



Citation: *MW v Minister of Employment and Social Development*, 2023 SST 1313

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** M. W.  
**Representative:** A. W.

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

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**Decision under appeal:** General Division decision dated July 28, 2023  
(GP-23-579)

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**Tribunal member:** Kate Sellar

**Decision date:** **October 3, 2023**

**File number:** AD-23-866

## Decision

[1] I'm refusing the Claimant leave (permission) to appeal. The appeal will not go ahead. These are the reasons for my decision.

## Overview

[2] M. W. (Claimant) applied for the *Canada Pension Plan* (CPP) survivor's pension in April 2022. She had previously applied for the CPP retirement pension in July 2010.

[3] On July 25, 2022, the Minister of Employment and Social Development (Minister) approved the Claimant's survivor's pension. The Minister explained that when someone is eligible for a retirement pension as well as a survivor's pension, both pensions are combined into one monthly payment. The amount is based on a specific calculation and cannot exceed a maximum which is set each year. The Claimant requested a change of her monthly entitlement amount for the combined benefits.

[4] The Minister denied her request initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal, finding that she didn't provide any evidence of any errors in the way the Minister calculated the combined benefit.

## Issues

[5] The issues in this appeal are:

- a) Could the General Division have made an error about its jurisdiction?
- b) Could the General Division have made an error by failing to increase the Claimant's monthly pension payment amount?
- c) Does the application set out evidence that wasn't presented to the General Division?

## **I'm not giving the Claimant permission to appeal**

[6] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the facts to the law.<sup>1</sup>

[7] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.<sup>2</sup>

[8] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

### **There's no argument about the General Division making an error of jurisdiction that has a reasonable chance of success.**

[9] The Claimant argues that the General Division made an error by finding that it didn't have the jurisdiction to change the amount the Claimant receives in pension payments in each month. The Claimant argues that the General Division should take the initiative and make a decision that they believe is fair given the circumstances.<sup>3</sup>

[10] The General Division explained that they don't have the jurisdiction to change the amount of the pension payment to the amount that the Claimant requested.<sup>4</sup>

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<sup>1</sup> See section 58.1(a) and (b) of the *Department of Employment and Social Development Act* (the Act).

<sup>2</sup> See section 58.1(c) of the Act.

<sup>3</sup> See AD1.

<sup>4</sup> See paragraph 10 in the General Division decision.

[11] The General Division must follow the CPP. The CPP sets out how to calculate a combined retirement and survivor's pension amount.<sup>5</sup> The Claimant argued based on her life and work history and her late husband's life and work history that she should receive the maximum payment for the combined CPP survivor's and retirement pensions.

[12] There's no argument for an error here about jurisdiction that has a reasonable chance of success. The General Division cannot change a pension payment based on arguments about how long or hard people worked generally. The General Division can correct errors that the Minister might make in applying the CPP calculation rules to the Claimant. The General Division didn't have the jurisdiction to decide what monthly payment might be most fair in a more general way.

### **Could the General Division have made an error by failing to increase the Claimant's monthly pension payment amount?**

[13] The Claimant argues that the General Division should have increased her monthly pension payment amount, and that the failure to do that was an error.

[14] The Claimant explained that she worked for many years, then took a break to raise her sons. Her late husband always worked full-time from 1972 until 2008 when he became disabled. The Claimant points out that it is hard to imagine how or why she wouldn't qualify for more. She highlights the financial hardship and poverty that can result after the death of a partner, especially for women.

[15] The General Division could only consider whether the Minister applied the calculation rules from the CPP to the Claimant's case properly. The Minister provided a detailed explanation about how they calculated the Claimant's combined monthly pension amount.<sup>6</sup> The General Division described the calculation the Claimant thought would apply, but it's not the calculation that's in the CPP.<sup>7</sup> The Claimant didn't have any argument about how the Minister's calculations were wrong. She provided a different

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<sup>5</sup> See section 58(2)(c) the *Canada Pension Plan (CPP)*.

<sup>6</sup> See GD2-26 to 29.

<sup>7</sup> See paragraph 8 in the General Division.

way to calculate her pension. The General Division cannot apply the Claimant's calculation, it must apply the calculation in the CPP. There's no argument here that the General Division made an error of fact or of law by failing to change the amount of the Claimant's monthly pension payment amount.

### **No new evidence**

[16] The Claimant hasn't set out any new evidence, so new evidence cannot form the basis for granting permission to appeal.

[17] I'm satisfied that the General Division didn't ignore or misunderstand the Claimant's evidence.<sup>8</sup> The Minister followed the steps to combine the retirement pension with the survivor's pension, and I'm not aware of any possible error in the way the Minister performed those steps that would justify giving the Claimant permission to appeal.

### **Conclusion**

[18] I refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>8</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 615 for more about the Appeal Division's role in reviewing General Division decisions.