



Citation: *MH v Minister of Employment and Social Development*, 2025 SST 426

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. H.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated February 21, 2025
(GP-25-144)

Tribunal member: Kate Sellar

Decision date: **April 25, 2025**

File number: AD-25-269

Decision

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

Overview

[2] The Claimant's mother and father were living in the United States when the Claimant was born in October 2003. They weren't married or living common law. The Claimant's father died in March 2008.

[3] In 2019, the Claimant's mother applied for a Canada Pension Plan (CPP) surviving child's benefit. The Minister of Employment and Social Development refused the application in July 2019. The Claimant applied again in November 2019. The Minister refused the application in December 2019.

[4] In October 2022, the Minister approved the first application. The Minister informed the Claimant's mother that she was entitled the surviving child's benefit from June 2018 to October 2021, when the Claimant turned 18 years of age. After that, under certain conditions, the Claimant would receive payment of the benefit directly. The Minister learned that the Claimant's father had creditable periods under the social security scheme of the United States. This allowed the Claimant's mother to qualify for the surviving child's benefit.

[5] In July 2023, the Claimant asked the Minister to reconsider the amount of the surviving child's benefit. She wanted to receive it back to 2008, when her father died. The family had applied for various Canadian benefits shortly after the deceased passed away but had received no answer.

[6] In October 2023, the Minister's reconsideration decision refused the Claimant's request. The reconsideration decision said that the 2008 application didn't confirm that the Claimant's father had lived or worked in another country. That meant the Minister couldn't grant the surviving child's benefit based on the 2008 application. The Minister maintained its decision to begin the Claimant's surviving child's benefit as of June 2018.

[7] The Claimant appealed the October 2023 reconsideration decision to this Tribunal on January 24, 2025. The General Division explained that the appeal wouldn't go ahead because the Claimant appealed more than a year after the Minister communicated the reconsideration decision to her.

Issues

[8] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error about its powers because it didn't consider the Claimant's evidence about extraordinary circumstances causing the delay in filing the appeal?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

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

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.

[11] Since the Claimant 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 made an error about its powers by failing to consider extraordinary circumstances.

[12] The Claimant says that she understands the law requires that appeals must typically be filed within a year of the Minister communicating its decision.³ She agrees she appealed to the General Division more than a year after receiving the reconsideration decision.

[13] However, the Claimant says that due to mailing delays and issues beyond her control, her appeal may have reached the Tribunal later than expected. The Claimant notes that her first application for the benefit was five or six years ago, and that during the pandemic she consistently called Service Canada for updates on her case.

[14] The Claimant says the General Division should have heard her appeal since these are extraordinary circumstances. She has acted in good faith and with persistence throughout the application and appeal process.

– The law doesn't give the Tribunal the ability to extend the deadline when the Claimant is past the one-year mark.

[15] The General Division explained that it must apply the law. The law states that if claimants disagree with the Minister's reconsideration decision, they have to appeal to the Tribunal within 90 days after the Minister told them about the decision. If claimants appeal after the 90-day deadline, the Tribunal can give them more time (accept the late appeal). But according to the law, **in no case** can claimants appeal a reconsideration decision more than one year after the Minister told them about it.⁴

³ See AD1-5.

⁴ See section 52(1)(b) and (c) of the Act. See also paragraph 14 in the General Division decision.

[16] The General Division explained that it doesn't have the authority to decide to ignore what the law says and focus on what might lead to a more fair or just outcome given the situation. The General Division has to follow the law as it's written.⁵

[17] There's no arguable case that the General Division made an error about its powers. The General Division explained that its powers come from the law, and the law is clear that in no case can it make an exception to the one-year deadline in the law. The Claimant hasn't raised any argument about how the General Division might have that power. I see no possible error in the General Division's reading of its inability to consider extraordinary circumstances and grant an extension to the Claimant.

There's no new evidence.

[18] The Claimant hasn't provided any evidence that wasn't already presented to the General Division. Accordingly, new evidence also cannot form the basis for permission to appeal.

[19] I've reviewed the written record.⁶ I'm satisfied that the General Division didn't overlook or misunderstand any important evidence that could change the outcome for the Claimant.

Conclusion

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

Kate Sellar
Member, Appeal Division

⁵ See paragraph 20 in the General Division decision.

⁶ For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.