



Citation: *The Estate of YB v Minister of Employment and Social Development*, 2022 SST 1429

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	The Estate of Y. B.
Representative:	N. B.
Respondent:	Minister of Employment and Social Development
<hr/>	
Decision under appeal:	General Division decision dated August 14, 2022 (GP-21-1028)
<hr/>	
Tribunal member:	Neil Nawaz
Decision date:	December 15, 2022
File number:	AD-22-824

Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] The late Y. B. (the Deceased) was a contributor to the Canada Pension Plan (CPP). She passed away in February 2020. Later that month, her estate (the Estate), represented by her son and executor, applied for the CPP death benefit.

[3] The Minister refused the application because its records showed that the Deceased had made valid contributions in only eight of the 10 years required under the law.¹

[4] The Estate appealed the Minister's refusal to the Social Security Tribunal. The Estate claimed that the Minister had not applied the CPP's so-called "drop-out" provisions correctly. It argued that, if the Minister had done its job properly, the Deceased's contributory period would have been shorter and that, in turn, would have reduced the number of years of contributions required to qualify her Estate for the death benefit.

[5] The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It found that the Minister had applied the CPP's drop-out provisions correctly and that the Estate remained two years short of contributions.

[6] The Estate is now requesting permission to appeal from the Appeal Division. It alleges that, in coming to its decision, the General Division made the following legal errors:

- It didn't fully apply the child-rearing drop-out provision to the Deceased's contributory period; and

¹ See Minister's initial and reconsideration decision letters dated March 25, 2020 (GD2-10) and January 27, 2021 (GD2-18). A record of earnings and contributions (GD2-4) shows that the Deceased had unadjusted pensionable earnings above the maximum pensionable thresholds for the years 1974-78 (inclusive), 1981-82, and 1984.

- It failed to apply a general reduction to the Deceased's contributory period.

Issue

[7] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.²

[8] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.⁵

[9] I have to decide whether the Estate has raised an arguable case that falls under one or more of the permitted grounds of appeal.

Analysis

[10] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Estate does not have an arguable case.

The Deceased's base contributory period started January 1966 and ended November 1995

[11] According to the *Canada Pension Plan*, a contributor establishes a minimum qualifying period for the death benefit by making valid CPP contributions for at least one-third of their contributory period or for at least ten years.⁶

² See *Department of Employment and Social Development Act* (DESDA), section 58(1).

³ See DESDA, sections 56(1) and 58(3).

⁴ See DESDA, section 58(2).

⁵ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁶ See section 44(3) of the *Canada Pension Plan*.

[12] The contributory period starts at age 18 or on January 1, 1966, whichever is later. It ends the month before the contributor turns 70, the month before they start receiving their CPP retirement pension, or the month in which they die, whichever is first.⁷

[13] In this case, the General Division determined that the Deceased's base contributory period began on January 1, 1966 (the date the CPP started) and ended in November 1995, the month before her CPP retirement pension started. That totalled 29 years and 10 months. The Estate does not dispute this calculation.

[14] However, the Estate does dispute the number of contributory period **exclusions** that the General Division recognized. The Estate argues that the General Division should have deducted an additional year in which the Deceased raised a child under the age of seven. It also argues that the General Division should have reduced the Deceased's remaining contributory period by 15 percent.

[15] I don't see a case for either of these arguments.

Partial years of child rearing can't be excluded

[16] The law excludes from a contributory period months in which the contributor was a family allowance recipient.⁸ A family allowance recipient is defined as someone who is the primary caregiver of a child under seven.⁹

[17] In this case, all of the Deceased's children turned seven before January 1, 1966—all except the youngest, who was born in June 1961. This prompted the General Division to remove 1966 and 1967 from the Deceased's contributory period.

[18] The Estate notes that the legislation refers to **months**, not years, in which contributor is a family allowance recipient. It argues that the General Division should

⁷ See sections 49(a) and (b) of the *Canada Pension Plan*.

⁸ See section 49(d) of the *Canada Pension Plan*.

⁹ See section 77 of the *Canada Pension Plan Regulations*.

have also removed 1968 from the contributory period because the Deceased's youngest child was under seven for the first six months of the year.

[19] I disagree. The General Division appropriately cited a case called *Abbott*, which held that a contributor who receives family allowance for only part of a year is not entitled to drop any portion of that year out of the contributory period.¹⁰ Although *Abbott* is about a claim for the CPP disability pension, rather than the death benefit, its principle applies just as well to this case. That is because it addresses a child-rearing exclusion that is worded almost identically to the one at issue here.¹¹

[20] Having removed 1966 and 1967 (but not 1968), the General Division reduced the Deceased's contributory period to 27 years and 10 months.

There is no general reduction of the contributory period for the purpose of determining eligibility

[21] The Estate also argues that the General Division should have recognized a general reduction to the Deceased's contributory period. The Estate points to section 48(4) of the *Canada Pension Plan*, which it says mandates a 15 percent discount to contributory periods of more than 120 months.

[22] However, I'm afraid the Estate has misinterpreted and misapplied section 48(4). Looking at sections 46 to 48.2 together indicates that they govern the calculation of the **amount** of the **retirement pension**, and not **eligibility** for the **death benefit** or any other benefit. It is true that section 48(4) provides for a 15 percent reduction in the number of months in the contributory period, but that is only for the purpose of calculating the "average monthly pensionable earnings," which in turn are used to calculate the amount of a claimant's monthly retirement pension.

¹⁰ See *Abbott v Minister of Social Development*, 2005 CP21427 (PAB).

¹¹ Section 42(2)(b)(iv) excludes periods of child rearing from the disability contributory period. Section 49(d) excludes periods of child rearing from other contributory periods.

[23] This section has no relevance to the death benefit, and the General Division was not wrong to find it inapplicable to the Estate's claim.¹² In the absence of any further reductions or deductions, the Deceased's contributory period remained 28 years, one-third of which was 9½ years. Rounded up, that meant the Estate had to show the Deceased made valid contributions in 10 years. Since she only had eight, the General Division rightly found her Estate was ineligible for the death benefit.

Conclusion

[24] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, permission to appeal is refused.



Member, Appeal Division

¹² In paragraph 20 of its decision, the General Division found that section 48(4) determines **when** (and not **if**) a benefit is payable. That is not quite accurate. Section 48(4) determines **how much** (and not **if**) retirement pension is payable. In my view, this error was immaterial because it had no effect on the outcome of the decision.