



Citation: *DC v Minister of Employment and Social Development and TC*, 2024 SST 1081

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

Decision

Appellant: D. C.

Respondent: Minister of Employment and Social Development

Added Party: T. C.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 9, 2021 (issued by
Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Teleconference

Hearing date: August 28, 2024

Hearing participants: Appellant
Appellant's representative
Respondent

Decision date: September 4, 2024

File number: GP-21-1314

Decision

[1] The appeal is allowed in part.

[2] The Appellant, D. C., had custody and control of the children GC and GOC from June 2016 to December 28, 2016. The Appellant's custody and control ended on December 28, 2016. This means that he is responsible for the overpayment from December 28, 2016 until November 2017.

Overview

[3] The Appellant is the father of GC and GOC. The Added Party is the mother of GC and GOC. The Appellant received a Canada Pension Plan (CPP) disability benefit and CPP Disabled Contributor's Child Benefit (DCCB) for GC and GOC effective November 2014.

[4] The Minister of Employment and Social Development (Minister) changed the payee from the Appellant to the Added Party effective as of July 2016 because it was determined that GC and GOC had not been in the custody and control of the Appellant since June 2016. This resulted in an overpayment for each child in the amount of \$3,738.36 for the period of July 2016 to November 2017.

[5] The Appellant requested a reconsideration of the change in payee and overpayment. The Minister maintained its decision. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[6] The Social Security Tribunal – General Division conducted the hearing via written questions and answers. By decision dated December 1, 2020, the General Division allowed the Appellant's appeal in part. It decided that the Appellant continued to have custody and control of the children until December 28, 2016, that his custody and control ceased on December 28, 2016, and that the Added Party then had custody and control of the children from December 28, 2016 until November 2017.

[7] The Appellant appealed this decision to the Social Security Tribunal's Appeal Division. By decision dated June 8, 2021, the Appeal Division allowed the Appellant's appeal because the General Division had denied the parties their right to be heard. The appeal was returned to the General Division for a new hearing, to be held either by teleconference or videoconference.

[8] The first part of the hearing was conducted on April 23, 2024. The Appellant did not attend this hearing. The Added Party and the Minister's Representative attended. The Appellant advised the Tribunal by e-mail that he did attempt to connect to the teleconference hearing, but was unsuccessful due to his location.

[9] The Tribunal decided that it would be procedurally unfair to the Appellant to render a decision without reopening the hearing to allow him an opportunity to participate. As a result, the hearing was reopened. The second part of the hearing proceeded on August 28, 2024. All parties attended.

[10] The Appellant says that he had custody and control of GC and GOC until May 2018, when he voluntarily gave up custody. He says that he continued to live in the same house as the Added Party, GC, and GOC from June 2016 until December 2016. He felt that the Added Party was alienating the children from him during this time. He says he was denied access to his children after December 2016. He loved his kids and giving them up in May 2018 was the hardest thing he ever did. He also submits that even if he did not have custody and control of the children, the DCCB was stolen from him. The person who stole the DCCB should repay the overpayment.

[11] The Added Party says that the Appellant stopped having custody and control of GC and GOC in June 2016. Although they continued to live in the same house until December 2016, the Appellant had no relationship with the children. He did not exercise any of his rights to see or talk to the children after December 2016. They have had almost no contact with the Appellant since then.

[12] The Minister has changed its position since the reconsideration decision. The Minister says that, in light of the fact that the Appellant and the Added Party remained in

the home until December 2016, the contributor should be entitled to the DCCB until December 2016. The Minister took no position on who should be entitled to the DCCB as of January 2017.

The issue in this appeal

[13] I have to decide which parent had custody and control of the children GC and GOC between June 2016 and November 2017.

Matters I have to consider first

The Appellant's behaviour during the hearing

[14] The Appellant was aggressive and, at times, verbally abusive during the hearing. I required him to take a 5 minute break at the outset of the hearing to calm himself down after he called the Added Party a "bitch". I advised him that the hearing would not continue if he continued to speak to the Added Party in this manner or if he was incapable of conducting himself in a respectful manner.

[15] The Appellant continued to use abusive language, such as "fuck you", during the hearing. He made derogatory comments about the Added Party and women in general, such as "women play the abuse victim". I asked him on multiple occasions to maintain a respectful tone so that he would have an opportunity to testify.

[16] The Appellant had a very difficult time refraining from discussing issues that had little or nothing to do with the DCCB entitlement. As directed by the Appeal Division in its decision, I did not allow him to provide evidence that was not relevant to the issue. For example, he was stopped from discussing allegations of sexual abuse, criminal allegations, other children that are not a part of this appeal, the Added Party's character and behaviour during and after their marriage, and other issues that would have no bearing on DCCB entitlement.

[17] In addition, the Appellant was not allowed to adduce additional documents and video at the hearing. Although this evidence was new, it was not relevant. It related to the disputes between the Appellant and the Added Party. In addition, it could have

been filed earlier, giving permission would have been unfair to the Added Party, and accepting it would have caused delays.

[18] Toward the end of the hearing, the Added Party decided that she wanted to leave the hearing. She did not have anything further to say and did not wish to continue listening to the Appellant. I told her that she could leave the hearing. Before she left, the Appellant screamed at her to “go to hell”. I abruptly concluded the hearing due to the Appellant’s repeated abusive conduct toward the Added Party.

Reasons for my decision

[19] I find that the Appellant had custody and control of GC and GOC from June 2016 until December 28, 2016. His custody and control ceased on December 28, 2016. The Added Party had custody and control of GC and GOC from December 28, 2016 until November 2017 and thereafter.

[20] The CPP provides that the DCCB may be paid to the child of a disabled contributor.¹ Where the DCCB is payable to a child who is under eighteen years of age, the payment is made to the person who has custody and control of the child.² The disabled contributor is presumed to be the person having custody and control of the children except where the child is living separate and apart from him and in the absence of evidence to the contrary.

[21] “In the narrow sense of the word, “custody” means physical care and control or day to day care and control of a child. In the broad sense of the word, “custody” means all of the rights and obligations associated with physical, day to day care and control of a child as well as the right and obligation to nurture the child by ensuring, providing for, and making decisions in relation to, a child’s physical and emotional health, education, religious or spiritual development, and all other matters that affect the welfare of the child.”³

¹ Paragraph 44(1)(e) of the CPP

² Section 75 of the CPP

³ *Abbott v. Abbott* 2001 BCSC 323

[22] The place of residence of a child and the time spent with the child are not determinative. If the child is under the age of 18, it is presumed that the disabled contributor has custody and control of the child. When custody of a child or children is shared, the Minister pays the DCCB to the disabled contributor.

The Appellant had custody and control of GC and GOC from June 2016 to December 28, 2016

[23] In this case, both the Appellant and the Added Party claim to have had custody and control of GC and GOC from June 2016 until December 28, 2016.

[24] The parties agree that they continued to reside in the family home during this period. The Appellant slept in the lower level while the Added Party, GC, and GOC slept upstairs.

[25] The Added Party says that she and the Appellant separated on June 1, 2016. This is when she and the children began living separate lives from the Appellant. She was responsible for feeding and taking care of them. She would sign them up for and take them to their activities. She would take them to their medical appointments, other than one orthodontist appointment that the Appellant took GC to without her knowledge. She was paying the bills from a joint account. She left this residence with GC and GOC on December 28, 2016 to live in a women's shelter.

[26] The Appellant, on the other hand, says that he maintained custody and control of GC and GOC during this time period. He spent most of his time on the couch because he was recovering from cancer treatments (including an amputation) and infection. Sometimes, GC would bring him food. He claims that the Added Party would tell the children to stay upstairs. However, he still communicated with them when he saw them. He was still paying for food, clothing, and sporting equipment. He says that the Added Party did not allow him to go to the children's sporting events, medical appointments, or school functions.

[27] I considered that both parties agreed that they all continued to reside in the family home until December 28, 2016, albeit sleeping on different levels of the house.

They also agreed that contact between the Added Party and GC and COC was minimal, although they disagreed with the reasons for this.

[28] The Appellant submitted receipts dated during this time period to show that he continued to provide necessities for GC and GOC.⁴ He also submitted medical reports to confirm his health conditions.

[29] A Student Information Sheet for the 2016-2017 school year⁵ indicates that, as of September 2016, the Appellant and the Added Party were living at the same address. The Appellant was listed as the father of GOC. There were no special custody arrangements between the parties listed.

[30] The Added Party submitted several letters in support of her position. These include the following:

- A letter from Dr. Sean Godfrey dated September 15, 2020 stating that he has been GC's pediatrician for many years, including in 2016 and 2017. The Added Party has been the sole caregiver for GC and her sister and has been the parent to bring them to their appointments.⁶
- A letter from GC to the Added Party dated June 25, 2018, thanking the Added Party for all the things she has done for her.⁷
- A letter from GOC's basketball coach dated August 6, 2020 confirming that GOC played for three seasons from 2015 to 2019. During this time, only the Added Party drove her to practices and attended games.⁸

⁴ See GD21

⁵ See GD21-17

⁶ GD19-5

⁷ GD19-6

⁸ GD19-8

- A letter from Meaghan Campbell, family service worker at the Durham Children's Aid Society stating that, to the best of her knowledge, GC and GOC have been in the primary care of their mother since September 2016.⁹
- A letter from Greg Hickey, school organizer of the ski club, stating that GC and GOC were involved in the club. He dealt only with the Added Party, including email and telephone communication and payment.¹⁰
- A letter from Sandra Keast, Girl Guides of Canada, dated September 23, 2020 confirming that GC was registered as a member from September 6, 2016 until June 22, 2017. She was brought to all meetings and events by the Added Party, who also signed all permission forms and made payments.¹¹
- A letter from Dr. Michael Todd, dentist, dated September 14, 2020 confirming that the Added Party was in attendance at appointments for GC and GOC from February 10, 2016 to December 22, 2017.¹²
- A letter from Dr. David Li dated April 27, 2017 stating that the Added Party has been his patient since 2011 and is the family physician for GC and GOC. The Added Party was noted to be their primary caregiver.
- A summary from a counselling session dated November 29, 2016 listing GC and another person (name illegible) as participants. It states that GC wanted to talk about verbal fighting at home.

[31] Although these letters show that the Added Party was the one driving GC and GOC to most of their appointments, school events, and activities, this does not mean that the Appellant did not share custody and control with the Added Party.

[32] When all of the evidence is considered, including the oral evidence, I am satisfied that both parents shared custody and control of GC and GOC between June and

⁹ GD19-9

¹⁰ GD19-11

¹¹ GD19-12

¹² GD19-13

December 28, 2016. The whole family continued to reside in the family home. The Appellant continued to be listed as GOC's father in the school information sheet for the 2016-2017 school year with no custody or special arrangement noted. The Appellant continued to provide for GC and GOC.

[33] I acknowledge that the Added Party left the home with GC and GOC to stay at her aunt and uncle's home for short durations during this time period. However, given the short duration of their time away, I do not accept that this changed their shared custody and control arrangement.

[34] The CPP allows only one person to be the payee for the DCCB. The CPP presumes the disabled contributor to be the person with custody and control of the children, except where the children are living apart from the disabled contributor. In this case, GC and GOC were not living apart from the Appellant and therefore he was presumed to be the person with custody and control.

[35] To overcome this presumption, the Added Party has the burden of proof to show, on a balance of probabilities, that she had actual custody and control of the children from June 2016 to December 28, 2016. She has not done so.

The Added Party had custody and control of GC and GOC from December 28, 2016 to November 2017.

[36] The Appellant acknowledged in documentation and at the hearing that he began living apart from GC and GOC on December 28, 2016, when they moved with the Added Party to a women's shelter. For example, in a letter dated October 18, 2020, the Appellant wrote that he had not seen GC and GOC since December 28, 2016. At the hearing, he said that the Added Party blocked his access to GC and GOC. He pointed out the court order dated January 31, 2017 that prohibited him from contacting the Added Party either directly or indirectly.¹³ However, in my view, this would not have

¹³ GD19-23

prevented him from contacting GC and GOC, which he acknowledges that he did not do.

[37] The Added Party stated that she resided with GC and GOC in the women's shelter from December 28, 2016 until February 10, 2017. This is confirmed by a shelter counsellor.¹⁴ The Appellant was ordered by the court to vacate the family home. The Added Party, GC, and GOC returned to the home on February 10, 2017. They were still living there in November 2017 and thereafter.

[38] The Added Party states that the Appellant did not see GC or GOC during this time. To her knowledge, there was no communication between the Appellant and GC and GOC.

[39] I am satisfied that the Appellant ceased having custody and control of GC and GOC on December 28, 2016, when they no longer resided together. It is the Added Party who had custody and control of GC and GOC from December 28, 2016 to November 2017.

No jurisdiction to deal with criminal allegation.

[40] The Appellant alleged at the hearing that the DCCB payments were stolen from him. For this reason, he does not think he should be responsible for the overpayment. However, if money was stolen from him, this would be a criminal matter. I do not have the jurisdiction to determine whether a theft was committed.

[41] Since the Appellant was in receipt of the DCCB from December 28, 2016 until November 2017, when he no longer had custody and control of GC and GOC, he is responsible for the overpayment for that time period.

Conclusion

[42] The Appeal is allowed in part. I find that the Appellant had custody and control of GC and GOC from June 2016 to December 28, 2016. His custody and control ceased

¹⁴ GD19-10

on December 28, 2016, when the Added Party moved out of the home with the children. The Added Party had custody and control from December 28, 2016 to November 2017 and thereafter.

[43] This means the appeal is allowed in part.

Lianne Byrne
Member, General Division – Income Security Section