



Citation: *GM v Minister of Employment and Social Development*, 2022 SST 1318

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

Decision

Appellant: G. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated August 25, 2021 (issued by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: In person

Hearing date: November 4, 2022

Hearing participants: Appellant
Respondent

Decision date: November 25, 2022

File number: GP-21-1949

Decision

[1] The appeal is allowed.

[2] The issue under appeal is narrow. My jurisdiction in this matter is limited to determining the date when the birth certificate was received by the Minister since it is clearly related to the amount of the benefit payable. The implication for my decision, namely whether an overpayment occurred and whether the Minister ought to remit any amount owing is outside my jurisdiction.¹

[3] I find that the Appellant, G. M., submitted his birth certificate to the Minister in September 2015. This decision explains why I am allowing the appeal.

Overview

[4] The Appellant is 72 years old. He applied for a CPP retirement benefit in 2011. When he applied for this benefit he provided the incorrect date of birth. The date of birth he provided was X 1949. The correct birthdate was X 1950.

[5] The Minister says the Appellant did not provide a valid confirmation of his birthdate until July 2019 when he applied for an Old Age Security benefit. This resulted in an overpayment. The reason an overpayment occurred is that the Minister recalculated the Appellant's benefit entitlement with his correct birthdate in 2019.

[6] The Appellant says that in September 2015, he attended a Service Canada site and submitted his correct birth information.

[7] The Minister says that it has no record of the submitted birth certificate in September 2015.

¹ The CPP does not grant the SST jurisdiction to review the Minister's decisions concern administrative errors or the remission of repayments. See *Lee 2019 FC 1189* at paragraph 23.

What the Appellant must prove

[8] For the date of receipt to be revised the Appellant must prove he submitted his corrected birth certificate in September 2015.

Reasons for my decision

I have the jurisdiction to make a decision in this case

[9] Before making a decision here, I first need to assess whether I have the jurisdiction or legal power to make a decision on this matter. I am bound to interpret the CPP legislation.

[10] The CPP states that a party who is dissatisfied with a decision of the Minister in relation to an amount of a benefit payable to the beneficiary may appeal the decision to the Social Security Tribunal.²

[11] Since the date the birth certificate was received clearly relates to the amount of the benefit payable, I am satisfied that I have the jurisdiction to make a decision in this case.

[12] I take further guidance in a Federal Court decision from 2011, where the Appellant's birthdate was at issue in an application for judicial review. In that case the Minister did not object to the jurisdiction of the Review Tribunal to make a finding. Further, upon judicial review, the Minister brought preliminary issues forward to the Court. It did not bring forward the issue of jurisdiction.³

[13] For the reasons set out above I find that I have jurisdiction to make a decision in this case.

The Appellant submitted his birth certificate in September 2015

[14] The problem in this case is a lack of official records to demonstrate the Appellant submitted his birth certificate in 2015. The Minister correctly notes that it does not have

² Sections 81(1)(c) and 82 *Canada Pension Plan*

³ *Hussaini v. Canada (Social Development)* 2011 FC 26

a record in its system of the Appellant having come in to submit a new copy of his birth certificate in September 2015. However, this occurred because the Minister made an administrative error in not accepting the Appellant's original birth certificate.

[15] The Minister's notes contain the following entries from 2015.

2015-09-02 DD added as per client, Date of Birth is incorrect on the system, seen other ID and B/C (Birth Certificate). B/C is too old to be able to update the registry client will come back with new B/C.

2015-9022 Account re-adjudicated to process new or revised earnings for PRB.
See SD6-710.

[16] There are no further notes from 2015.

[17] During the oral hearing, I asked the Appellant about what happened when he attended the Service Canada site in 2015. He told me that the Minister's notes from September 2, 2015 accurately reflect what happened. He attended the Service Canada site to provide his birth certificate. When he did, he was advised that the copy he had was too old and could not be used to validate his birth date. I pause here to question how a Service Canada representative was able to assert this. Absent a policy within the department that limits acceptance of older documents, this appears to me to be an administrative error on the part of the Minister.

[18] At the oral hearing, the Appellant exhibited the birth certificate he brought into the Service Canada site in 2015. It is certainly old, but there is nothing about the document that ought to have precluded the Service Canada representative to determine it could not be relied upon. Had the Service Canada representative not asserted such, there would have been no further issue in this case as the matter would have been resolved at that point in time.

[19] The Appellant told me that after being advised that his birth certificate was too old, he went about obtaining a new copy to submit to Service Canada. The new birth

certificate from the Vital Statistics department in British Columbia was issued on September 8, 2015.⁴

[20] The Appellant told me that approximately two weeks after he went into Service Canada, and was advised that his birth certificate was too old and could not be accepted, he returned with his new birth certificate. He submitted the new birth certificate to a Service Canada representative and presumed his records would be updated.

[21] While there is no evidence from Service Canada that this second attendance occurred in September 2015, I am satisfied that the evidence presented at the oral hearing is factually correct.

[22] First, the Appellant's testimony aligns with the objective evidence on file. There is a record of his attendance on September 2, 2015, wherein he was advised that his birth certificate was too old to be accepted.

[23] Second, he obtained a new birth certificate a week after being advised that his original birth certificate was too old.

[24] It is clear from the Appellant's interaction with Service Canada and his action of immediately obtaining a new birth certificate that he regarded this as an important issue. It follows that he more likely than not took immediate steps to present the valid birth certificate to Service Canada. Insofar as there is a conflict between the Appellant's testimony and the records Service Canada relies upon, I prefer the Appellant's testimony.

[25] For these reasons, I find that the Appellant submitted his birth certificate containing his correct date of birth, X 1950, to Service Canada in September 2015.

⁴ GD15-4

Conclusion

[26] I find that the Appellant submitted his birth certificate to Service Canada in September 2015.

[27] I leave it to the Minister to determine whether its actions amounted to an administrative error and as a result whether the overpayment should be remitted.

Adam Picotte
Member, General Division – Income Security Section