



Citation: *RF v Minister of Employment and Social Development*, 2024 SST 321

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: R. F.

Respondent: Minister of Employment and Social Development
Representative: Cathy Isenor

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 29, 2023 (issued by
Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Teleconference

Hearing date: March 7, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: March 25, 2024

File number: GP-23-1310

Decision

[1] The appeal is dismissed.

[2] The Appellant, R. F., isn't eligible for the Canada Pension Plan (CPP) death benefit. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant's spouse (M. F.) passed away in December 2022.¹ A short while later, the Appellant applied for the CPP death benefit.²

[4] The Minister of Employment and Social Development (Minister) denied the application at the initial and reconsideration levels of review. This is because the Minister determined that the late M. F. (the contributor to the CPP) didn't make enough years of contributions to the CPP to qualify her estate for the death benefit. The Minister explained that the contributor needed to have made at least 8 years of contributions to the CPP. However, she only contributed to the CPP in 4 years.³

[5] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

This appeal is only about the CPP death benefit

[6] When the Appellant applied for the death benefit, he also filed an application for the CPP survivor's pension.⁴

[7] This appeal is only about the Appellant's eligibility for the death benefit. In other words, this appeal is not about the Appellant's eligibility for the survivor's pension. This is because the Minister's reconsideration decision **only** addresses the death benefit. I

¹ See page GD8-10.

² The application for the death benefit is at pages GD8-6 to GD8-9.

³ The Minister's initial decision is at pages GD2-6 to GD2-7. The Minister's reconsideration decision is at pages GD2-4 to GD2-5.

⁴ See page GD2-6.

can only consider a person's eligibility for a benefit if the Minister has made a decision about that benefit at the reconsideration level of review.⁵

What the Appellant must prove

[8] To succeed with his appeal, the Appellant must prove that his late spouse made enough contributions to the CPP to qualify her estate for the death benefit.

My findings

[9] The Appellant isn't eligible for the CPP death benefit. I will start by explaining what the law says about the benefit.

What the law says about the CPP death benefit

[10] The CPP legislation says that the death benefit can only be paid if the contributor made contributions to the CPP for not less than the minimum qualifying period.⁶

[11] To meet the minimum qualifying period, a contributor must have made contributions during their contributory period for:⁷

- at least 3 years and for at least one-third of the total number of years included either wholly or partly within their contributory period or
- at least 10 years.

– What a contributory period is

[12] The CPP is a contributory program. The time during which a person can contribute to the CPP is known as a contributory period.

[13] A person's contributory period starts the **later** of January 1, 1966 (when the CPP began) or the month after the person's 18th birthday.⁸

⁵ See section 82 of the *Canada Pension Plan*.

⁶ See paragraph 44(1)(c) of the *Canada Pension Plan*.

⁷ See subsection 44(3) of the *Canada Pension Plan*.

⁸ See subsection 2(2) and section 49 of the *Canada Pension Plan*.

[14] A person's contributory period ends the **earliest** of:⁹

- the month before the month in which the contributor reached age 70
- the month in which the contributor died, or
- the month before the month in which the contributor's CPP retirement pension began.

[15] There are two circumstances in which a person can shorten their contributory period. In each case, the contributory period is shortened by excluding (dropping) certain months from that period.

[16] I will call the first type of exclusion the **disability exclusion**. This type of exclusion applies to people who received the CPP disability benefit.¹⁰

[17] I will call the second type of exclusion the **child rearing exclusion**. This type of exclusion applies to people who:¹¹

- received family allowance payments for a child under the age of 7 or qualified for the Canada Tax Benefit (now called the Canada Child Benefit) for a child under the age of 7; and
- didn't make a valid contribution to the CPP for the year(s) in question.

The contributor's contributory period

[18] The contributor was born in December 1946¹², and so her contributory period began in January 1966 (when the CPP began).

⁹ See subsection 49(b) of the *Canada Pension Plan*.

¹⁰ See subsection 49(c) of the *Canada Pension Plan*. This provision also refers to a disability benefit provided by a provincial pension plan. The term "provision pension plan" means a comprehensive pension plan of old age pensions and supplementary benefits that is provided by a province (subsection 3(1) of the *Canada Pension Plan*). The only province in Canada that provides a "comprehensive pension plan", as this term is defined in the *Canada Pension Plan*, is Quebec. This means there is only one "provincial pension plan", and that is the Quebec Pension Plan (QPP).

¹¹ See subsection 49(d) of the *Canada Pension Plan*.

¹² See page GD12-6.

[19] The contributor began receiving her CPP retirement pension in January 2007.¹³ This means her contributory period ended in December 2006 (the month before her pension began).

[20] Without any exclusions from the contributory period, the contributor's contributory period totals 41 years.

[21] The disability exclusion doesn't help the contributor. This is because she didn't receive the CPP disability benefit.

[22] The child rearing exclusion helps to shorten the contributor's contributory period. She had five children, born in April 1967, November 1968, November 1970, December 1976, and June 1980.¹⁴ I can therefore remove a total of 18 years from her contributory period. The years that are removed are 1969 to and including 1986. I can't remove 1967 or 1968 because the contributor made contributions to the CPP in those years.

[23] The Appellant said that the contributor took care of 45 foster children and raised them until they were adopted. He added that she adopted two of the foster children.¹⁵

[24] I am unable to apply the child rearing exclusion for all the foster children the contributor cared for. I can only apply the exclusion for the years she received family allowance payments or qualified for the Canada Tax Benefit (now called the Canada Child Benefit) for a child under the age of 7.

[25] The contributor filled out a *Child Rearing Dropout Provision* form in November 2006, and in that form she confirmed that she had only received family allowance payments for the five children born in 1967, 1968, 1970, 1976 and 1980. The contributor also confirmed she was never eligible for the Child Tax Benefit.

¹³ See page GD15-1.

¹⁴ See page GD12-4.

¹⁵ See page GD5-4.

[26] The five children identified on the *Child Rearing Dropout Provision* form include the two children that the contributor and the Appellant adopted.¹⁶

[27] After applying the child rearing exclusion for the five children, the contributor's contributory period totals 23 years.

The contributor needed to have made at least 8 years of contributions to the CPP

[28] As the contributory period is 23 years, the contributor needed to have made at least 8 years of contributions to the CPP to qualify her estate for the death benefit. This is because one-third of 23 is 7.66 and the law requires me to round up to the nearest whole number.¹⁷

The contributor made 4 years of contributions to the CPP

[29] The contributor's Record of Earnings shows she made 4 years of contributions to the CPP. She contributed in 1966, 1967, 1968, and 1987.¹⁸

[30] As the contributor didn't make at least 8 years of contributions to the CPP, the Appellant isn't eligible for the death benefit.

There are limits to my jurisdiction

[31] I don't have the jurisdiction (authority) to render decisions on grounds of fairness, compassion, or extenuating circumstances.¹⁹

[32] I must interpret and apply the law. I can't ignore what the law says, and I can't change what the law says.

¹⁶ The Appellant's testimony.

¹⁷ See *Canada (Minister of Human Resources Development) v. Skoric*, (2000), A-709-97.

¹⁸ See page GD5-5.

¹⁹ See, for example, *Miterv. Canada (Attorney General)*, 2017 FC 262 at paragraph 35. See also *Canada (Minister of Human Resources Development) v. Esler*, 2004 FC 1567.

Conclusion

[33] The Appellant isn't eligible for the CPP death benefit.

[34] This means the appeal is dismissed.

Shannon Russell

Member, General Division – Income Security Section