



Citation: *AV v Minister of Employment and Social Development*, 2024 SST 1534

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

Decision

Appellant: A. V.
Representative: F. V.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 7, 2024 (issued by
Service Canada)

Tribunal member: Michael Medeiros
Type of hearing: Teleconference
Hearing date: November 27, 2024
Hearing participant: Appellant's representative
Decision date: December 12, 2024
File number: GP-24-1563

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. V., isn't eligible for a disabled contributor's child's benefit under the Canada Pension Plan (CPP). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant's father was receiving a disability pension under the CPP. The Appellant was receiving the disabled contributor's child's benefit when she was under 18 years old. After she turned 18 years old on December 13, 2021, she submitted to Service Canada a Declaration of Attendance at School or University in March 2022. The Appellant continued to receive the benefit from January to September 2022.

[4] On April 24, 2023, the Minister reassessed the Appellant's application and found that she didn't qualify for the benefit because she wasn't attending school full-time between January and September 2022. The Minister requested that the Appellant pay back the benefits she received during that period. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[5] The Appellant says that it is unfair to make her pay back the benefit payments she received from January to September 2022. She completed the application correctly, which stated she wasn't in full-time attendance at school. It is not her fault that the application was accepted incorrectly.

[6] The Minister says that the evidence doesn't support a finding that the Appellant is eligible for the disabled contributor's child's benefit under the CPP as of January 2022. The evidence shows that she wasn't in full-time attendance at a school or university at the relevant time. Therefore, she didn't qualify for the benefit and the law requires that she pay it back.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove she was entitled to receive a CPP disabled contributor's child's benefit between January and September 2022.

[8] A disabled contributor's child's benefit under the CPP is payable to the dependent child of a contributor to the CPP that is disabled.¹ A dependent child of a contributor that is 18 or more years of age but less than 25 must be in full-time attendance at a school or university to qualify.²

[9] There is no dispute that the Appellant is the child of a disabled contributor and was older than 18 years of age but less than 25 between January and September 2022. The issue in this appeal is whether she was in full-time attendance at a school or university at that time.

Matters I have to consider first

The Appellant wasn't at the hearing

[10] A hearing can go ahead without the Appellant if she got the notice of hearing.³ I decided that the Appellant got the notice of hearing because her mother acting as her representative at the hearing confirmed that she did. So, the hearing took place when it was scheduled, but without the Appellant.

Reasons for my decision

[11] I find that the Appellant didn't qualify for a disabled contributor's child's benefit under the CPP. She wasn't in full-time attendance at school or university from January to September 2022.

¹ See sections 42(1) and 44(1)(e) of the *Canada Pension Plan*.

² See the definition of "dependent child" under section 42(1) of the *Canada Pension Plan*.

³ Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

The evidence shows that she wasn't a full-time student from January to September 2022

[12] The Appellant submitted to Service Canada a Declaration of Attendance at School or University in March 2022.⁴ The Appellant took a reduced course load (one course, three hours per week) for the Winter term (January to April 2022). The section of the form completed by the university said that the Appellant's course load didn't meet or exceed the minimum requirement to be considered a full-time student.⁵

[13] The Appellant accepts that she wasn't a full-time student from January to September 2022. She switched to part-time to relieve stress and prepare to transfer into another program.⁶ But she says that she filled out the application for benefits correctly and it isn't her fault that her application was incorrectly accepted. She says it is unfair to expect her to pay back this large sum of money in these circumstances.

[14] Unfortunately, the circumstances don't change the fact that the Appellant wasn't a full-time student from January to September 2022. Therefore, she didn't qualify for the disabled contributor's child's benefit.

The Tribunal has no jurisdiction under section 66(3) of the CPP

[15] Section 66(3) of the CPP gives the Minister the discretion to remit (cancel) all or any portion of the amount owing from an overpayment of a benefit if certain circumstances are met. Those circumstances include when:

- repayment of the amount or excess of the benefit payment would cause undue hardship to the debtor; or
- the amount or excess of the benefit payment is the result of erroneous advice or administrative error on the part of the Minister or an official of the Department of

⁴ See GD2-24 to 26.

⁵ See GD2-26.

⁶ See Notice of Appeal, at GD1-3.

Employment and Social Development acting in an official capacity in the administration of the CPP

[16] This appeal doesn't provide the Tribunal with the authority to consider section 66(3) of the CPP.⁷ It is for the Minister to decide whether to exercise this power if the Appellant decides to make the request. But making the request to the Minister is up to the Appellant and beyond what I can consider in this appeal.

Conclusion

[17] I find that the Appellant isn't eligible for a disabled contributor's child's benefit under the CPP.

[18] This means the appeal is dismissed.

Michael Medeiros
Member, General Division – Income Security Section

⁷ See the Minister's submissions at GD5, page 5, paragraph 14.