it.

[13] I understand that the Appellant says that the order does not indicate the date to apply and that she was not informed that there was a deadline to apply. However, as a legislative body, the Tribunal has only the powers that the law gives it. I therefore have to interpret and apply the provisions as they are set out in the CPP. Unfortunately, since the Appellant’s credit split application was received on March 26, 2020, after the September 30, 2017, deadline, the application for a CPP pension credit split cannot be approved unless the two common-law spouses sign a statement or agreement waiving the four-year period.

[14] As a result, I find that the appeal has no reasonable chance of success.

Conclusion

[15] The appeal is summarily dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section