



Citation: *AL v Minister of Employment and Social Development and TT*, 2024 SST 1515

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: A. L.

Respondent: Minister of Employment and Social Development

Added Party: T. T.

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated January 16, 2024 (issued by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Teleconference

Hearing date: November 20, 2024

Hearing participants: Appellant
Respondent's representative
Added Party

Decision date: December 9, 2024

File number: GP-24-676

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. L., isn't eligible to receive a Canada Pension Plan (CPP) disabled contributor's child's benefit (DCCB) on behalf of her children, M. T. and J. T. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant and the Added Party, T. T., were in a common-law relationship that ended in August 2012.¹ They have two children. M. T. was born in September 2007. J. T. was born in August 2010.

[4] The DCCB is a monthly benefit paid for each child of a person who is getting a CPP disability pension.² If the child is under 18, the DCCB isn't paid directly to the child. Until recently, it was paid to the person with custody and control of the child. Then the law changed. The DCCB is now paid to the person with decision-making responsibility for the child. I will explain what these terms mean, and whether they apply to this appeal, later in this decision.

[5] The Appellant started getting a CPP disability pension effective November 2018. In her disability application, she said that she did not have custody and control of the children.³ As a result, the Minister of Employment and Social Development (Minister) did not pay the DCCB to her.

[6] The Appellant applied for the DCCB in July 2023. The Minister denied her application. The Appellant appealed to the Social Security Tribunal.

[7] The Appellant says she is entitled to receive the DCCB on behalf of the children because:

¹ The Appellant said this at the hearing.

² See section 44(1)(e) of the *Canada Pension Plan*.

³ See GD2-109.

- she contributed to the CPP and has earned the right to receive the benefit
- a court order gives her parental rights
- their father does not provide for them properly and refused to even apply for the DCCB for years⁴

[8] The Minister and the Added Party say the Appellant is not entitled to receive the DCCB because she did not have custody and control of the children in November 2018, when the children became eligible for the benefit, and she has not had custody and control of them at any time since then.

What I have to decide

[9] I have to decide if the Appellant was eligible to receive the DCCB on behalf of the children at any time from November 2018 to the hearing date (the relevant period).

Reasons for my decision

[10] I find that the Appellant was not eligible to receive the DCCB at any time during the relevant period. This is because she did not have custody and control of the children. Here are my reasons.

What the law says about payment of the DCCB

– The law before June 20, 2024

[11] Before June 20, 2024, the law said the DCCB was paid to the person with **custody and control** of the child, if the child was under age 18. The law presumed that the disabled contributor (in this case, the Appellant) was the person with custody and control, unless there was evidence that the contributor didn't have custody and control, or the child lived apart from the contributor.⁵

[12] The law didn't define "custody and control." However, I agree with a decision of the Tribunal's Appeal Division, which said "the essential ingredients of custody and

⁴ See GD1-7, GD1-13-15.

⁵ See section 75 of the *Canada Pension Plan*, RSC 1985, c. C-8, s. 75; SC 2000, c. 12, s.56, repealed by SC 2004, c. 17, s. 193.

control are proximity to, and responsibility for” the child. The Appeal Division said this means the DCCB should go to the parent who is actually raising the child.⁶

– **The law since June 20, 2024**

[13] The law changed on June 20, 2024. It now says the DCCB is paid to the person with **decision-making responsibility** for the child. The law presumes this is the disabled contributor, unless there is evidence that the contributor doesn’t have decision-making responsibility, or the contributor has less than 20% of the **parenting time** in respect of the child.⁷

[14] The law defines “decision-making responsibility” and “parenting time.”

[15] “Decision-making responsibility” means the responsibility for making significant decisions about a child’s well-being, including decisions about their health, education, culture, language, spirituality, and significant extra-curricular activities.⁸

[16] “Parenting time” means the time that the child spends in the care of a person who is their parent, whether or not they are physically with that person during that entire time.⁹

– **The law that applies to this appeal**

[17] The new law doesn’t affect this appeal, because the Appellant applied for the DCCB before the law changed. New laws that affect rights are not retroactive unless they explicitly or implicitly say otherwise.¹⁰ The new law doesn’t say or suggest that it applies to previous rights, so it is not retroactive.

[18] The right that is at issue here is a parent’s right to receive the DCCB on behalf of their child. In future, if the Appellant’s parenting arrangement changes, she may be

⁶ See *MM v Minister of Employment and Social Development*, 2022 SST 575 at paragraphs 44 and 50. The Federal Court of Appeal approved of this interpretation in *Sibbald v Attorney General of Canada*, 2022 FCA 157.

⁷ See section 75 of the *Canada Pension Plan*, SC 2024, c. 17, s. 193.

⁸ See section 42(1) of the *Canada Pension Plan*.

⁹ See section 42(1) of the *Canada Pension Plan*.

¹⁰ This is a general rule of statutory interpretation. See also section 43(c) of the *Interpretation Act*.

eligible to receive the DCCB. She **may** be able to argue that the new law should apply to that determination. But I don't have to decide that here, because there wasn't any change in the parenting arrangement between when the law changed in June 20, 2024, and when the hearing took place.

The Added Party had custody and control during the relevant period

[19] I find that the Added Party had custody and control of the children from November 2018 to the hearing date.

[20] At the hearing the Appellant said that she and the Added Party shared parenting until 2016. Their younger daughter was taken by children's services in June 2016. Then the children lived with the Added Party.

– The Added Party had custody and control by court orders

[21] In March 2019, the Court of Queen's Bench of Alberta dismissed the Appellant's application to vary primary residential care of the children. It referred to several court orders of 2017 and said the Added Party would **continue** to have primary residential care of the children, and sole decision-making power.¹¹

[22] In my view, a person who has primary residential care of and sole decision making power for their children has custody and control of them. So, although the 2017 court orders are not in the file, I am satisfied that the court gave the Added Party custody and control of the children before November 2018, and that this remained the case in March 2019.

[23] The Added Party said that the March 2019 order has never been changed. He continues to have primary residential care of the children and sole decision-making power.

[24] The Appellant said that a police officer told her in 2022 that the order was nullified because she and the Added Party had stopped following it. However, that is not

¹¹ See GD2-78-80.

how court orders work. It may be that the police would not enforce the order if the parties weren't observing it anyway, but that doesn't mean the order was nullified. That could only happen through a subsequent court order, and there is no evidence that one was made.

[25] The Appellant filed notes of a court mediation from March 2023, where additional parenting time was discussed.¹² She said the result was that she was to have reasonable and generous parenting time. The judge did say "reasonable and generous parenting time," but they also said "every other weekend" for J. T. and "as agreed between M. T. and Mom." The clerk's notes show there was even some dispute about how much time the children wanted to spend with the Appellant.

[26] It isn't clear to me that this mediation resulted in an agreement, and it certainly did not result in a court order that changed who had custody and control of the children.

– **The Added Party had custody and control in fact**

[27] The Appellant's access to the children has changed over time. The 2017 order allowed her to see J. T. every second Wednesday, and M. T. for two days every two weeks.¹³ The March 2019 order gave her parenting time on the first and third weekend of every month, from 10:00 am on Saturday to 4:00 pm on Sunday.¹⁴

[28] The Appellant said that in June 2021, she moved to a new home that was just one minute away from where the children and the Added Party lived. She started seeing them more often. J. T. would come over about six days a week and would often sleep over. She saw M. T. once or twice a month, but M. T. would not stay overnight. This continued through 2022, although there were periods where the Added Party would not let the children visit her. In August 2023, the Appellant had to move. She now lives about 30 minutes away from the children. She said that she still communicates with them, but only sees them on holidays and "a little bit more."

¹² See GD1-19-23.

¹³ The Appellant said this at the hearing.

¹⁴ See GD2-79.

[29] The Appellant said that, although the children do not live with her, she has always provided care to them.¹⁵ At the hearing, she explained that she meant that she is their parent, she always has a bedroom available for them, she gives them money, and they come to her with questions. She said that she made decisions for them when they were with her, such as what they would do together.

[30] The Added Party has a different view of the Appellant's time with the children.

[31] First, he felt the Appellant was exaggerating the amount of time the children spent with her, although he admitted that he did not keep track.

[32] Second, he did not agree that the time the children spent with the Appellant was parenting time. He said that when the Appellant moved close to where he and the children were living, he allowed them to spend more time with her because he wanted them to develop a relationship with her. He did not view this as giving the Appellant more parenting time; he considered it to be more like visits or sleepovers they would have with a friend.

[33] Third, he said the Appellant doesn't make any significant decisions for the children. For example, she doesn't have authority to sign school permission slips for them. She only gets their school grades and attendance reports because he consented to it. The Appellant did not dispute this.

[34] As a result of the mediation in 2023, the Added Party gave the Appellant his benefits card. This was so that she could take the children to the doctor or dentist. It's possible she might have been asked to give consent for their medical care if something came up at an appointment that could not wait for the Added Party. But this was never tested, because the Appellant has not taken the children to any medical appointments. In any case, any decisions the Appellant might have been able to make on her own would have been minor ones. I am satisfied that the Added Party retained the right to make all of the significant decisions about the children's medical care.

¹⁵ See GD2-16-17.

[35] Even if I accept the Appellant's version of how much time the children have spent with her, they have not lived with her since well before November 2018. They live with the Added Party. This means that I can't presume that she had custody and control of them.

[36] In addition, the evidence supports that the Added Party, not the Appellant, had custody and control of the children throughout the relevant period. Court orders gave him custody and control. He has given the Appellant more access to the children, but that did not change his proximity to, or responsibility for them. He is the parent who was actually raising the children during the relevant period.

The Appellant's other arguments

[37] The fact that the Appellant may have contributed to the CPP has no effect on her eligibility to receive DCCB payments for her children. The Added Party's parenting skills or provision for the children are not relevant to whether he is paid the DCCB. The only requirement in the law is that the person receiving the DCCB have custody and control of the children, which the Appellant does not.

Conclusion

[38] For these reasons, the Appellant isn't eligible to receive the DCCB on behalf of the children.

[39] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section