



Citation: *NB v Minister of Employment and Social Development*, 2023 SST 792

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

# **Decision**

**Appellant:** N. B.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated October 12, 2022 (issued by Service Canada)

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**Tribunal member:** Anne S. Clark

**Type of hearing:** Teleconference

**Hearing date:** May 9, 2023

**Hearing participant:** Appellant

**Decision date:** June 6, 2023

**File number:** GP-22-1861

## Decision

[1] The appeal is dismissed.

[2] The Appellant, N. B., isn't entitled to have the Tribunal reduce or forgive (remit) an overpayment of his *Canada Pension Plan* (CPP) retirement pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant applied for a CPP retirement pension in the year he turned 60. The Minister of Employment and Social Development (Minister) approved the application. His pension was effective in July 2017.<sup>1</sup> The Minister calculated the pension using the information in the application.

[4] In the year the Appellant turned 65 he applied for his *Old Age Security* (OAS) pension. That application contained a different date of birth. The Minister concluded this meant one of the applications (CPP or OAS) used a wrong date of birth. The Minister required the Appellant to file a birth certificate. Using the information in the birth certificate the Minister recalculated the CPP pension. The recalculation resulted in an overpayment of \$2,415.36. The Minister decided the Appellant had to repay the overpayment. The Minister set up a repayment schedule and deducts approximately \$100.00 each month from his pension to recover the overpayment.

[5] The Appellant agreed the Minister used the wrong date of birth to calculate his CPP retirement pension. But he says it wasn't his fault. He began his application online, but he finished it in person. He says a Service Canada clerk told him the application was correct. The Appellant said he explained that he could not afford to pay the overpayment. He says the Minister ignored the fact that he did not make the mistake. He said the Minister also ignored his statement that repayment would cause financial difficulties.

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<sup>1</sup> The Minister did not file a copy of the application, but the Appellant confirmed he applied in February 2017.

[6] The Minister says the Appellant completed the application form online. The form included a date of birth that was not correct. To complete the form the Appellant was required to review and confirm his personal information. That information included his date of birth. The Minister relied on the information the Appellant confirmed as correct. That meant they calculated his pension using the wrong birthdate. He was overpaid and the Minister is required to recover overpayments.

## **What the Appellant must prove**

[7] For the Appellant to succeed, he must prove he is entitled to have the overpayment reduced or forgiven. In order to decide that question I have to consider whether I have the authority to intervene and change the Minister's decision because it was based on an error or will result in financial difficulties.

## **Reasons for my decision**

[8] The Tribunal is created by legislation. It only has the powers granted to it by its governing statute. This means I have to interpret and apply the provisions as they appear in the CPP and its regulations. I cannot change or waive them, even if they seem unfair in a particular situation.<sup>2</sup>

## **Can the Tribunal change an overpayment if the Minister relies on an administrative error or gives erroneous advice?**

[9] The Appellant said he contacted the Ministry in early 2017 to complete his application process. He said he did not use the wrong date of birth. He also said a Service Canada agent told him his application was correct and would be processed. He said he complied with the request to file his birth certificate after he applied for the OAS pension. He said he did not know there was an error on his CPP application. He alleges the Minister made an administrative error or gave erroneous advice (AE/EA) that caused the overpayment.

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<sup>2</sup> See the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22.

[10] The CPP explains what can happen in the event of EA/EA. If the Minister is satisfied that an AE/EA happened, and a part of a benefit was denied as a result, the Minister “shall take such remedial action as the Minister considers appropriate” to put the person back in the position they should have been in.<sup>3</sup> The Tribunal has no authority to intervene in a matter of AE/EA.<sup>4</sup>

[11] The Appellant said he told the Minister the agent made the mistake. He also told the Minister he could not afford to pay \$100.00 every month. The Appellant said he feels they Minister ignored his request that they consider that this was not his fault. He said he has not received a decision from the Minister about any investigation. I explained that I cannot decide if there was an AE/EA that affected his benefits. He said he understands has to contact the Ministry to follow up on that matter.

[12] The file shows the Minister told the Appellant they would take his financial difficulties into consideration when setting up the repayment.<sup>5</sup> The Minister invited the Appellant to contact them to discuss the payments.<sup>6</sup> I explained the Tribunal does not have the authority to intervene or require the Minister’s to forgive or remit overpayments. I urged him to contact the Minister directly if he wants them to consider his financial circumstances.

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<sup>3</sup> See section 66(4) of the *Canada Pension Plan*.

<sup>4</sup> *Pincombe v. Canada (Attorney General)*, [1995] FCJ No. 1320 (FCA); *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

<sup>5</sup> Subsections 66(1), (2), and (3) of the *Canada Pension Plan* set out the general rules about overpayments and recovery of amounts.

<sup>6</sup> See GD2-6.

## **Conclusion**

[13] The Tribunal does not have the authority to reduce or remit the overpayment because of AE/EA or because of financial hardship. I explained to the Appellant that he has to raise these issues with the Minister. If he is not satisfied with the Minister's decision, he may be able to apply for judicial review.

[14] This means the appeal is dismissed.

Anne S. Clark  
Member, General Division – Income Security Section