Citation: *PA v Minister of Employment and Social Development and WA*, 2024 SST 1456

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	P. A.
Respondent:	Minister of Employment and Social Development
Added Party:	W. A.
Representative:	Ilena Candiani
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated June 5, 2024 (issued by Service Canada)

Tribunal member:	Adam Picotte
Type of hearing:	In person
Hearing date:	October 18, 2024
Hearing participants:	Appellant Respondent
Decision date:	October 25, 2024
File number:	GP-24-1231

Decision

[1] The appeal is allowed.

[2] The Minister of Employment and Social Development (Minister) must reverse the division of the Appellant and Added Party's unadjusted pensionable earnings. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant and the Added Party got married on August 13, 1994. They separated on September 13, 2000.[1] They signed Minutes of Settlement for a separation agreement on June 10, 2002.[2] On September 6, 2002, a Justice of the Supreme Court of British Columbia granted a divorce order for the Appellant and Added Party.[3]

[4] On April 14, 2022, the Added Party, made an application for a division of unadjusted pensionable earnings (DUPE), also called a "credit split."[4] A credit split is when spouses' contributions to the Canada Pension Plan (CPP) during certain years are combined and divided equally between them upon separation or divorce.

[5] The Minister allowed the Added Party's application and notified the Appellant, as it was required to do. The Appellant asked the Minister to reverse the credit split because, through the Minutes of Settlement, he and the Added Party had agreed not to split their CPP contributions. The Minister refused the request.

[6] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division. One week prior to the hearing, the Appellant submitted the Minutes of Settlement from June 2002. This was provided to the Minister and Added Party two days prior to the oral hearing.

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[1] GD12-3
[2] GD12-13
[3] GD2-23
[4] GD2-9

[7] The Appellant says by operation of the Minutes of Settlement, the Credit Split was incorrectly granted to the Added Party.

[8] The Minister attended the oral hearing and advised the Tribunal that "the content of the Minutes of Settlement may appear to change things" but the Minister was not able to change its position at such a late stage in the Tribunal process.

What I have to decide

[9] I have to decide whether the Minister should have processed the Added Party's credit split application.

Matters I have to consider first

The hearing was not recorded

[10] The hearing proceeded by a hybrid method, with the Appellant appearing in person and the Minister attending by videoconference. Generally, when there is a videoconference, a hearing is recorded and that appeared to happen here as well. However, upon completion of the oral hearing, there was no recording available. As such, there is no recording of hearing available for this matter.

The Minister requested that I adjourn the hearing

[11] Because the Appellant had submitted the Minutes of Settlement just before the hearing date, the Minister did not have a full opportunity to consider the implication of the document. As a result, on the date of the hearing, the Minister asked for an adjournment.

[12] I considered this request and ultimately decided it was not in keeping with the Social Security Tribunal *Rules of Procedure*. ("SST Rules"). The SST Rules say that the appeal process must be as simple and quick as fairness allows.[5]

[5] Section 8 SST Rules

[13] After considering the request, I determined that I had all the information I needed in order to make a quick and fair decision. Granting an adjournment would only have delayed a process that had almost been completed. I was also mindful that the initial application had been made by the Added Party more than two years before the hearing date. So the timely conclusion of this matter was of paramount importance. Finally, the Added Party and her representative had both been provided with the Minutes of Settlement on October 16, 2024, and confirmed on October 17, 2024, that they would not be attending the oral hearing.[6] As a result, I decided to proceed with the hearing as it had been set down.

Reasons for my decision

[14] The Minister should not have processed the Added Party's credit split application. It must reverse the credit split. Here is why.

When the Minister must process a credit split, and when it must not

[15] The Minister **must** process a credit split when the Minister is informed that spouses have divorced.[7] The exception is when these four requirements are met:

1) The ex-spouses entered into a written agreement after June 3, 1986, containing a provision that expressly mentions the *Canada Pension Plan* and indicates that they don't want a credit split.

2) The provision is expressly permitted by the applicable provincial law.

3) The agreement was entered into before the divorce judgment was granted.

4) The provision hasn't been invalidated by a court order.

[16] If these requirements are met, then the Minister must not process a credit split.[8]

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[6] This is detailed in the Important File Messages.
[7] See section 55.1(1)(a) of the *Canada Pension Plan*. The Minister must also receive certain information before it can process a credit split.
[8] See section 55.2(3) of the *Canada Pension Plan*.

Requirements 1, 2, and 3 are met

[17] For reasons that I will note, it is obvious from the evidence that requirements 1, 2, and 3 are met. While the separation agreement was not initially provided by the Appellant or the Added Party, it is referenced in the Divorce Order. While it may have served the Appellant to have provided this document during the application process, it is understandable why he did not do so.

[18] The divorce was ordered in 2002. The application for a credit split was not made until 20 years later.

[19] Given the passage of time, it is understandable why the Appellant was not able to produce the Minutes of Settlement upon receipt of the application from the Minister. It is also reasonable for the Minister to have arrived at its initial conclusion to grant the Added Party's application. The sole document provided to the Minister by either party was the order for divorce. The order for divorce made no specific mention of the CPP or not wanting a credit split. Therefore it did not satisfy the requirements to prevent a credit split.

[20] The Minutes of Settlement were entered into on June 10, 2002. This was after June 3, 1986, and before the divorce judgment was granted on September 6, 2002.

[21] Section 15 of the Minutes of Settlement states:

> Subject to this Agreement, each party shall keep his or her own monies, savings, investments, insurance, Registered Retirement Savings Plans, pensions, including Canada Pension Plan pensionable credits and benefits, Canada Savings Bonds and severance pay and the like, for his or her own use absolutely.

[22] This provision expressly mentions the *Canada Pension Plan* and indicates that the Appellant and the Added Party didn't want a credit split.

[23] A credit split is permitted in British Columbia. That is where the settlement agreement was executed. The parties agreed that the law of British Columbia governed the Settlement Agreement.[9]

Requirement 4 is also met

[24] I have also considered whether requirement 4 has been met. I have decided that requirement 4 has been met. The divorce order is different from the Minutes of Settlement. It formed the basis for the Minister granting the Added Party's application for a Credit Split. However, the divorce order does not invalidate the provision found in section 15 of the Minutes of Settlement.

[25] The divorce order set out at item 7 that each party shall keep his or her respective pensions.[10] This is differently framed than the Minutes of Settlement. However, I am not satisfied that it was the intent of either party or the Judge to vary the Settlement Agreement insofar as it related to the Credit Split.

[26] Generally, Separation Agreements are binding on the parties entering into such contracts. However, circumstances do arise where a judge can change the support terms of a Separation Agreement. Generally, there needs to be a material change in the parties' circumstances in order for such a change to be granted.[11] There is no indication from the materials filed that either party experienced a material change in their circumstances between June and September 2002.

[27] Further, both parties were represented by lawyers when they signed the separation agreement and presumably through the divorce process as well. The Judge knew about the Minutes of Settlement as those are specifically mentioned and incorporated into the divorce order.[12]

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[9] Section 27 to 28.2 of the Minutes of Settlement
[10] GD2-13
[11] L.M.P. v. L.S. 2011 SCC 64
[12] See Item 5 of the Divorce Order at GD2-13

[28] Still further, the divorce order does not conflict with the Minutes of Settlement. It simply reiterates with less specificity what was to happen with the parties' pensions. It is also not clear if the reference to pension in the divorce order was meant to apply to the CPP or to private pensions held by the parties. In any case, it has been recognized in law that when a divorce order does not incorporate all the terms of a separation agreement, the excluded terms are not rendered null and void.[13] Rather, those provisions remain effective except to the extent of any inconsistency with the divorce order, unless there is evidence that the parties have abandoned their rights in the separation agreement.

[29] Therefore, absent a specific intention to vary the minutes of settlement, I am not satisfied that it was the intent of the parties or the judge to maintain these provisions through the divorce order.

[30] As a result, I am satisfied that requirement 4 has been met.

Conclusion

[31] I find that the Minister should not have processed the Added Party's credit split application. All four requirements in the *Canada Pension Plan* were met. As a result, the Minister was bound by the Minutes of Settlement. It had no authority to split the Appellant and Added Party's CPP contributions.

[32] This means the appeal is allowed.

Adam Picotte
Member, General Division – Income Security Section

[13] Cooper v. Cooper, 1984 CarswellBC 320