



Citation: *SP v Minister of Employment and Social Development*, 2023 SST 1880

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

# Decision

**Appellant:** S. P.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated April 13, 2023 (issued by  
Service Canada)

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**Tribunal member:** Virginia Saunders

**Type of hearing:** Teleconference

**Hearing date:** October 12, 2023

**Hearing participants:** Appellant

**Decision date:** October 13, 2023

**File number:** GP-23-985

## Decision

[1] The appeal is dismissed.

[2] The Appellant, S. P., can't have her Canada Pension Plan (CPP) credit split reversed. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant and her former spouse were married in December 1976. They separated in March 2001 and divorced in November 2003.

[4] The Appellant applied for a CPP credit split (also called a division of unadjusted pensionable earnings, or DUPE) in July 2019. She was already receiving a CPP retirement pension at the time. She says she only applied for the credit split because someone from Service Canada told her she would receive more money if she did.

[5] The Minister of Employment and Social Development (Minister) approved the application. The former couple's CPP credits were divided between them for the years 1976 through 2000.<sup>1</sup>

[6] Because of the credit split, the amount of the Appellant's retirement pension went down, not up. She asked the Minister to reconsider its decision, and the Minister refused. She appealed to the Social Security Tribunal's General Division.

[7] The Appellant says she made a mistake. She wouldn't have applied for the credit split if she had known her retirement pension would go down. She says she shouldn't be penalized because Service Canada gave her the wrong information. She also argues that her former spouse isn't going to use his pension credits, so they should be returned to her.

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<sup>1</sup> See GD2-4.

## What I have to decide

[8] I have to decide if the credit split can be reversed.

## Reasons for my decision

[9] The Minister was right to grant the credit split for the period January 1976 to December 2000. It can't be reversed.

### – The credit split is mandatory

[10] The *Canada Pension Plan* says the credit split **shall** take place if the Minister is informed of a divorce and receives certain information.<sup>2</sup>

[11] The required information was in the Appellant's application, the statutory declaration of marriage, and the divorce certificate.<sup>3</sup> As a result, the credit split **had to** take place. It is "mandatory and automatic following a divorce."<sup>4</sup>

[12] There are only two situations where the Minister can refuse to allow a credit split. Neither applies here.

[13] The first situation is where benefits are payable to both parties, and **both** their benefits would go down when or if the split is made.<sup>5</sup> In this case, only the Appellant's benefit went down.

[14] The second situation is where the spouses made a written agreement before their divorce. The agreement must be expressly permitted by provincial law, and it must clearly state that there is to be no credit split.<sup>6</sup> The Appellant didn't have an agreement.<sup>7</sup> It doesn't matter that her former spouse doesn't want his pension and asked to have it

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<sup>2</sup> See section 55.1(1)(a) of the *Canada Pension Plan*. The information that is required is set out in sections 52 and 54 of the *Canada Pension Plan Regulations*.

<sup>3</sup> See GD2-19-28.

<sup>4</sup> The Federal Court of Appeal said this in *Dominie v Minister of Social Development*, 2005 FCA 242, and *Dela Cruz v Canada (Attorney General)*, 2020 FC 744.

<sup>5</sup> See section 55.1(5) of the *Canada Pension Plan*.

<sup>6</sup> See section 55.2(3) of the *Canada Pension Plan*.

<sup>7</sup> See GD2-22.

assigned to her.<sup>8</sup> The law doesn't allow spouses to opt out of the credit split except in the limited circumstances I just described.

– **The credit split was made for the correct period**

[15] A credit split is for the period that starts in January of the year in which the marriage took place, or the couple began living together. The months when they lived together after that are included in the period. They aren't considered to have lived together at any time in the year they separated.<sup>9</sup>

[16] In this case, the credit split was correctly made for the period from January 1976 (the year they got married) to December 2000 (the end of the year before they stopped living together).

– **The Tribunal has to follow the law**

[17] I recognize that the Appellant feels she was misled and wishes she hadn't applied for the credit split. I also recognize that she is in financial difficulty and that having her pension go down has caused hardship. However, I have to follow the law. I can't make a decision because I feel sorry for the Appellant or want to help her.

## **Conclusion**

[18] I find that the Minister was right to grant the credit split for the period January 1976 to December 2000.

[19] This means the appeal is dismissed.

Virginia Saunders  
Member, General Division – Income Security Section

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<sup>8</sup> See GD2-9 and 15.

<sup>9</sup> See section 55.1(4) of the *Canada Pension Plan* and section 78.1 of the *Canada Pension Plan Regulations*.