



Citation: *GF v Minister of Employment and Social Development and X*, 2024 SST 931

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: G. F.
Representative: Laura Dettling

Respondent: Minister of Employment and Social Development
Representative: Viola Herbert

Added Party: X
Representative: Amalia E. Szilagyi (counsel)

Decision under appeal: General Division decision dated December 11, 2023
(GP-23-1039)

Tribunal member: Janet Lew

Type of hearing: In person
Hearing date: July 23, 2024
Hearing participants: Appellant
Appellant's representative
Respondent's representative

Decision date: August 6, 2024
File number: AD-24-210

Decision

[1] The appeal is dismissed.

Overview

[2] This is an appeal of the General Division decision dated December 11, 2023. The General Division determined that the Appellant, G. F. (Claimant), was not eligible to receive a Canada Pension Plan death benefit as the Respondent, the Minister of Employment and Social Development (Minister), had already paid the benefit to the Added Party, X.

[3] The Appeal Division granted leave (permission) to the Claimant to appeal the General Division decision. The Appeal Division held a new hearing on July 23, 2024.¹

[4] The Claimant denies that X was entitled to receive the Canada Pension Plan death benefit. She argues that X did not have any legal claim to the benefit. She argues that she was entitled to receive the benefit as the surviving spouse and next of kin, and as the administrator of the estate of the deceased contributor. She asks the Appeal Division to approve her claim to the death benefit.

[5] Both the Minister and X argue that the Claimant is not entitled to the death benefit. They argue that the Minister properly paid the death benefit to X, as the Committee of the Estate for the deceased contributor. They argue that payment was made in accordance with the *Canada Pension Plan*. They ask the Appeal Division to dismiss the appeal.

¹ See section 58.3 of the *Department of Employment and Social Development Act*. An appeal to the Appeal Division of a decision made by the Income Security Section is to be heard and determined as a new proceeding.

Issues

[6] The issues in this appeal are as follows:

- a) Did X have any legal claim to the Canada Pension Plan death benefit? What was its legal status?
- b) Was X entitled to receive the Canada Pension Plan death benefit under either section 71(1) or 71(2) of the *Canada Pension Plan*?
- c) Was X required to wait until after 60 days had passed after the deceased contributor's death before applying for the death benefit under section 64 of the *Canada Pension Plan Regulations*? If X did not wait until after 60 days had passed before applying, does that invalidate its application?
- d) Is the Claimant entitled to receive the death benefit?

Background facts

[7] The facts generally are not in dispute.

[8] P. F. was declared incapable of managing his financial and legal affairs because of cognitive impairment arising from developmental disability and serious and persistent mental illness in November 2010. The effect of this was that X was appointed statutory property guardian and Committee of the Estate of P. F., under section 6(3) of the *Patients Property Act*.²

² See Province of British Columbia Certificate of Incapability, at GD 10-5.

[9] P. F. passed away on September 1, 2021.³

[10] X applied for the Canada Pension Plan death benefit, as the Committee of the Estate of the deceased contributor. X made the application under section 24 of the *Patients Property Act*.⁴

[11] X claims that it applied for the death benefit in or around December 2021.⁵ The Claimant notes that the Minister states that it received X's application on October 28, 2021.⁶

[12] The Minister was satisfied that X was entitled to receive the death benefit. It paid the death benefit to X as the Committee of the Estate for the deceased contributor.

[13] On March 4, 2022, the Claimant applied for the Canada Pension Plan death benefit, as the spouse and next of kin of the deceased contributor.⁷ The Claimant had been married to the deceased contributor for about 11 years when he passed away.

[14] The Minister wrote to the Claimant.⁸ It advised her that it could not approve her application because she had not met all of the eligibility requirements. The Minister told her that, to qualify for the benefit, she had to be:

- the executor, administrator, or legal representative of the estate,
- in the absence of the above, the individual or representative of the institution responsible for the funeral expenses,
- in the absence of the above, the survivor of the deceased contributor, or
- in the absence of the above, the next of kin of the deceased contributor.

³ See Certificate of Death at GD 2-28 (issued September 21, 2021), and GD 2-33 and GD 10-6 (issued October 14, 2021).

⁴ See application by X, at GD 2-29 to 32.

⁵ See Submissions of X, at AD 11-2.

⁶ See Submissions of the Minister, at AD 4-6, at para 13.

⁷ See application by the Claimant, at GD 1-9 to 24 and GD 2-24 to 2-27.

⁸ See Minister's letter dated April 4, 2022, at GD 2-22.

[15] On July 12, 2022, letters of administration of the estate were granted to the Claimant.⁹

[16] The Claimant asked the Minister to reconsider its decision denying her claim for the death benefit. The Minister maintained its decision.¹⁰

The *Canada Pension Plan*

[17] Section 71 of the *Canada Pension Plan* states that where payment of a death benefit is approved, the Minister shall, with some exceptions, pay the death benefit to the estate of the contributor.

[18] Exceptions exist to this general rule, under section 71(2) of the *Canada Pension Plan*:

- (a) where the Minister is satisfied, after making reasonable enquiries, that there is no estate;
- (b) the estate has not applied for the death benefit within the prescribed time interval following the contributor's death; or
- (c) if the contributor's death occurs before January 1, 2019, the amount of the death benefit is less than the prescribed amount.

[19] Where a payment has been made under one of the exceptions, the Minister is not liable to make payment to any subsequent applicant.¹¹

The parties' arguments over entitlement to the death benefit

[20] The Claimant disagrees with X and the Minister over who was entitled to the Canada Pension Plan death benefit.

⁹ Probate was granted to the Claimant on July 12, 2022. See GD 1-75 and GD 2-21.

¹⁰ See Minister's letter dated December 9, 2022, at GD 2-13.

¹¹ See section 71(3) of the *Canada Pension Plan*.

– **The Claimant argues that she is entitled to the death benefit**

[21] The Claimant argues that the Minister wrongfully paid the death benefit to X. She alleges that X lied in its death benefit application that the deceased did not have a will, when she says that it was fully aware that he had a will.

[22] The Claimant says that the deceased contributor had a will in which he named his sister the executor of his estate. As the deceased's sister was the executor of the estate, the Claimant argues that X could not have served as the estate. For this reason, she denies that X was entitled to the death benefit. She argues that both X and the Minister have misinterpreted section 24 of the *Patients Property Act*.

[23] The Claimant also argues that the named executor of the estate had 60 days within which to apply for the death benefit. The Claimant also argues that if the named executor did not apply for the death benefit within 60 days, such as in this case, then she was entitled to receive the benefit as she was the survivor, next of kin, and, as of July 12, 2022, the administrator of the estate of the deceased contributor.¹²

[24] At the hearing before me, the Claimant also argued that whoever paid the funeral expenses could also apply for the death benefit after 60 days had passed.

[25] The Claimant also says that she completed the death benefit application with the help from "Debby," the director of the funeral home. The director assured her that the funeral home would file the death benefit application on her behalf. She says that X interfered with this process. It contacted the funeral home and said that it would look after all of the arrangements.

[26] The Claimant argues that she is entitled to receive the death benefit for this reason too, as her application was completed before X filed its application.

¹² Under section 64 of the *Canada Pension Plan Regulations*, if section 71(2)(a) of the *Canada Pension Plan* applies or if the estate of a deceased contributor has not applied for the death benefit within 60 days after the contributor's death, a direction may be given for payment of the death benefit to the individual or institution who has paid or is responsible for payment of the funeral expenses, or in the absence of one, then the deceased's survivor, and in the absence of that, then to the next of kin.

[27] The Claimant asserts that she is entitled to the death benefit priority for multiple reasons: as the spouse, next of kin, administrator of the estate, and because she completed an application early on. She asks the Appeal Division to approve her claim for the death benefit. She maintains that X was not entitled to receive the death benefit and denies that it acted as the estate for her late spouse.

– **X argues that it was entitled to receive the death benefit as the Committee of the Estate**

[28] X argues that, upon the death of the deceased contributor, as the Committee of the Estate, it continued to have the rights, powers, duties, and privileges that it would have had if the patient had not died. It also argues that it held the powers of an executor of the last will and testament of or the administrator of the estate of the deceased, until a representation grant was issued, under section 24 of the *Patients Property Act*.¹³

[29] X argues that, as the Committee of the Estate, it was entitled to claim and receive the Canada Pension Plan death benefit on behalf of the estate of the deceased contributor.¹⁴ X says that it paid \$3,424.54 for the deceased's funeral and that it used the death benefit to offset the costs of the funeral.

– **The Minister argues that X as the Committee was entitled to receive the death benefit**

[30] The Minister notes that the Claimant stated in her death benefit application that there was no will.¹⁵ However, the Minister argues that the issue of the existence of a will is irrelevant, as it paid the death benefit to X as the administrator of the deceased contributor's estate under section 71(1) of the *Canada Pension Plan*, rather than under any of the exceptions set out in section 71(2) of the *Canada Pension Plan*.

[31] The Minister agrees that X, acting as the Committee of the Estate, held the powers of an executor of the last will and testament of or the administrator of the estate of the deceased contributor under section 24 of the *Patients Property Act* until

¹³ See Submissions of X, at AD 11-2, para 3 and AD 11-4, at para 14.

¹⁴ See Submissions of X, at AD 11-3, para 5 and AD 11-4, at para 15.

¹⁵ See Submissions of the Minister, at AD 4-5, at para 8.

July 12, 2022, when letters probate was granted to the Claimant.¹⁶ The Minister argues that until that date, X was entitled to apply for and receive the death benefit under section 71(1) of the *Canada Pension Plan*.

[32] The Minister also argues that X was properly paid the death benefit as the estate, not as a party other than the estate. So, they argue that X's application for the death benefit was not subject to the precondition that they pay or assume responsibility for payment of any funeral expenses.¹⁷

[33] The Minister argues that the Claimant is not entitled to receive the death benefit, as it properly paid the death benefit to X as the Committee of the Estate of the deceased contributor, in accordance with the *Canada Pension Plan*.¹⁸

Analysis

- a) Did X have any legal claim to the Canada Pension Plan death benefit? In other words, what was its legal status?

[34] X relies on section 24 of the *Patients Property Act* to establish its entitlement to the death benefit. That section reads:

Death of patient

24 (1) Subject to subsection (2), on the death of a patient and until a representation grant, within the meaning of the *Wills, Estates and Succession Act*, is issued in respect of the patient's estate and notice in writing of the representation grant is served on the committee, the committee of the patient

- (a) continues to have the rights, powers, duties and privileges that the committee would have had if the patient had not died, and
- (b) has the powers of a person who has been issued a representation grant...

¹⁶ See Submissions of the Minister, at AD 4-7, at para 17.

¹⁷ See Submissions of the Minister, at AD 4-7, at para 18.

¹⁸ See Submissions of the Minister, at AD 4-7, at para 18.

[35] The *Wills, Estates and Success Act* defines a “representation grant” as meaning:

- (a) The grant of probate of a will in British Columbia, whether made for general, special or limited purposes,
- (b) the grant of administration of the estate of a deceased person in British Columbia with or without will annexed, whether made for general, special or limited purposes ...

[36] After the Claimant’s spouse passed away, section 24(1)(b) of the *Patients Property Act* gave the Committee of the Estate of the deceased contributor certain powers. These powers included the power of a person who had been issued a representation grant.

[37] Under the *Wills, Estates and Administration Act*, a representation grant means a grant of probate or the grant of administration of the estate of a deceased person.

[38] In other words, after the Claimant’s spouse passed away, the Committee of the Estate had the powers of an executor or administrator to the estate, as if that power had been issued to them. This is consistent with the findings made by the Appeal Division in a case called *The Estate of B.T.*¹⁹

[39] There, the Public Guardian and Trustee of Saskatchewan applied for and received a Canada Pension Plan death benefit in 2009. The Estate of B.T. applied for the same benefit in 2014. The Appeal Division rejected the General Division’s conclusion that Saskatchewan was an institution or individual other than the estate. The Appeal Division determined that the Public Guardian qualified as the estate because it was the court-appointed administrator of the estate.

[40] The Committee’s power of an executor or administrator has limits. The Committee does not hold the power indefinitely. The power lasts only as long as a

¹⁹ See *Minister of Employment and Social Development v The Estate of B.T.*, 2018 SST 708.

representation grant has been issued, and after written notice of that representation grant has been served on the Committee of the Estate.

[41] So, it did not matter if there was a will that named the deceased's sister the executor. She had to get probate of that will in British Columbia, and she had to serve notice of probate on the Committee. Until then, the Committee continued to have the powers of a person who had been issued a representation grant.

[42] Here, there is no evidence that the deceased contributor's sister ever sought or got probate. The evidence shows that the Claimant applied for and received probate. Administration of the estate of the deceased contributor was granted to her on July 12, 2022.²⁰

[43] When X applied for the death benefit in October 2021, it stated that it was applying for the death benefit as the Committee of the Estate under section 24 of the *Patients Property Act*. At that point, it held the powers of an executor or administrator as the Claimant had not yet been granted administration of the estate, nor had it been served notice of the grant.

b) Was X entitled to receive the Canada Pension Plan death benefit under either section 71(1) or 71(2) of the *Canada Pension Plan*?

[44] Section 71(1) of the *Canada Pension Plan* provides for payment of the death benefit to the estate of the contributor.

[45] This begs the question: Did X qualify as the estate of the contributor?

[46] X applied for the death benefit as the Committee of the Estate. As I noted above, at the time X applied, a representation grant had yet to be issued. So, X held the powers of an executor or administrator of the estate under section 24(1)(b) of the *Patients Property Act*. Because it held this power, X qualified and was entitled to receive the death benefit under section 71(1) of the *Canada Pension Plan*.

²⁰ See grant of probate, at GD 1-75 and GD 2-21.

- c) Was X required to wait until after 60 days had passed after the deceased contributor's death before applying for the death benefit? If X did not wait until after 60 days had passed before applying, does that invalidate its application?

[47] The Claimant argues that X's application for the death benefit was premature. She argues that the named executor of the deceased contributor's estate had 60 days within which to apply for the death benefit.

[48] But X did not have to wait until after 60 days had passed. Section 71(1) does not require the estate to wait until 60 days passed. Its application did not become invalid. X was entitled to receive the death benefit under section 71(1) of the *Canada Pension Plan* as the estate of the contributor before 60 days had passed.

- d) Is the Claimant entitled to receive the death benefit?

[49] The Claimant says that she filled out the application form for the death benefit, with the help of the director of the funeral home. She did this before X contacted the funeral home.

[50] However, there is no evidence in the hearing file that the Minister received an application on behalf of the Claimant in either September or October 2021.

[51] Apart from that, it would not have been enough for the Claimant to file an application for the death benefit. To be entitled to the death benefit under section 71(1) of the *Canada Pension Plan*, she would have had to establish that she was either the executor or the administrator of the estate. She did not become the administrator of the estate until July 12, 2022.

[52] By then, of course, X had applied and been approved for the death benefit, as the Committee of the Estate of the deceased contributor. As the Minister had already paid the death benefit to X as the Committee of the Estate under section 71(1) of the *Canada Pension Plan*, there was no basis to pay the benefit to the Claimant under

either section 71(1) of the *Canada Pension Plan*, when the Claimant subsequently became the administrator. or under section 71(2) of the *Canada Pension Plan*.

[53] The Claimant has outstanding claims against X. She questions why X was appointed the Committee of the Estate in the first place, as she was the wife and there were other family members who could have handled the Claimant's financial and legal affairs without the expense of going through X.

[54] The Claimant also says that she has not received an accounting from X. She says that she is entitled to a full accounting as the spouse and administrator of the estate. She says X should have been discharged by now and provided a full accounting to her, as it has now been fully two years since she received a grant of administration from the courts.

[55] The Appeal Division does not have any authority to address these issues. There are other avenues available to the Claimant to pursue her claims against X. That said, the Claimant can be assured that the death benefit was paid to X in its capacity as the Committee of the Estate. In other words, X did not personally benefit from the death benefit and an accounting should show that the death benefit was paid to the account of the estate of the deceased contributor.

Conclusion

[56] The appeal is dismissed.

[57] The Minister properly paid the death benefit to X acting as the Committee of the Estate, at a time when it held the powers of an executor or administrator to the estate. Payment was made in accordance with section 71(1) of the *Canada Pension Plan*. The Claimant is not entitled to the *Canada Pension Plan* death benefit.

Janet Lew
Member, Appeal Division