



Citation: *RS v Minister of Employment and Social Development and CH*, 2024 SST 1554

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

Decision

Appellant: R. S.
Respondent: Minister of Employment and Social Development
Added Party: C. H.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 18, 2024 (issued by
Service Canada)

Tribunal member: Dawn Kershaw
Type of hearing: Teleconference
Hearing date: November 21, 2024
Hearing participant: Appellant
Decision date: December 17, 2024
File number: GP-24-1397

Decision

[1] The appeal is allowed.

[2] The Appellant, R. S., is eligible for the Canada Pension Plan (CPP) death benefit. This decision explains why I am allowing the appeal.

Overview

[3] This case is about competing claims for a CPP death benefit.

[4] The death benefit is a one-time payment that is payable when a person dies.

[5] R.M.S. (the deceased contributor) died on January 8, 2024.

[6] On January 18, 2024, the Added Party, who is the daughter of the woman who was R.M.S.'s partner,¹ applied for the death benefit as the person responsible for the funeral expenses.²

[7] She wrote that she was the deceased contributor's stepdaughter.³ She said there was no will. She attached a contract with a funeral home showing her as the purchaser.⁴

[8] On February 1, 2024, the Minister approved the death benefit payment to the Added Party.⁵

[9] On April 15, 2024, the Appellant, who is the deceased contributor's son, applied for the death benefit.⁶

¹ The deceased contributor's partner died in October 2021, before the deceased contributor died. See Appellant's application for a death benefit at GD2-16.

² See Added Party's application for a death benefit at GD2-18.

³ See Added Party's funeral expense receipts at GD2-22.

⁴ See Added Party's funeral expense receipts at GD2-22.

⁵ See Minister's submissions at GD3.

⁶ See Appellant's application for a death benefit at GD2-13.

[10] In a letter, dated May 8, 2024, the Minister refused the Appellant’s application.⁷ The Minister said they already paid the death benefit to the Added Party.⁸ They said the Appellant didn’t qualify for the benefit.

[11] The Appellant asked the Minister to reconsider their decision.⁹

[12] The Minister refused to change their decision.¹⁰ The Appellant appealed the Minister’s decision to the Tribunal.¹¹

What I have to decide

[13] I have to decide whether the Appellant is eligible for the death benefit.

What the law says

[14] The *Canada Pension Plan* sets out who is entitled to a death benefit when someone dies. By default, the death benefit is payable to the estate or succession of the deceased contributor.¹² But there are three exceptions to this general rule. In the following three situations, the rule **does not** apply:¹³

- a) After making reasonable inquiries, the Minister finds that there is no estate.
- b) The estate didn’t apply within 60 days of the contributor’s death.
- c) The amount of the death benefit is less than the “prescribed amount” if the death occurred before 2019.

[15] If any of these exceptions applies, then the Minister **may** pay the death benefit to the individual or institution who paid, or is responsible for paying, the funeral expenses—but only up to the amount of the funeral expenses.¹⁴ Then, if

⁷ See decision letter at GD2-10.

⁸ See decision letter at GD2-10.

⁹ I didn’t have a copy of this letter in the file.

¹⁰ See reconsideration decision at GD2-7.

¹¹ See Notice of Appeal at GD1-2.

¹² See section 64(3) of the *Canada Pension Plan Regulations* (Regulations)

¹³ See section 71(2) of the *Canada Pension Plan* and section 64(1) of the Regulations.

¹⁴ See sections 64(1) and (2) of the Regulations.

the death benefit is greater than the funeral expenses, the rest of the funds may be paid to the contributor's survivor or next of kin.¹⁵

[16] The Minister's power to pay the death benefit to someone other than the estate or succession of the contributor is **discretionary** rather than mandatory. This means the Minister may use this power, but it doesn't have to. If it uses this power, it must act judicially. In other words, the Minister must not:

- act in bad faith
- act for an improper purpose or motive (the wrong reason)
- consider an irrelevant factor
- ignore a relevant factor
- discriminate¹⁶

Reasons for my decision

[17] The Minister has to pay the death benefit to the estate unless one of the exceptions applies.

[18] The Minister says that the estate didn't apply for the death benefit within 60 days of the deceased contributor's death,¹⁷ so that exception applies. But the Minister's obligation to pay the death benefit to the estate continues even if the estate doesn't apply within 60 days.¹⁸ So, the Minister can't rely on that exception, since there is an estate. Even if the Minister didn't know that at the time, the Minister didn't wait 60 days before paying the benefit to the Added Party.

[19] The Minister also can't rely on the third exception because the death occurred after 2019.¹⁹

¹⁵ See section 64(3) of the Regulations.

¹⁶ See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA), [1996] 1 FC 644.

¹⁷ See section 71(2)(b) of the Canada Pension Plan.

¹⁸ See *Cormier v Canada (Minister of Human Resources Development)*, 2002 FCA 514.

¹⁹ See section 71(2)(c) of the Canada Pension Plan.

[20] That means there is only one other exception the Minister could rely on to consider paying the death benefit to someone other than the estate. The Minister could pay the death benefit to someone else if they made reasonable inquiries and found that there wasn't an estate.²⁰

[21] The Minister didn't make reasonable inquiries. They paid the death benefit to the Added Party after only 14 days. And they paid it to a stepdaughter without making any inquiries about whether there was an estate.

[22] So, none of the exceptions applied in this case, and the Minister should have paid the death benefit to the estate.

[23] Because they paid the death benefit to the Added Party even though none of the exceptions applied, I find that the Minister didn't act judicially because it ignored a relevant factor in determining who the death benefit should have been paid to.

[24] Because the Minister didn't act judicially, I can make the decision the Minister should have made.

[25] I find that the Appellant is entitled to the payment of the death benefit as the representative of the estate.

[26] Furthermore, even though the estate didn't apply within 60 days, priority of payment is given to whoever is responsible for paying the funeral expenses.²¹ In this case, according to the invoice the Appellant submitted none of the funeral expenses was paid by the Added Party, at least as of June 2024.²² The responsibility for unpaid expenses would fall to the estate.

²⁰ See section 71(2)(a) of the Canada Pension Plan.

²¹ See section 64(1)(a) of the Regulations.

²² See June 10, 2024, receipt at GD5-2 showing that the full amount remains outstanding. Even though it is the Added Party's name on the receipt, the funeral home has now sent the receipt to the Appellant for payment.

Conclusion

[27] I find that the Appellant is eligible for the death benefit.

[28] This means the appeal is allowed.

Dawn J. Kershaw
Member, General Division – Income Security Section