



Citation: *FD v Minister of Employment and Social Development*, 2022 SST 1594

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

Decision

Appellant: F. D.
Representative: C. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 20, 2021 (issued
by Service Canada)

Tribunal member: Jackie Laidlaw

Type of hearing: Teleconference

Decision date: December 30, 2022

File number: GP-22-402



Decision

[1] The appeal is dismissed.

[2] The Appellant, F. D., isn't eligible for a Canada Pension Plan (CPP) survivor's benefit. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a survivor's benefit on behalf of his late wife, C. C., also referred to as the "Deceased Contributor."

[4] The Appellant says the Deceased Contributor was pregnant three times in their 39 years together. In her last few years before she died she was very sick with cancer and could not work.

[5] The Minister says the Deceased Contributor did not make enough contributions to the CPP to qualify the Appellant for the survivor's benefit.

Matters I have to consider first

The pre-hearing conference was the hearing

[6] I held a pre-hearing conference with the Appellant, his representative, and the Minister's representative. At the pre-hearing, the parties agreed that the Appellant would provide the Tribunal with documents to claim the child-rearing provision. The parties also agreed that once the Minister had reviewed the documents and made their submissions based on the new evidence, I would write my decision without need for a further hearing.

[7] I am satisfied the Appellant had presented all his evidence, and he had effectively received a fair hearing at the pre-hearing conference.

Reasons for my decision

The legislation

[8] In order for the Appellant to receive the survivor's benefit, the Deceased Contributor had to have contributed to the CPP for 10 years.¹ I will explain in the following paragraphs.

[9] The Deceased Contributor's contributory period² started in August 1978, the month after her 18th birthday, and ended in June 2020, the month she died. That is 42 years. A person is required to make valid CPP contributions for:

- at least 1/3 of those years, and in no case less than three years, or
- at least 10 years³

[10] In the Deceased Contributor's case, this means she had to make valid contributions for at least 10 years.

[11] There are two provisions which may lower her required years of contributions. The first is the child-rearing provision,⁴ and the other provision is for a disabled contributor.⁵ Both these provisions don't help the Appellant. I will explain why.

The child-rearing provision

[12] There is a child-rearing provision in the *Canada Pension Plan*. This is a provision for the parent who could not contribute to the CPP due to staying home to care for a child. It allows the removal of the calendar years from the month after the child's birth to the month of their seventh birthday.

[13] In this case, the child-rearing provision was used to assist the Appellant in qualifying for the survivor's benefit.

¹ See subsection 44(1)(d) of the *Canada Pension Plan*.

² See section 49 of the *Canada Pension Plan*.

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

⁴ See section 49(d) of the *Canada Pension Plan*.

⁵ See section 49(c) of the *Canada Pension Plan*.

[14] The Deceased Contributor had four children, two being still-born twins. The child-rearing provision was applied to the two single-born children:

- for her first child the period is from August 1978 to July 1985 (1979, 1980, 1981, 1982, 1983, 1984, and 1985)
- for the second child the period is from October 1989 to September 1996 (1990, 1991, 1992, 1993, 1994, and 1996)

[15] Removing these 13 years reduced her contributory period from 42 years to 29 calendar years.

[16] Her new qualifying period is $\frac{1}{3}$ of 29 years, or 9.7 years. Partial years are rounded up. Therefore, she still had to contribute to the CPP for 10 years.

[17] I note the Minister did not remove 1995 in the child-rearing provision for the second child. There is no explanation given as to why. If I consider it was an oversight and include the year, then 14 years would be removed from the 42 contributory years. This would make the Deceased Contributor's contributory period 28 years. Her new qualifying period would be $\frac{1}{3}$ of 28, or 9.3 years, which is rounded up to 10 years. This is not enough years. I will explain.

[18] The Deceased Contributor only contributed in 1976, 1999, 2003, 2008, 2009, 2010, 2011, and 2012. This is seven years, as 1976 is not part of her contributory period. In their calculations, the Minister recognized 1976 as a qualifying contribution. Even with the addition of 1976, she is still below the requirement with only eight years of contributions. She needed to contribute to the CPP for 10 years in order for the Appellant to qualify for a CPP survivor's benefit.

[19] Unfortunately, even after applying the child-rearing provision, the Deceased Contributor still needed to have contributed to the CPP for 10 years.

A disabled contributor

[20] There is another provision in the *Canada Pension Plan* which removes the years when a person was disabled and getting a CPP disability pension or a provincial pension plan. This is called the disabled contributory provision.

[21] The Appellant argued that the Deceased Contributor was disabled. I accept this may have been the case. Unfortunately, in order to use this provision she had to be getting a CPP disability pension or a provincial pension. She was not. Therefore, this provision does not apply to the Deceased Contributor.

Conclusion

[22] I find that the Appellant isn't eligible for a CPP survivor's benefit because his late wife, the Deceased Contributor, did not contribute enough years to the CPP.

[23] This means the appeal is dismissed.

Jackie Laidlaw

Member, General Division – Income Security Section