



Citation: *DD v Minister of Employment and Social Development*, 2023 SST 1685

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

Decision

Appellant: D. D.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated February 22, 2022 (issued by Service Canada)

Tribunal member: Michael Medeiros

Type of hearing: In person

Hearing date: November 20, 2023

Hearing participant: Respondent's representative

Decision date: November 24, 2023

File number: GP-22-663

Decision

[1] The appeal is dismissed.

[2] The Minister of Employment and Social Development (Minister) was entitled to recalculate the Appellant's 2020 Canada Pension Plan (CPP) Post-Retirement Benefit (PRB) and recover the overpayment. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant, D. D., applied for a CPP retirement pension in January 2018. She started receiving the PRB in 2019. In a letter dated November 5, 2021, the Minister advised the Appellant that it had recalculated the amount of her 2020 PRB based on recent information sent from the Canada Revenue Agency (CRA). The recalculation meant that the Appellant's 2020 PRB was overpaid by \$17.35. The letter said that the amount would be recovered by deducting it from a future payment.

[4] The Appellant asked the Minister to reconsider its decision. The Minister decided to maintain its original decision. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that she completed a form electing to stop contributing to the CPP in 2019 and 2020 that the CRA accepted. The CRA and Service Canada have no right to offset an election made by a Canadian citizen.

[6] The Minister says that the determination of an overpayment to the Appellant for the 2020 PRB was correct. It was the result of amended earnings and contributions information provided to the Minister by the CRA. When revised information from the CRA is received, benefits are recalculated. The updated information from the CRA meant that the Appellant wasn't entitled to the 2020 PRB she had received, and she was required to repay it.

Matters I have to consider first

The Appellant wasn't at the hearing

[7] A hearing can go ahead without the Appellant if she got the notice of hearing.¹ The following evidence shows that the Appellant received notice of the hearing but made the choice not to attend:

- The Appellant has been very clear that she would only accept an in-person hearing. A case conference in May 2023 that was set to discuss her choice of hearing was cancelled because she said she “asked for a hearing in person” and she would not attend a teleconference.²
- The Notice of Hearing scheduling the in-person hearing in Kelowna was sent by email on October 5, 2023.³
- On October 9, 2023, the Appellant responded to the Tribunal’s email notifying her of the hearing, stating she lived in Vernon (approximately 50 km from Kelowna), and asked the Tribunal to “please correct.”⁴
- On October 13, 2023, I sent a letter by email to the Appellant.⁵ I explained that Kelowna was the closest Service Canada Centre to Vernon that is available for an in-person hearing. I said that if she didn’t want to travel to Kelowna, she could instead choose to have her hearing by teleconference or videoconference. I set a deadline of October 20, 2023, for her to communicate her preference.
- On November 7, 2023, the Appellant sent an email to the Tribunal in response to the Tribunal’s email from the prior day providing the list of

¹ For appeals filed before December 5, 2022, Section 12 of the 2013 version of the *Social Security Tribunal Regulations* sets out this rule. For appeals filed on or after December 5, 2022, Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

² See GD6 and GD7.

³ See GD0C. An email sent by the Tribunal is considered received on the next business day. Section 22(3) of the *Social Security Tribunal Rules of Procedure* sets out this rule.

⁴ See GD17.

⁵ See GD18.

documents for her hearing. All her email said was “cancel all.” Tribunal staff thought her email may be a request to withdraw the appeal and attempted to follow-up by telephone. The Appellant discontinued the call shortly after answering it.⁶

- On November 16, 2023, the Appellant emailed the Tribunal in response to an email sent the same day seeking to confirm her attendance at the hearing scheduled for November 20, 2023.⁷ She emphasized that she lived in Vernon, not Kelowna, and would not travel to Kelowna for the hearing.
- On November 17, 2023, I responded to the Appellant’s November 16, 2023, email.⁸ I again explained that she must travel to Kelowna for an in-person hearing. I said she was expected to attend the hearing as scheduled.

[8] The Appellant didn’t ask for the hearing to be rescheduled.⁹ But even if her emails can be framed as a request to reschedule the hearing, I would refuse the request. In these circumstances, rescheduling isn’t necessary for a fair hearing. The Appellant made a deliberate choice not to attend the hearing in Kelowna. She had plenty of notice. It is reasonable to expect an appellant to travel 50 km to accommodate their choice of hearing. The Appellant gave no reason why she couldn’t.

[9] So, the hearing took place when it was scheduled, but without the Appellant.

Reasons for my decision

[10] I agree with the Minister that it was entitled to recalculate the Appellant’s 2020 PRB and ask her to repay the benefit.

⁶ Since it was unclear whether the Appellant intended to withdraw her appeal, I presumed that she did not and wanted her appeal decided on the merits.

⁷ See GD19.

⁸ See GD20.

⁹ The Appellant was specifically advised in the Notice of Hearing (see GD0C) about the requirements for a request to reschedule, including that it must: (1) be filed in advance of the hearing; (2) explain why you want the hearing rescheduled; and (3) explain why rescheduling would be necessary for a fair hearing. See Section 43 of the *Social Security Tribunal Rules of Procedure*, which sets out this rule.

The Minister recalculated the PRB based on updated earnings information from the CRA

[11] The Appellant's 2020 PRB was recalculated because the Minister received updated earnings information from the CRA. That meant the Appellant had been overpaid the benefit and so the Minister asked for the payment back. In my view, the Minister followed the law.

[12] The Minister relies on information provided by the CRA in a Record of Earnings to determine entitlement to CPP benefits and to calculate benefit amounts.¹⁰ The law requires that the Minister accept this information as accurate.¹¹

[13] The Minister recalculates benefit amounts when they receive updated information from the CRA.¹² The law requires that the Minister also accept the updated record as accurate. This may result in the recalculation of benefit amounts. That is what happened here.

The Appellant is required to repay a benefit they are not entitled to

[14] The Minister followed the law when it recovered the overpayment of the Appellant's 2020 PRB.

[15] When someone is paid a benefit they are not entitled to, the law says they must return the benefit payment.¹³

[16] I understand that the Appellant signed a CRA form CPT30 electing to stop contributing to the CPP in 2019 and 2020.¹⁴ However, this doesn't address the issue on this appeal. Regardless of whether she signed this form, the CRA originally reported earnings information to the Minister that stated she had made CPP contributions in

¹⁰ See Submissions of the Minister, at GD3-6.

¹¹ Section 97(1) of the *Canada Pension Plan* sets out this rule.

¹² See Submissions of the Minister, at GD3-6.

¹³ Section 66(1) of the *Canada Pension Plan* sets out this rule.

¹⁴ The earliest a person may choose to stop making contributions to the CPP is the month of their 65th birthday upon completing a request to their employer: see Sections 12 and 13 of the *Canada Pension Plan* and Submissions of the Minister, at GD3-5.

2019.¹⁵ On the basis of that information – which the Minister must accept as accurate – she was paid a 2020 PRB that she was not entitled to. Now that the information has been corrected, the Minister is asking for the payment back. And the law says she must return it.

[17] In my view, the Minister’s decision isn’t offsetting the Appellant’s election to stop contributing to the CPP. The Minister’s decision is acknowledging that election. Because the Appellant didn’t contribute to the CPP in 2019, she was overpaid the PRB in 2020. But correcting that mistake meant that the Appellant was required to repay the benefit.

Conclusion

[18] I find that the Minister followed the law when it recalculated the Appellant’s 2020 PRB and asked for repayment of the benefit.

[19] This means the appeal is dismissed.

Michael Medeiros
Member, General Division – Income Security Section

¹⁵ See Adjudication Details with timestamp April 14, 2020, at GD2-15.