



Citation: *LC v Minister of Employment and Social Development*, 2022 SST 1229

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

Decision

Appellant: L. C.
Representative: G. Y.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 21, 2021 (issued
by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Videoconference

Hearing date: November 18, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: December 5, 2022

File number: GP-22-232

Decision

[1] The appeal is allowed.

[2] The Appellant, L. C., is entitled to a Canada Pension Plan (CPP) surviving child's benefit (orphan's benefit) for October 2021, November 2021, and December 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant's father died in 2018. As a result, she started receiving a surviving child's benefit from the Minister of Employment and Social Development (Minister).¹

[4] The Appellant turned 18 in January 2019. This meant she could receive the benefit only if she was in school or university full-time.² At the time, the Appellant was in high school. Then she became a full-time student at the X (). So, she continued to receive the benefit.

[5] In the fall of 2021, the Appellant started her second year at X. She registered for four courses.³ However, she was on a waiting list for one of the courses. She wasn't admitted into the course until two weeks after classes started. She decided it would be too hard to catch up, so she dropped the course.

[6] This meant the Appellant was only taking three courses, for a total of eight credits. X told the Minister that it considered a student to be full-time if they were registered for nine or more credits.⁴

[7] The Minister decided the Appellant couldn't receive the benefit after September 2021 because she wasn't in school full-time. The Minister told the Appellant she had to

¹ The *Canada Pension Plan* calls this benefit an orphan's benefit. It is for a dependent child of a contributor who has died. See section 44(1)(f) of the *Canada Pension Plan*. Service Canada usually calls the benefit a surviving child's benefit.

² To receive a surviving child's benefit, a dependent child must be less than 18 years old or between the ages of 18 and 25 and in school or university full-time. See section 42(1) of the *Canada Pension Plan*.

³ See GD1-9-10.

⁴ See GD2-6.

pay back the amount she had already received for October 2021, and that she wouldn't receive the benefit again unless she became a full-time student before she turned 25.⁵

[8] The Appellant appealed to the Social Security Tribunal's General Division. She says she has met the requirements to receive the surviving child's benefit during the period in question.

What the Appellant has to prove

[9] For the Appellant to succeed, she has to prove she was in school full-time from October 2021 through December 2021. The periods before and after that aren't in dispute.

Reasons for my decision

[10] I find that the Appellant was entitled to a surviving child's benefit from October 2021 through December 2021. Here are my reasons.

The rules for full-time attendance at school

[11] An appellant who is between the ages of 18 and 25 can receive a surviving child's benefit only if they are "in full-time attendance at a school or university."⁶

[12] The *Canada Pension Plan* doesn't say what "full-time attendance" means. The CPP provides social benefits, so I have to interpret the law that governs it broadly and generously. If I have any doubts about the wording of the law, I have to interpret it in the Appellant's favour.⁷

[13] To receive a surviving child's benefit, an appellant has to send the Minister a declaration signed by their school to prove they are enrolled full-time.⁸ But the *Canada*

⁵ See GD2-7-8. Because a student is entitled to the benefit during the normal vacation period after an academic year, the Minister pays them for May through September as well. See section 66(1) of the *Canada Pension Plan Regulations* and GD6-4.

⁶ See section 42(1) of the *Canada Pension Plan*.

⁷ See *Villani v Attorney General of Canada*, 2001 FCA 248.

⁸ See section 67 of the *Canada Pension Plan Regulations*.

Pension Plan doesn't say the school's definition of full-time attendance is what decides the issue.

[14] I agree with a decision by the Pension Appeals Board which says the requirement for a declaration from the school is a procedural and not a substantive requirement.⁹ This means that an appellant has to send a completed declaration to the Minister. The Minister will consider what the declaration says, but it doesn't have to accept it.

[15] The Minister has to make its own decision about whether an appellant is a full-time student. The Tribunal has to do this too. Because the law doesn't say what "full-time attendance" means, the Minister (and the Tribunal) should assess each case on its own facts. There isn't a one-size-fits-all answer.

The Appellant was in full-time attendance at university

[16] I find the Appellant was in full-time attendance at X from October 2021 through December 2021.

– The Appellant's evidence

[17] The Appellant and her mother spoke at the hearing. They sounded honest and open. I believe what they told me, including what they said about how much time the Appellant spent on her school work.

[18] After dropping the course she had been wait-listed for, the Appellant was left with a chemistry course, a psychology course, and a biology lab. The chemistry and psychology courses were worth three credits each, but the biology lab was only worth two credits.

[19] The Appellant told me she spent more time on the biology lab than she did on each of the two courses. The two courses and the lab each had three hours per week of instruction. The instruction took place in class or (because of pandemic restrictions)

⁹ See *Minister of Human Resources Development v Attewell* (January 15, 1999), CP 9435. I don't have to follow decisions of the Pension Appeals Board, but I find this decision is persuasive on this issue.

over Zoom. She then had assignments and reading for all three, which took more time. She estimated she spent about fifteen hours per week in total on the chemistry course, about eight hours per week on the psychology course, and about seventeen hours per week on the biology lab.

[20] The Appellant told me 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.

[21] After discovering that X only assigned two credits to the lab, the Appellant's mother called the X biology department to ask why. They couldn't give her an answer. The Appellant told me she has taken other labs that are worth three credits. She has no idea why the biology lab isn't.

– **I don't accept X's definition of full-time attendance**

[22] The Minister says it doesn't matter how much time the Appellant spent on the biology lab. The Minister relies entirely on how X defines full-time attendance.¹⁰

[23] As I explained above, I have to look at the facts in this case. I can't just use X's definition.

[24] The Minister didn't provide any other evidence or arguments to support its position that a course load of nine credits is full-time, while a course load of eight credits is not.

[25] Similarly, there is no explanation for why X assigned two credits to the Appellant's biology lab, when courses requiring less time are worth three credits. The Appellant tried to get an explanation, but X couldn't give her one.

¹⁰ See GD6-6.

[26] As a result, I didn't place much weight on the fact that X assigned the biology lab two credits, or that it doesn't consider a student to be full-time if their course load is eight credits.

[27] Instead, I looked at how much time the Appellant was expected to spend on her school work. This included going to class, working on group projects, working on individual assignments, and doing required reading. If she didn't spend time doing these things, she likely would not pass the course or lab.

[28] It is reasonable to conclude that a student who spends 40 hours per week on required school work is in full-time attendance. Those hours are considered full-time in the workforce.

[29] The Appellant spent at least 40 hours per week on required school work from October 2021 to December 2021. This means she was in full-time attendance at university.

Conclusion

[30] I find that the Appellant is entitled to a surviving child's benefit (orphan's benefit) for October 2021, November 2021, and December 2021.

[31] This means the appeal is allowed.

Virginia Saunders
Member, General Division – Income Security Section