



Citation: *TS v Minister of Employment and Social Development and AB*, 2024 SST 1749

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: T. S.

Respondent: Minister of Employment and Social Development

Added Party: A. B.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 17, 2023 (issued by
Service Canada)

Tribunal member: Antoinette Cardillo

Type of hearing: Videoconference

Hearing date: July 10, 2024

Hearing participants: Appellant
Interpreter
Added Party

Decision date: September 3, 2024

File number: GP-23-1598

Decision

[1] The appeal is allowed.

[2] The Appellant, T. S., is eligible for the Disabled Contributor's Child's benefits (DCCB) on behalf of the children. This decision explains why I am allowing the appeal.

Overview

[3] The Added Party started receiving the DCCB on behalf of the children in August 2021.¹ The Minister of Employment and Social Development (Minister) initially granted a Canada Pension Plan disability benefit to the Added Party as well as the DCCB for his two children. The Minister determined that the Added Party had custody and control of the children as attested on the disability application.

[4] The Appellant applied for the DCCB on behalf of the children on January 31, 2023.² On her application, she indicated that the children were under her full custody and care. The Minister denied her application.

[5] The Appellant appealed the Minister's decision at the Tribunal's General Division. In her notice of appeal, she stated that she was solely responsible for the major decision-making, day-to-day care, and control of the children. Although the Added Party was granted regular visitation rights to the children, he had not exercised regular visitation and was only seeing the children in person when the children were visiting their paternal grandmother in Montreal.

[6] After a review of the evidence, the Minister's position changed and determined that the Appellant was eligible to receive the DCCB on behalf of the children. The Minister requested that the appeal be allowed.

¹ See page GD2-6.

² See application on page GD2-143.

What the Appellant must prove

[7] For the Appellant to succeed, she must prove that she has custody and control of the children.³

[8] The Canada Pension Plan provides that the DCCB is a flat-rate benefit payable to the eligible child of an individual who is in receipt of a CPP disability benefit. If the child has not reached 18 years of age, the benefit is to be paid to the person or agency that has custody and control of the child.

[9] The Federal Court of Appeal determined that the parent who demonstrates actual day-to-day custody and control of children should receive the DCCB.⁴

Reasons for my decision

- The Appellant's submissions

[10] In her notice of appeal, the Appellant said:⁵

- a) the divorce order issued by the court explicitly stated that the Added Party did not have major decision-making authority concerning their children;
- b) since December 2017, the children were residing with her in Ottawa, and she had been solely responsible for major decision-making, day-to-day care, and control;
- c) despite being granted regular visitation rights to the children with conditional supervision, the Added Party relocated from Ottawa, where the children resided, to live with his mother in Montreal in early 2020. He had not exercised his regular visitation in Ottawa since then. He sees the children only while they visit their paternal grandmother in Montreal during agreed-upon occasions.

³ See section 75 of the *Canada Pension Plan*.

⁴ See *Sibbald v. Canada (Attorney General)*, 2022 FCA 157.

⁵ See notice of appeal on page GD1-9.

[11] The Appellant also submitted the following documentary evidence:

- a) A doctor's letter dated December 18, 2023, said that the Appellant's son was a patient since May 31, 2023, and the Appellant had been attending all medical appointments with him.⁶ She was the only authorized contact for him;
- b) A student vaccination consent form for both children showed that the Appellant was indicated as being the legal guardian of the children;⁷
- c) A teacher's meeting request addressed to the Appellant;⁸
- d) An Individual Educational Plan (IEP) online consultation request form for the Appellant's son completed by the Appellant on September 26, 2023;⁹ other IEP forms and reports sent to the Appellant and signed by her between 2018 and 2023;¹⁰
- e) A letter from a family friend of 10 years dated December 5, 2023, said that since January 2018, she can confirm that the two children were living exclusively with the Appellant. The family friend witnessed the Appellant's active involvement in their daily lives, including dropping them off at school, attending parent-teacher meetings, driving them to various activities. Having observed the Appellant and her children's daily routines over the years, she stated that the Appellant assumed full responsibility for the day-to-day care of her children;¹¹
- f) A letter from a parent dated December 16, 2023, saying that her son was friends with the Appellant's children. They attended the same primary school since

⁶ See letter at page GD6-6.

⁷ See form at page GD6-11.

⁸ See note at page GD6-13.

⁹ See request at page GD6-14.

¹⁰ See forms at pages GD6-15 to 27.

¹¹ See letter at page GD6-30.

kindergarden (in 2017) and were in the same middle school. Both schools were in Ottawa. The Appellant's children and her son also attended the same after school care program throughout primary school. The entire time she had known the Appellant, she had always been the one seen picking up her children at the after-school care program. She was the one seen at all school functions and meetings;¹²

- g) A letter dated January 18, 2024, from the children's dentist stating that the Appellant was the authorized contact for the children since their initial visit in March 2019 until present.¹³ She was the parent that accompanied the children to their appointments at the clinic.

- The Added Party's submissions

[12] In a letter dated April 4, 2024, the Added Party said that:

- a) unless the Appellant offers, he drives from Montreal to Ottawa to see the children or brings them back to Montreal for a stay;
- b) although close proximity would have made spending time with the children more convenient, he left Ottawa because he could not find a new home that he could afford. He also did not feel safe in Ottawa. He felt as though he was being monitored;
- c) he had originally intended to remain in Ottawa but, at the height of the pandemic, he went to Montreal to stay with his mother. It was in May 2020 that he first started spending the majority of his time in Montreal. He then decided to relocate to Montreal, to a familiar, calm environment where he felt less stressed and where he could work out some mental health issues. He changed his residence in January 2023. On July 1, 2023, he rented a 3-bedroom upper duplex from his

¹² See letter at page GD6-29.

¹³ See letter at page GD6-5.

mother so that the children could have their own bedrooms and feel more established there. However, due to renovations, he is still temporarily living with his mother;

d) he is involved in the children's education. He met on Zoom with his daughter's French teacher and helps with her homework. He attended an open house for the children's new school. He said that he engages with the school as necessary;

e) regarding the children's health care, when the Appellant properly seeks his consultation as prescribed by their divorce agreement, he takes this role seriously.

- Additional evidence

[13] On February 17, 2021, a Family Court Divorce Order from the Ontario Superior Court of Justice stated that the children's primary residence was with the Appellant.¹⁴ The Added Party had visitation rights. The Divorce Order provided details on where the children would spend specific holidays and summers. The Divorce Order also provided for a process for the parent's decision making regarding the children but in the event of a disagreement on matters not clearly provided for in the Divorce Order, the Appellant had the right to make the final decision, after considering the Added Party's input and position.

[14] In a questionnaire dated May 29, 2023, the Added Party said that the number of nights per month during which the children stayed with him varied.¹⁵ He also said that he does participate in important decisions regarding the children's health care and extracurricular activities. However, as they do not live in the same city, he does not take the children to medical appointments, and he is not listed as an emergency medical or school contact for the children. He attends parent/teacher meetings as needed. He pays

¹⁴ See page GD2-18.

¹⁵ See questionnaire at page GD2-98.

for child support and other costs when they are with him as well as the expenses for driving back and forth from Montreal to Ottawa.

[15] At the hearing, the Added Party explained that he took his role in his children's life very seriously and at times, he is not made aware by the Appellant of some of the issues involving his children which makes it difficult to participate in their lives. He also reiterated the arguments he had presented in his letter dated April 4, 2024.

[16] The issue that I have to determine is who has custody and control of the children. There is no doubt that the Added Party sees the children and is involved in their lives. However, based on the evidence, the Appellant has custody and control.

[17] As provided by the Canada Pension Plan, if the children have not reached 18 years of age, the DCCB is to be paid to the person that has custody and control of the children. Further, the Federal Court of Appeal determined that the parent who demonstrates actual day-to-day custody and control of children should receive the DCCB.¹⁶ The Court determined that the person who has custody and control is the person who is raising the children, more precisely, who takes care of their day-to-day welfare, which suggests an element of physical proximity to and responsibility for the children.

[18] In this case, although the Added Party is involved in the children's life, he lives in Montreal due to specific circumstances, whereas the children live in Ottawa, and he is not the person who takes care of the children's needs or makes decisions about their welfare on a daily basis. While he may not be made aware of some issues relating to the children, even if he was, he is not present on a daily basis or on a regular basis to tend to their day-to-day needs.

¹⁶ See *Sibbald v. Canada (Attorney General)*, 2022 FCA 157.

Conclusion

[19] I find that the Appellant is eligible for the DCCB on behalf of the children.

[20] This means the appeal is allowed.

Antoinette Cardillo

Member, General Division – Income Security Section