



Citation: *DC v Minister of Employment and Social Development and TW*, 2024 SST 1415

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. C.

Respondent: Minister of Employment and Social Development
Representative:

Added Party: T. W.
Representative:

Decision under appeal: General Division decision dated September 4, 2024
(GP-21-1314)

Tribunal member: Kate Sellar

Decision date: **November 15, 2024**

File number: AD-24-596

Decision

[1] I'm refusing to give the Applicant, D. C., leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

Overview

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

[3] The Minister of Employment and Social Development (Minister) changed the payee from the Applicant to the Added Party effective July 2016. The Minister decided that GC and GOC had not been in the custody and control of the Applicant 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.

[4] The Applicant requested a reconsideration of the change in payee and the overpayment. The Minister maintained its decision. The Applicant appealed the Minister's decision to this Tribunal.

[5] The General Division allowed the appeal. The Appeal Division sent the appeal back to the General Division to reconsider.

[6] The General Division allowed the Applicant's appeal in part. In a decision dated September 4, 2024, the General Division concluded:

- From June 2016 to December 28, 2016, the Applicant had custody and control of GC and GOC.
- From December 29, 2016, the Added Party had custody and control through to November 2017 and thereafter.

[7] The Applicant wants permission to appeal the General Division's decision.

Issues

[8] The issues in this appeal are:

- a) Is there an arguable case that the General Division failed to give the Applicant a fair process when it:
 - (i) refused to consider documents the Applicant said he wanted to produce?
 - (ii) asked him to turn his camera off during the teleconference hearing?
 - (iii) allowed the Added Party to testify about irrelevant matters and did not allow him to testify about the same matters?
- b) Is there an arguable case that the General Division made an error of jurisdiction by deciding something (the custody and control of the children) that was already decided by the Courts?
- c) Is there an arguable case that the General Division made an error of law by refusing to hear the Applicant's allegations about theft and fraud by the Added Party?
- d) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Applicant permission to appeal

[9] I can give the Applicant permission to appeal if the application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.¹

[10] I can also give the Applicant permission to appeal if the application sets out evidence that wasn't presented to the General Division.²

[11] Since the Applicant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

There's no arguable case that the General Division failed to give the Applicant a fair process.

– Fair process at the General Division

[12] What fairness requires will depend on the circumstances.³ When an applicant raises a concern about fairness, the ultimate questions are:

- whether that applicant knew the case they had to meet and had a chance to respond; and
- whether that claimant had an impartial decision maker consider the case fully and fairly.⁴

– There's no arguable case that the General Division failed to provide fair process by refusing to consider documents.

[13] The Applicant argues that when he offered to provide over a thousand photographs, receipts, audio files, videos, and written documents to impeach the

¹ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

² See section 58.1(c) in the Act.

³ See *Baker v Canada (Minister of Employment and Immigration)*, 1999 CanLII 699 (SCC).

⁴ See paragraph 10 in *Kuk v Canada (Attorney General)*, 2024 FCA 74.

credibility of the Added Party at the hearing, he should have been permitted to provide them.⁵

[14] When the General Division received this appeal back from the Appeal Division, the Appeal Division member provided specific instructions to the General Division for the process:

I am also directing the General Division to carefully screen subsequent submissions for relevance. The General Division is to admit only those documents that, in its judgment, are directly related to who had custody and control of the children after July 2016. The Appellant and the Added Party are hereby notified that any documents that fail to address this question will not be considered.⁶

[15] The General Division decision explains that the Applicant was aggressive and at times verbally abusive during the hearing.⁷ The General Division describes attempts to maintain decorum during the hearing so that the Applicant would preserve his ability to testify.⁸

[16] Further, the General Division explained that the Applicant had a very difficult time refraining from discussing issues that had little or nothing to do with entitlement to the DCCB. The Applicant was not permitted to provide evidence that wasn't relevant, including evidence about the Added Party's character and behaviour during and after their marriage.⁹

[17] The Applicant hasn't raised an arguable case for an error. The question with fair process is not whether the Applicant was permitted to provide any evidence he felt was important, regardless of its relevance or how late he asked to provide it. The question is whether the Applicant knew the case to be met and had a chance to respond to it. The

⁵ See ADN1.

⁶ See paragraph 28 in the June 8, 2021 Appeal Division decision.

⁷ See paragraph 14 in the General Division decision for the details.

⁸ See paragraph 15 in the General Division decision.

⁹ See paragraph 16 in the General Division decision.

General Division was clear that the Added Party's credibility and behaviour had nothing to do with the case the Applicant had to meet.

[18] I see no argument here about how there was any possible connection between the kind of documents and testimony the Applicant wanted to provide at the hearing and the issue in the appeal. The Appeal Division anticipated this problem for the General Division and went so far as to notify the parties that the General Division decision would carefully screen documents for relevance and would not consider those that were irrelevant.

[19] Additionally, I see no indication that the Added Party's credibility was at issue. The General Division's task was to weigh the parties' evidence about having custody and control of the children. The General Division is a tribunal and doesn't follow the strict rules of evidence like a court does. It must, however, provide a process that is simple, quick, and fair.¹⁰ Redirecting unrepresented parties who might be seeking to lead irrelevant evidence is an important part of maintaining a simple and quick process that is still fair.

[20] There's no arguable case that the General Division breached the Applicant's right to fairness by refusing to let him provide this additional evidence.

– **There's no arguable case that the General Division failed to provide a fair process by asking the Claimant to turn his camera off during the teleconference hearing.**

[21] The Applicant argues that being told to turn off his camera at the hearing and participate by teleconference as the other parties were doing "totally defeated the purpose" of his request. I believe the Claimant is referring to his request to re-open the hearing so that he could participate after missing the first scheduled date. The Applicant went as far as to say that the General Division member's instruction was for a "nefarious reason because there was something I wasn't supposed to witness."¹¹ The Claimant provides no further information to support this claim.

¹⁰ See section 8(1) of the *Social Security Tribunal Rules of Procedure* (Rules).

¹¹ See ADN1-2.

[22] As I explained in the overview, the General Division was reconsidering the matter with instructions from the Appeal Division. The Appeal Division returned the matter to the General Division to conduct **either a teleconference hearing or a videoconference hearing** so that the Applicant would have a chance to testify consistent with fair process.¹²

[23] As the General Division described in its decision, it held the teleconference hearing in April 2024. The Applicant didn't attend this hearing, but the Added Party and Minister's representative attended. The Applicant later advised the Tribunal by e-mail that he tried to connect to the hearing; however, he was unsuccessful due to his location.¹³

[24] The General Division decided that it would be procedurally unfair to the Applicant to decide the appeal without reopening the hearing to allow him an opportunity to participate. The General Division also sent a copy of the recording from the first hearing to all parties.¹⁴ The Tribunal issued a new notice of teleconference hearing. I have no evidence to suggest that the Applicant requested that the form of hearing be changed in advance of the hearing.¹⁵ The General Division reopened the hearing on August 28, 2024. All parties attended.

[25] I see no arguable case that asking the Applicant to turn off his camera to ensure he was participating in the teleconference as the other parties were had any impact on the fairness of the process. I see no possible impact on the Applicant's ability to know the case to be met, and to present his case fully before an impartial decision maker.

[26] The Applicant may not have been aware that teleconferences using Zoom as a platform was possible, but that doesn't make the teleconference hearing unfair. He's

¹² See paragraphs 22 and 26 in the Appeal Division decision of June 8, 2021.

¹³ See paragraph 8 in the General Division decision.

¹⁴ See IS15-1.

¹⁵ Applicants have their choice of form of hearing at the General Division with some exceptions, see section 2 in the *Social Security Tribunal Regulations, 2022*. However, that doesn't necessarily or automatically mean that a failure to provide a videoconference hearing rather than a teleconference hearing is a failure to provide a fair process.

provided no arguable case as to how being asked to turn his camera off to participate at a teleconference hearing deprived him of his right to be heard.

- **There’s no arguable case that the General Division failed to provide a fair hearing by allowing the Added Party to testify about irrelevant matters and not allowing the Applicant to testify about the same matters.**

[27] The Applicant argues that the General Division failed to provide him with a fair process by allowing the Added Party to testify about irrelevant matters and not allowing him to testify about the same matters.¹⁶

[28] General Division members are required to help parties participate fully in the appeal process. This includes using methods other than adversarial methods of adjudication the courts typically use. These methods may include deciding what issues need to be addressed and deciding what procedures are appropriate in the circumstances.¹⁷

[29] In this case, the decision from the Appeal Division returning the matter to the General Division stated quite clearly that the parties had sometimes “found it difficult to refrain from arguing over things that have little or nothing to do with the issue at hand: DCCB entitlement.”¹⁸

[30] The Applicant wasn’t clear in his materials about what matter the Added Party was able to testify about that he was prevented from covering in his testimony.

[31] However, the Applicant has provided no information to support an arguable case that his right to be heard was jeopardized in any way. It’s not clear to me that the Applicant is even arguing that the General Division relied on or considered the irrelevant matter he says the Added Party was permitted to testify about.

¹⁶ See ADN1-2.

¹⁷ See sections 8 and 17 in the Rules.

¹⁸ See paragraph 27 in the General Division decision.

[32] And if the matter the Added Party testified about was irrelevant as the Applicant says it was, and he wasn't permitted to testify about it, that cannot possibly form an arguable case for a breach of the right to fairness for at least two reasons.

[33] First, fairness doesn't require the Applicant have the chance to respond to issues or items that aren't part of the case to be met. The Applicant concedes the information he wasn't permitted to testify about was irrelevant. Therefore, the Applicant hasn't raised an arguable case for a lack of fairness.

[34] Second, fairness requires an impartial decision maker. To decide whether there is a reasonable apprehension of bias (or a lack of impartiality), the correct legal question is to ask is: what would a reasonably well-informed person, viewing the matter realistically and practically, having thought the matter through, conclude?¹⁹ The person considering the bias must be reasonable and the apprehension of bias must be reasonable in the circumstances of the case.²⁰

[35] The Claimant has provided no arguable case that the General Division's management of testimony as between the parties would lead a reasonable person to conclude there was bias.

[36] I listened to the recording of the General Division hearing and observed how difficult it was throughout the process to keep the witnesses on track. I observed no example of any red flags that would signal a possible reasonable apprehension of bias.

[37] The Applicant hasn't raised an arguable case for an error based on any failure to provide a fair process.

¹⁹ This test comes from the Supreme Court of Canada in *Committee for Justice and Liberty et al. v National Energy Board et al.*, [1978] 1 SCR 369, 1976 CanLII 2 (SCC).

²⁰ *R. v S. (R.D.)* 1997 CanLII 324 (SCC), [1997] 3 SCR 484.

There's no arguable case that the General Division made an error of jurisdiction by deciding something (the custody and control of the children) that was already decided by the Courts.

[38] The Applicant argues that the General Division made an error of jurisdiction by deciding something (the custody and control of the children) that was already decided by the Superior Court of Justice.²¹

[39] The General Division may decide any question of law or fact that is necessary for deciding any appeal that is properly before it.²² When it comes to the CPP, the Tribunal can decide questions of law or fact relating to whether a benefit is payable to a person or its amount.²³

[40] The General Division needed to decide which parent was entitled to payment of the DCCB between June 2016 and November 2017.²⁴ In order to decide to whom the benefit was payable, the General Division had to consider the wording of the CPP in place at the time, which stated that the DCCB is paid to the parent who exercised custody and control of the children.²⁵

[41] If a court made an order or underlying findings of fact that could be relevant to determining custody and control in the context of the CPP or a court, this may be relevant evidence for the General Division to consider in making its decision. But the Applicant states that a judge stated, "on the record and in open court that neither party had custody of the two remaining children of the marriage."²⁶

[42] If this were true, the existence of such a statement doesn't negate the jurisdiction of the General Division to decide who had custody and control for the purpose of the DCCB. It also doesn't help the General Division reach any conclusion on that issue,

²¹ See ADN1-2 to 3.

²² See section 64(1) of the Act.

²³ See section 64(2) of the Act.

²⁴ The authority for the Tribunal to make that decision about the DCCB comes from sections 81 and 82 of the CPP.

²⁵ See section 75 of the CPP as it was at the time.

²⁶ See ADN1-3.

since the General Division would need to decide that at least one parent had custody and control of the children in order to determine which parent was entitled to payment.

[43] The Applicant hasn't raised an arguable case for an error of law relating to any findings by the family court.

There's no arguable case that the General Division made an error of law by refusing to hear the Applicant's allegations about theft and fraud by the Added Party.

[44] The Applicant argues that the General Division made an error of law by refusing to hear his allegations of fraud and theft by the Added Party.²⁷

[45] The General Division acknowledged in its decision that at the hearing, the Applicant raised issues about theft. He said that the DCCB payments were stolen from him. Accordingly, he doesn't think he should be responsible for the overpayment. The General Division stated that it does not have the jurisdiction to determine whether a theft was committed.²⁸

[46] It isn't unreasonable for a decision maker to fail to address allegations that fall outside the scope of its legal mandate.²⁹ Since the General Division has no mandate to investigate fraud or theft related to any CPP benefits, there can be no arguable case for a General Division error arising from refusing to hear those arguments.³⁰

There's no new evidence.

[47] The Applicant hasn't set out any new evidence that wasn't already presented to the General Division. So new evidence also cannot form the basis for permission to appeal.

²⁷ See ADN1-3.

²⁸ See paragraph 40 in the General Division decision under the heading "No jurisdiction to deal with criminal allegation."

²⁹ See paragraph 46 in *Cecchetto v Canada (Attorney General)*, 2023 FC 102. See also paragraphs 44 to 45 in *Kuk v Canada (Attorney General)*, 2023 FC 1134.

³⁰ See section 64(2) of the Act, which sets out the only issues the General Division can make findings of law or fact about. Allegations of fraud by a third party related to a benefit is not on that list.

[48] I've reviewed the record.³¹ I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any other important evidence. The Applicant's behaviour was challenging (to say the least) at the General Division hearing. The General Division member displayed a great deal of skill, professionalism, and restraint throughout the hearing. The General Division applied the law about payment of the DCCB to the facts of the appeal and I see no arguable case for error.

Conclusion

[49] I've refused to give the Applicant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

³¹ For more on this type of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.