



Citation: *WA v Minister of Employment and Social Development and SA*, 2023 SST 1847

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: W. A.

Respondent: Minister of Employment and Social Development

Added Party: S. A.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 6, 2022 (issued
by Service Canada)

Tribunal member: Pierre Vanderhout

Type of hearing: In Writing

Decision date: September 11, 2023

File number: GP-23-433

Decision

[1] The appeal is dismissed.

[2] The Appellant, W. A., has not established that the Minister of Employment and Social Development (the “Minister”) wrongly performed the Division of Unadjusted Pensionable Earnings (“DUPE”, or “Credit Split”) under the Canada Pension Plan (“CPP”). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is 60 years old. He married S. J. (“S. J.”) on December 31, 2012.¹ They separated on November 2, 2020.² Their divorce took effect on May 13, 2022.³ All these events took place in Manitoba, where both S. J. and the Appellant still live.

[4] S. J. applied for a CPP Credit Split on May 25, 2022. She sought the equal division of the CPP contributions made by her and the Appellant during their marriage and up to their separation. The Minister granted S. J.’s application and upheld it upon reconsideration. The Appellant then appealed to the Tribunal.

[5] The Appellant opposes the CPP Credit Split. He says he makes adequate payments for S. J.’s support. He adds that he must continue working, despite a decline in his physical health, because of his financial obligations. He says S. J. can support herself. He suggests that she reported a low income to the Canada Revenue Agency (“CRA”). He also wonders if she is entitled to a CPP Credit Split from her other ex-spouses.

[6] The Minister says the marriage and cohabitation dates are not in dispute. The Minister says the CPP Credit Split was performed according to the law. None of the

¹ See GD2-10.

² See GD2-6 and GD2-19.

³ See GD2-9.

possible exceptions apply. The Minister says it has no discretion to prevent the CPP Credit Split for the time that the Appellant and S. J. cohabited.

[7] The Appellant requested a written hearing.⁴ The hearing proceeded in writing, because the Tribunal must hold hearings in the format requested by the Appellant.⁵

What the Appellant must prove

For the Appellant to succeed, he must prove that the Minister incorrectly applied the CPP Credit Split provisions to his relationship with S. J.

Reasons for my decision

[8] I find that the Appellant and S. J. cohabited in a conjugal relationship from December 31, 2012, to November 2, 2020. This period starts on their marriage date and ends on their separation date. This means a CPP Credit Split must be performed for the period from January 1, 2012, to December 31, 2019.

[9] I will now explain the reasons for this decision.

The Appellant's marriage to S. J. creates an entitlement to a CPP Credit Split

[10] The law says a CPP Credit Split shall be performed for a former spouse who applies for that split. The Minister must do this once it is informed of the divorce judgment. The Minister does not have any discretion. The law says that the division shall take place.⁶ This must occur once the Minister receives the information required by the CPP Regulations.⁷

⁴ See GD1-2.

⁵ See s. 2(1) of the *Social Security Tribunal Regulations, 2022*.

⁶ See s. 55.1(1)(a) of the *Canada Pension Plan*.

⁷ See s. 54(2) of the *Canada Pension Plan Regulations*.

[11] The evidence shows that S. J. applied for the CPP Credit Split.⁸ It also shows that the Minister received the information required to make to perform that split.⁹ This means that the Minister must perform the split for the applicable period.

– **When the CPP Credit Split applies**

[12] I see no reason to question the cohabitation dates. The parties agree on these dates. Neither the Appellant nor S. J. said that they cohabited before marriage.

[13] The CPP Regulations say that the CPP Credit Split period starts with the first month of the year that the parties married or started to cohabit in a conjugal relationship.¹⁰ As the Appellant and S. J. married in December 2012, the CPP Credit Split must start with January 2012.

[14] The CPP Regulations also say that the parties are considered not to have cohabited at any time during the year in which they started to live separate and apart.¹¹ As the Appellant and S. J. separated in November 2020, the CPP Credit Split cannot extend beyond December 2019.

[15] I find that the CPP Credit Split applies from January 2012 to December 2019. This is the same period for which the Minister applied the split, according to their submissions.¹² However, the Minister misstated this period at one point in the reconsideration decision.¹³ The Minister should ensure that the split was performed for the correct period.

⁸ See GD2-4.

⁹This includes the marriage certificate (GD2-10), divorce certificate (GD2-9), and separation date (GD2-6).

¹⁰ See s. 78.1(1)(a) of the *Canada Pension Plan Regulations*.

¹¹ See s. 78.1(1)(b) of the *Canada Pension Plan Regulations*.

¹² See GD4-3 to GD4-4.

¹³ See the last sentence on page GD2-16. This appears to be an error. It is not consistent with the analysis on that page. Nor is it consistent with the Minister's position throughout the assessment, reconsideration, and appeal processes.

Can the Credit Split be prevented on any other grounds?

[16] As noted in the Minister's submissions, there are two very limited exceptions to the mandatory nature of the CPP Credit Split.

[17] Firstly, the Minister cannot perform a CPP Credit Split if it would reduce the CPP entitlement of both ex-spouses.¹⁴ While the Appellant suggests that the split reduced his CPP entitlement, I see no evidence that it reduced S. J.'s entitlement. In virtually all splits, the entitlement increases for one spouse and decreases for the other.

[18] Secondly, in certain conditions, a written agreement or court order can prevent the Minister from performing a CPP Credit Split.¹⁵

[19] However, one of the conditions is that the provincial law governing such agreements expressly permits such agreements to prevent a CPP Credit Split.¹⁶ In this case, Manitoba law would apply. However, I see no indication that Manitoba law permits such agreements to prevent such a split. Quebec, Saskatchewan, Alberta, and British Columbia appear to be the only provinces permitting this.

[20] In any case, I see no evidence of a written agreement or a court order that expressly addresses the CPP Credit Split for S. J. and the Appellant. The CPP says that such an agreement or order must expressly mention the CPP and indicate the parties' intention that there be no CPP Credit Split.¹⁷

[21] The Appellant's submissions suggest that I should not apply the law as written because it would be unfair to him. He also suggests that S. J. can support herself by other means. However, I note that the Tribunal was created by statute. The Tribunal can only apply the legislation as drafted. It can only grant remedies that it has the specific statutory authority to grant.¹⁸ I cannot overrule the law just because it may impact the parties differently.

¹⁴ See s. 55.1(5) of the *Canada Pension Plan*.

¹⁵ See ss. 55.2(2) and (3) of the *Canada Pension Plan*.

¹⁶ See s. 55(3)(b) of the *Canada Pension Plan*.

¹⁷ See s. 55(3)(a) of the *Canada Pension Plan*.

¹⁸ See *R. v. Conway*, 2010 SCC 22, at paragraph 82.

[22] I also cannot consider what financial arrangements S. J. might have from her other marriages. This appeal concerns only the CPP Credit Split for S. J. and the Appellant. Nor can I make findings on what S. J.'s real income or CPP contributions should have been during the period of the CPP Credit Split. Income questions are normally resolved with the CRA or the Tax Court of Canada.

Conclusion

[23] I find that the Minister correctly concluded it must perform the CPP Credit Split for the period from January 2012 to December 2019. However, due to a potentially confusing statement made by the Minister in the reconsideration decision, the Minister should ensure it performed the CPP Credit Split correctly for those dates.

[24] This means the appeal is dismissed.

Pierre Vanderhout
Member, General Division – Income Security Section