



Citation: *LR v Minister of Employment and Social Development*, 2022 SST 716

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

Decision

Appellant: L. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 18, 2019
(issued by Service Canada)

Tribunal member: Pierre Vanderhout

Type of hearing: Questions and answers

Decision date: September 27, 2022

File number: GP-19-1920

Decision

[1] The appeal is dismissed.

[2] The Appellant, L. R., isn't eligible for a second survivor's pension under the Canada Pension Plan ("CPP"). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is the surviving spouse of two CPP contributors. Her first husband, D. R., passed away many years ago. She began receiving a CPP survivor's pension, based on Mr. R.'s CPP contributions (the "First Pension"). She then married Y. R. in 1990, and continued receiving the First Pension. Mr. R. passed away on April 9, 2019. On April 12, 2019, the Appellant applied for a CPP survivor's pension with respect to Mr. R. (the "Second Pension").¹

[4] The Minister of Employment and Social Development (the "Minister") denied the Appellant's application for the Second Pension initially and on reconsideration. The Minister said she was only entitled to one CPP survivor's pension. As the First Pension was greater than the Second Pension, the Minister would continue to pay only the First Pension.² The Appellant appealed that denial to the Tribunal. She seeks payment of the Second Pension, in addition to the First Pension.

[5] The Appellant says it is unfair that she only receives one CPP survivor's pension. She believes that the relevant provisions of the *Canada Pension Plan* discriminate against women. She says the Tribunal hasn't adequately considered how women typically live longer than men. She is also under severe financial strain, as foreclosure proceedings are underway. She says she wouldn't need welfare payments if she received the Second Pension. She wonders where the contributions to the Second Pension went, and suggests that the government committed fraud.

¹ GD2-16

² The Minister's reconsideration decision is at GD2-6.

[6] The Minister says the *Canada Pension Plan* limits survivors to one CPP survivor's pension. The Minister says the Appellant's current entitlement is correct, as the First Pension is greater than the Second Pension.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove that the Minister has improperly denied her the Second Pension.

Reasons for my decision

[8] I find that the Minister was correct in denying the Second Pension. I will first look at the First Pension and Second Pension amounts.

The First Pension and Second Pension amounts are not in dispute

[9] The First Pension was \$576.06 per month, as of September 2019. The Second Pension was \$559.59 per month, as of September 2019.³ I see nothing to suggest that the Minister calculated these amounts correctly.

[10] I asked the Appellant whether she accepted the amounts of those pensions. She said that she "would have to agree" with those amounts, as she was not capable of calculating them.⁴

[11] The Appellant's dispute is not with the amounts of the First Pension and Second Pension. Instead, she simply wants to receive both pensions.

[12] I will now look at the relevant law about receiving more than one CPP survivor's pension.

³ GD2-6

⁴ GD35-2

A person can only receive one CPP survivor's pension

[13] The *Canada Pension Plan* is clear that a person can receive only one survivor's pension. If more than one survivor's pension would otherwise be payable to one person, that person can only receive the larger pension.⁵

[14] In this case, both the First Pension and the Second Pension are potentially payable to the Appellant. The First Pension amount is greater than the Second Pension amount. As a result, she is only entitled to receive the First Pension.

[15] I will now look at the possible application of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

The *Charter* issue has already been addressed

[16] The Appellant says the rule against multiple CPP survivor's pensions is a form of discrimination. She submits that the rule is contrary to the *Charter*, because women generally outlive men and therefore are more affected by the rule. She also suggests that the Tribunal has not sufficiently considered her arguments and evidence about women living longer than men.⁶

[17] The Appellant filed Charter Argument Notices on July 17, 2020, and November 18, 2020.⁷ In an interlocutory decision dated January 5, 2021, I allowed this matter to proceed as a *Charter* appeal. I found that her November 2020 Charter Argument Notice was sufficient. A *Charter* appeal is a special kind of appeal that challenges the validity of a statutory provision. *Charter* appeals are much more complex than regular appeals. Because they are so complex, they have special procedural requirements.

[18] However, in a further interlocutory decision dated July 12, 2022 ("the July 2022 Decision"), I found that the Appellant's appeal could not continue as a *Charter* appeal. I

⁵ See s. 63(6) of the *Canada Pension Plan*.

⁶ GD35-2

⁷ See GD5-1 and GD12-1.

decided that it would continue as a regular appeal, and that the Tribunal would not consider her *Charter* arguments further.

[19] As this matter is proceeding as a regular appeal, the Appellant can no longer successfully advance an argument based on the *Charter*. I will now comment on the issue of fairness.

Fairness and related issues

[20] Many of the Appellant's submissions focus on the fairness of the CPP. She says it is unfair that she is only entitled to one CPP survivor's pension, when both of her spouses contributed to it during their marriages to her. She also suggests that the government committed fraud against her, as she cannot access funds contributed by her second husband. More urgently, she says foreclosure proceedings are underway against her home.

[21] The earlier termination of her *Charter* appeal may partly address these submissions. In any event, I must consider that the Tribunal is created by statute. The Tribunal can only grant remedies that it has the specific statutory authority to grant.⁸

[22] This means that I cannot make decisions on alleged fraud by the Minister. The *Canada Pension Plan* does not grant the Tribunal any authority to investigate the flow of CPP funds or to make findings of fraud against the Minister. Nor does the *Canada Pension Plan* allow the Tribunal to make decisions on a compassionate basis.

[23] As set out in the July 2022 Decision, I acknowledge the many tragic events in the Appellant's life. However, I must apply the *Canada Pension Plan* as it is drafted. I cannot bend the rules.

[24] I recognize that the Appellant is strongly opposed to the rule against multiple CPP survivor's pensions. However, this rule is part of the law. As the *Charter* aspect of

⁸ *R. v. Conway*, 2010 SCC 22, at paragraph 82.

her appeal ended, her only recourse appears to be urging Parliament to make changes to the *Canada Pension Plan*. The Tribunal cannot help her with this.

Conclusion

[25] I find that the Appellant isn't eligible for the Second Pension. However, she will continue to receive the First Pension.

[26] This means the appeal is dismissed.

Pierre Vanderhout
Member, General Division – Income Security Section