



Citation: *Minister of Employment and Social Development v LC*, 2023 SST 1245

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Minister of Employment and Social Development  
**Representative:** Ian McRobbie

**Respondent:** L. C.  
**Representative:** G. Y.

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**Decision under appeal:** General Division decision dated December 5, 2022  
(GP-22-232)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Teleconference

**Hearing date:** August 11, 2023

**Hearing participants:** Appellant's representative  
Respondent's representative

**Decision date:** September 10, 2023

**File number:** AD-23-227

## Decision

[1] I am allowing this appeal. The Respondent was not a full-time student from October to December 2021. That means she was not entitled to a Canada Pension Plan (CPP) surviving child's benefit (SCB) during the period.

## Overview

[2] The Respondent was a child when her father died in 2018. As a result, she started receiving an SCB from the Minister of Employment and Social Development (Minister).<sup>1</sup>

[3] The Respondent turned 18 in January 2019. Under the CPP, this meant that she could receive the SCB only if she was in school or university full-time.<sup>2</sup> At the time, the Respondent was in high school. Then she became a full-time student at the University of British Columbia (UBC). So she continued to receive the benefit.

[4] In the fall of 2021, the Respondent started her second year at UBC. She registered for four courses.<sup>3</sup> However, the university placed her on a waiting list for one of the courses. She wasn't admitted into the course until two weeks after classes started. She decided that it would be too hard to catch up, so she dropped the course.

[5] That left the Respondent with only three courses, for a total of eight credits. UBC issued a certificate declaring the Respondent to be a part-time student. The University later told the Minister that a student was deemed full-time only if they were registered for nine or more credits.<sup>4</sup>

[6] The Minister decided that the Respondent couldn't receive the SCB after September 2021 because she wasn't in school full-time. The Minister told the

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<sup>1</sup> See section 44(1)(f) of the *Canada Pension Plan*, which refers to this benefit the orphan's benefit. It is for a dependent child of a contributor who has died. Service Canada usually refers to the benefit a surviving child's benefit.

<sup>2</sup> In section 42(1) of the *Canada Pension Plan*, a "dependent child" is defined as the child of contributor who is less than 18 or between 18 and 25 and in full-time attendance at a school or university.

<sup>3</sup> See UBC tuition history, Winter 2021, GD1-9.

<sup>4</sup> See letter dated September 26, 2021, from Kathleen Ross, UBC Associate Vice-President, Enrolment Services, and Registrar, GD2-6.

Respondent that she had to pay back the amount she had already received for October 2021 and that she wouldn't be eligible for the benefit again unless she resumed full-time studies.<sup>5</sup>

[7] The Respondent appealed the Minister's decision to the Social Security Tribunal's General Division. She argued that she met the requirements to receive the SCB during the period in question.

[8] The General Division allowed the appeal. It found that the Respondent didn't need a declaration of full-time attendance to be considered a full-time student. It found that, even though UBC deemed the Respondent a part-time student, she was in effect attending school full-time, based on her course load and on the amount of work she had to do.

[9] The Minister then applied for permission to appeal to the Appeal Division, alleging that the General Division made two legal errors. First, the Minister argued that the General Division misinterpreted the *Canada Pension Plan Regulations* (CPPR), specifically their requirement that an SCB claimant provide a declaration certifying full-time attendance at a school or university. Second, the Minister argued that the General Division incorrectly relied on case law stating that the CPPR requirement was merely procedural.

[10] Earlier this year, one of my colleagues on the Appeal Division granted the Minister permission to appeal. Last month, I held a hearing to discuss the Minister's appeal in full.

[11] Now that I have considered submissions from both parties, I have concluded that the Respondent was not entitled to the SCB from October to December 2021.

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<sup>5</sup> See Minister's letter dated October 27, 2021, GD2-7.

## Preliminary Matter

[12] On December 5, 2022, the law governing the appeals to the Social Security Tribunal changed.<sup>6</sup> Under the new law, the Appeal Division, once it has granted permission to proceed, must now hold a *de novo*, or fresh, hearing about the same issues that were before the General Division. As I explained at the outset of the hearing, that meant I would not be bound by any of the General Division's findings. I also made it clear that I would be considering all available evidence, including new evidence, about whether the Respondent was entitled to the SCB from October to December 2021.

## Issues

[13] In this appeal, I had to decide the following questions:

- What do SCB claimants need to prove that they are full-time students under the law?
- Was the Respondent a full-time student under the law from October to December 2021?

## Analysis

[14] I have applied the law to the available evidence and concluded that the Respondent was not a full-time student from October to December 2021. According to the CPPR, the Respondent had to file a declaration certifying her full-time enrollment in UBC. She did not do so, and none of her other evidence indicated full-time enrollment either.

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<sup>6</sup> See section 58.3 of the *Department of Employment and Social Development Act*. This appeal is subject to the new law, because the Minister's application for permission to appeal was filed with the Tribunal on March 2, 2023, after the new law came into force.

## **The CPP requires full-time attendance at school**

[15] A surviving child of a deceased CPP contributor can receive an SCB only if they are between the ages of 18 and 25 and “in full-time attendance at a school or university.”<sup>7</sup>

[16] The CPP doesn’t say what “full-time attendance” means, but the CPPR sets out what is needed to prove it:

An applicant or beneficiary shall, in support of his claim that a dependent child of 18 or more years of age

- (a) is or has been enrolled in a course requiring full-time attendance at a school or university, file with the Minister a declaration signed by a responsible officer of the institution, certifying to such enrolment; and
- (b) is or has been for a period of time in full-time attendance at a school or university, file with the Minister a declaration of such attendance signed by the child.<sup>8</sup>

[17] This means that SCB claimants must provide declarations from themselves and from their educational institution saying that they are a full-time student.

### **– A law’s meaning depends on its text, context and purpose**

[18] The Minister argues that neither the Minister nor the Tribunal are permitted to assess for themselves whether an SCB claimant is a part-time or full-time student. Instead, they must rely on the school or university’s determination of their enrollment status.

[19] The Respondent disagrees. She argues that the CPP allows the Tribunal to look beyond the school or university’s declaration and to make its own determination about the student’s status. She says that, in addition to UBC’s declaration, I can consider all other evidence about her enrollment, including her testimony about the amount of homework she had to do to get through her courses.

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<sup>7</sup> See sections 42(1) and 44(1)(f) of the *Canada Pension Plan*.

<sup>8</sup> See CPPR, section 67.

[20] When interpreting the law around the SCB, I have to follow some guiding principles:

- If the words in the legislation are clear, then I must give significant weight to the ordinary meaning of those words;<sup>9</sup>
- I have to take a close look at the legislation's text, context, and purpose;<sup>10</sup> and
- I must interpret the legislation generously and in a way that is most compatible with what it was designed to do.<sup>11</sup>

[21] According to the Supreme Court of Canada, the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

**– Text: The wording of section 67 suggests that a declaration full-time attendance is essential**

[22] A plain reading of the text of section 67 of the CPPR indicates that a dependent child over the age of 18 requires two things to receive an SCB:

- A declaration from their school or university certifying that they are or have been enrolled in a course requiring full-time attendance; and
- A declaration from the child certifying their full-time attendance at the school or university.<sup>1213</sup>

[23] There are several things to note about the wording of this provision:

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<sup>9</sup> See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

<sup>10</sup> See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).

<sup>11</sup> See section 12 of the *Interpretation Act*.

<sup>12</sup> See section 67 of the CPPR.

<sup>13</sup> See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).

- It does not ask for an open-ended description of the child’s status at the school or university, but for a specific declaration confirming the child’s **full-time** enrollment;
- It says that an applicant or beneficiary “shall” file the above declarations with the Minister; it does not say “may” file or “can” file; and
- It uses the word “and” rather than “or” to separate the items, suggesting that both declarations are required.

[24] The construction of section 67 suggests that a claimant who wants to receive the SCB has no choice but to provide a document from their school confirming their “full-time” attendance—or words to that effect.

– **Context: The CPPR does not generally restrict filings**

[25] At first glance, the CPPR’s requirement to show full-time enrollment is strict. Section 67 says that SCB claimants need to produce declarations from themselves and from their school—but nothing more.

[26] Can decision-makers look at other evidence beside these two documents? Another provision in the CPPR suggests that they can.

[27] Section 52 of the CPPR sets out the information and evidence that is required by all CPP applicants. It sets out a long list of items that applicants, where applicable, “shall” furnish in writing when requested to do so by the Minister. One those items acknowledges the CPP’s requirement that dependent children over the age of 18 be full-time students:

- (j) where a dependent child of the disabled or deceased contributor is 18 or more years of age, whether that child is and has been in full-time attendance at a school or university;

[28] The list ends with a supplementary item that solicits other evidence relevant to the preceding items:

- (n) such additional documents, statements or records that are in the possession of the applicant or beneficiary or are obtainable by him that will assist the Minister in ascertaining the accuracy of the information and evidence referred to in paragraphs (a) to (m).

[29] Between them, these two items compel SCB applicants to file **any** evidence that will “assist the Minister in ascertaining the accuracy” of whether a child over the age of 18 “has been in full-time attendance at a school or university.” Such evidence potentially goes beyond the two declarations enumerated in section 67 and, in my view, could include material that calls into question the accuracy or integrity of a school or university’s declaration of attendance. However, nothing in this section relieves the applicant from having to provide the declaration in the first place.

**– Purpose: The SCB is meant to provide financial support to children who have lost an earning parent**

[30] The CPP is a contributory scheme that provides certain benefits to people who have paid into it or who qualify based on specific criteria.<sup>14</sup> It is not a social welfare regime that provides benefits to all. The CPP’s viability and affordability depend on limiting who qualifies. It is Parliament’s job to pass legislation that defines those limits, and it is my job to interpret what that legislation means.

[31] The available record does not contain transcripts of parliamentary debates that might have offered me insight into the specific purpose of the SCB. However, it is obvious that the SCB was intended to provide a measure of monetary support to orphans of deceased CPP contributors. The benefit continues from 18 to 25 if the recipient remains in school, and it is not hard to see why: a post-secondary education is one of the best means of mitigating the financial disadvantages that follow the death of an earning parent.

[32] As benefits-conferring legislation, the CPP must be interpreted in a way that is consistent with its objectives. I recognize that those objectives are served by avoiding

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<sup>14</sup> The courts have described the purposes of the CPP in *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28 and *Miceli-Riggins v Canada (Attorney General)*, 2013 FCA 158.



undue delays in processing SCB applications, and I can understand the Minister's preference to rely on only two documents to determine whether the claimant is full-time student.

[33] However, the interests of administrative efficiency must be weighed against fairness and, more importantly, what the law actually says. As written, the CPPR, permits the submission of evidence beyond the declarations set out in section 67—but only to ascertain the accuracy of those declarations. Once submitted, such evidence must be given due consideration.

– ***Attewell* applied the right principle for the wrong reasons**

[34] As far as I can tell, the courts have never ruled on what it takes to prove full-time attendance at a school or university. There is a decision called *Attewell*, which considered section 67 in the 1990s.<sup>15</sup> Since it was issued by the Pension Appeals Board (PAB), a predecessor of this Tribunal, I am not bound by it.

[35] More than that. I don't find it persuasive. *Attewell* involved an SCB claimant who enrolled in what sounds like a drawn-out high school equivalency program. The evidence showed that he was in class between two and eight hours per week. He was unable to produce a declaration or certificate of full-time attendance from his school and instead pointed to a remark from one of his teachers in his report card: "Good attendance." Despite that, the PAB found that the claimant was entitled to the SCB, dismissing the formal requirements of section 67 as a "procedural, rather than substantive," matter.

[36] I agree with the PAB that decision-makers can consider evidence beyond declarations provided by the claimant and the school, but I come to this conclusion for different reasons. I have the right to look at whatever documents the parties put before me but, unlike the PAB, I see that right as substantive as much as procedural. That is because it is contained in the text of the CPPR.

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<sup>15</sup> See *Minister of Human Resources Development v Attewell* (January 15, 1999), CP 9435.

[37] The Minister urges me to reject *Attewell*. I am willing to do that, because I don't think it was guided by the appropriate principles of statutory interpretation. The Minister also urges me to consider UBC's declaration to the exclusion of all other evidence. I can't do that because section 52(n) plainly says otherwise.

### **The evidence suggests that the Respondent was not a full-time student**

[38] The Respondent and her mother have filed several letters and briefs explaining their position. The Respondent testified at the General Division hearing and, although she chose not to appear before the Appeal Division, her mother did. Throughout it all, they have argued that UBC's declaration of part-time attendance did not accurately reflect reality.

[39] At the beginning of the winter 2021 term, the Respondent dropped a course for which she had been wait-listed, leaving her with a chemistry course, a psychology course, and a biology lab. She notes that all three courses took up three hours each on her weekly schedule. But the chemistry and psychology courses were worth three credits each, while the biology lab was only worth two.

[40] The Respondent regarded the unequal weighting as inconsistent and unfair. She said that she spent more time on the biology lab than she did on the other two courses. She estimated that she spent about eight hours per week in total on the psychology course, 15 hours on the chemistry course, and 17 hours on the biology lab.

[41] The Respondent said that the biology lab took more time than her courses did because she had to meet with her lab group several times a week to work on projects. Those meetings usually lasted for three hours or more. She also had to do reading and assignments.

[42] After discovering that UBC only assigned two credits to the lab, the Respondent's mother called the UBC biology department demanding an explanation. They couldn't give her an answer. The Respondent said that she had taken other labs that were worth three credits and had no idea why the biology lab wasn't weighted equally.

[43] The Respondent insists that, whatever UBC's declaration says, the evidence shows that she is, in effect, a full-time student. She asks me to look past the declaration, recognize UBC's iniquitous course weightings, and grant her the SCB.

– **There is no reason to believe that UBC's declaration mischaracterized the Respondent's workload**

[44] The Respondent disagrees with UBC's assignment of two credits to her first-year biology course. I can understand her frustration, but I am reluctant to second-guess the university's weighting.

[45] UBC provided a certified declaration that the Respondent was enrolled as a part-time student because she was taking only eight credits in the 2021 winter session.<sup>16</sup> In same document, UBC noted that students registered in nine or more credits per term were considered full-time students. Although the Respondent disagrees with the credits attributed per course by UBC, she has not provided any convincing evidence that would challenge the accuracy of this declaration besides her personal views about how UBC should manage course credit attribution in relation to her workload. Her oral and written evidence, which I am considering pursuant to section 52(n) of the CPPR, failed to demonstrate the inaccuracy of UBC's declaration.

[46] UBC is a reputable institution of higher learning. It presumably has a robust registrar's office dedicated to overseeing the accurate collection and management of student academic data. If UBC certifies a course of study as part-time, then one can reasonably expect to rely on it. The Respondent's biology lab was developed by professors and instructors in the faculty of science who must have had some idea about how much effort would be reasonably required for the average first-year student to successfully complete the course.

[47] UBC assigned the biology lab two credits, but it might have had good reason to do so. Labs, unlike lectures, involve practical work. It is possible that a lab comes with less content than a lecture. Labs also tend to involve group assignments, not individual

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<sup>16</sup> See UBC's declaration at GD2-6.

study. It is possible that a lab's workload might be more manageable because it is shared.

[48] The Respondent claims that, whatever its weighting, her biology lab in practice occupied nearly half of her time. She further claims that her entire supposedly part-time course-load amounted to 40 hours per week. But there are any number of reasons why a student might find themselves spending far more time on a course than what it was designed for. It could be that the student has no affinity for the course. Or it could be that their work habits are less than optimal. I am not saying that either is true of the Respondent, but these possibilities are just as likely as a university mischaracterizing or misrepresenting one of its own courses—especially one, like the Respondent's first year biology lab, that is probably well established in UBC's curriculum.

[49] It was up to the Respondent to show that UBC mischaracterized its courses. In my view, she has failed to do so. She has not provided convincing evidence that UBC improperly weighted her biology lab.

## **Conclusion**

[50] For the above reasons, I find that the Respondent was not entitled to the SCB from October to December. She did not submit a declaration of full-time attendance from her university, as required by section 67(a) of the CPPR. I considered the Respondent's evidence that she spent 40 hours per week on her studies, but I decided to give more weight to UBC's declaration that she was a part-time student during that period. The Respondent argued that UBC's course classification system was flawed, but her evidence to that effect was less than compelling.

[51] The appeal is allowed.



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Member, Appeal Division