



Citation: *RW v Minister of Employment and Social Development*, 2025 SST 623

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: R. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decisions dated May 1, 2024, and July 17,
2024 (issued by Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Videoconference

Hearing date: May 22, 2025

Hearing participants: Appellant

Decision date: June 11, 2025

File number: GP-24-1536

Decision

[1] The appeal is allowed.

[2] The Appellant, R. W., is eligible for the Canada Pension Plan (CPP) death benefits for E. D. (E. D.) and R. D. (R. D.).

[3] I don't have jurisdiction (legal authority) to decide if the Minister of Employment and Social Development (Minister) can keep the death benefits that are payable to the Appellant as a set-off against the overpayment of CPP benefits that E. D.'s and R. D.'s estates owe to the Government of Canada.

[4] This decision explains why I am allowing the appeal, and why I don't have jurisdiction to decide the set-off issue.

Overview

– Background

[5] The Appellant is E. D.'s and R. D.'s granddaughter.

[6] E. D. and R. D. lived in Ontario until 2014, when they moved to the United Kingdom. They lived there until they died. E. D. died on March 6, 2015. R. D. died on July 30, 2017.

[7] E. D. and R. D. were both receiving CPP retirement pensions and Old Age Security (OAS) pensions. These pensions are supposed to stop in the month the recipient dies.¹ But no one told Service Canada that E. D. and R. D. had died. As a result, Service Canada continued depositing their pensions into their account at a bank in Brampton, Ontario.²

[8] In March 2020, the Appellant applied for the CPP death benefit for E. D. and R. D., as their next-of-kin.³ The application alerted Service Canada to the fact that E. D.

¹ See section 68 of the *Canada Pension Plan* and section 8(3) of the *Old Age Security Act*.

² Service Canada administers the CPP and OAS programs for the Minister.

³ See GD2R-61 to 64 and GD14-2 to 5.

and R. D. had died. Service Canada had already stopped paying their pensions, for reasons that aren't clear from the file. But by that time, Service Canada had deposited thousands of dollars into E. D.'s and R. D.'s bank account that should not have been paid to them. This is called an overpayment.⁴

[9] There is no evidence that the Appellant received any of these funds. She says that she has never had control of or access to the bank account. She did not know about the payments, nor did she take money out of the account. She believes that her father, who was E. D.'s executor, was responsible for informing Service Canada when E. D. and R. D. died, but he did not. She believes he would have had access to the account and would have been able to withdraw funds. She says that R. D. would not have known what was happening because she had Alzheimer's and moved to a care home after E. D. died.

– The Minister's decisions

[10] The Minister didn't make a decision on the Appellant's death benefit applications for over three years.

[11] On July 22, 2023, the Minister sent decision letters to the estates of E. D. and R. D., care of the Appellant at her home in British Columbia. The letters said the applications for the CPP death benefit had been approved, and that "[y]ou will receive payment in the near future."⁵ The Appellant told me she did not receive any payment, either for herself or for the estates.

[12] A few days before sending the above letters, the Minister sent two other letters to the Appellant's home.

[13] The first letter, dated July 18, 2023, was addressed "[f]or the estate of R. D., c/o [the Appellant]".⁶ The letter said that, since August 2017, R. D. had been paid \$10,224.63 in CPP benefits and \$4,863.93 in OAS that she wasn't entitled to. The

⁴ Section 66(2) of the *Canada Pension Plan* says that a person who receives a benefit they aren't entitled to owes a debt to the Government of Canada.

⁵ See GD18-2 and 3.

⁶ See GD2R-48 to 50.

\$2,500 CPP death benefit was applied to the CPP overpayment. This left a total remaining overpayment of \$12,408.56 for R. D.

[14] The letter also said “you have been named the deemed debtor for both the Canada Pension Plan and Old Age Security debt. Please return this payment to us as soon as possible. If the money is not recovered it will be garnished from your CPP and OAS benefits when they begin.”

[15] The second letter, dated July 19, 2023, was similar, except that it was for E. D..⁷ The overpayments were \$29,208.87 for CPP and \$17,782.39 for OAS. After the \$2,500 CPP death benefit was applied to the CPP debt, the total remaining overpayment for E. D. was \$44,491.26. The letter contained the same “deemed debtor” language that was in the letter for R. D.

[16] The Appellant asked for reconsideration.⁸ Although the form she filled out said she wanted reconsideration of the July 18, 2023 letter (R. D.’s), it’s clear from the rest of the document and the letter attached to it that she wanted the Minister to reconsider everything in the decisions, including the decision to pay the death benefits to E. D.’s and R. D.’s estates rather than to her.

[17] The Minister maintained its decisions on reconsideration.⁹

[18] The Appellant appealed to the Tribunal’s General Division.

– **The case conference of October 31, 2024**

[19] I held a case conference in October 2024. The main purpose was to determine if the Tribunal had jurisdiction to hear much of this appeal.¹⁰

⁷ See GD2R-45 to 47. The letter was re-sent on August 15, 2023, this time with information about how the Appellant could ask for reconsideration. See GD2R-41 to 44.

⁸ See GD2R-31 to 39.

⁹ See GD2R-11 to 14.

¹⁰ The case conference summary is GD5.

[20] At the case conference, the Appellant confirmed that she asked for reconsideration of all aspects of the Minister's decisions. She said that she took Service Canada's advice about how to proceed.

[21] The Minister's representative confirmed that, although the decision letters were addressed to the estates of E. D. and R. D., the Minister had decided that the Appellant was the "deemed debtor" in her personal capacity. The Minister intended to pursue her for the overpayments and deduct them from any CPP or OAS benefits she might be entitled to in the future.

[22] The Minister's representative couldn't tell me what provision in the law allowed the Minister to deem someone a debtor if there was no evidence they had received amounts they weren't entitled to. However, she said the Minister's position was that the Tribunal doesn't have jurisdiction to hear an appeal of that decision.

[23] I asked the Minister to provide a full explanation of the provisions it was relying on to deem the Appellant a debtor. This would allow me to determine whether the Tribunal had jurisdiction.

– The Minister's change of position

[24] In January 2025, the Minister changed its position about the Appellant's personal liability. It said an error had been made in the initial investigation, and there was no concrete evidence that the Appellant was responsible for the debt. The Minister apologized to the Appellant for causing her unnecessary distress.¹¹

[25] Because the Minister had abandoned its position that the Appellant was a "deemed debtor," that issue was no longer part of this appeal. So, I didn't decide whether I had jurisdiction in that matter.

¹¹ See GD11.

– **The remaining issue is the Appellant’s eligibility for the CPP death benefits**

[26] That left the Appellant’s eligibility for the CPP death benefits as the only remaining issue in this appeal.

[27] The Minister paid the death benefits to the estates of E. D. and R. D..¹² But the Appellant says she is entitled to the death benefits as E. D.’s and R. D.’s next-of-kin. She says it’s the least the Minister can do after all the worry, time, and expense she was put to by the Minister’s attempt to make her responsible for the overpayment.

[28] The Minister didn’t make any submissions about the Appellant’s eligibility for the death benefit.

What the Appellant must prove

[29] For the Appellant to succeed, she must first prove that the Minister was not authorized to pay the death benefits to E. D.’s and R. D.’s estates.

[30] If the Appellant proves that, she then has to prove that the Minister should have paid the death benefits to her.

Matters I have to consider first

The Minister wasn’t at the hearing

[31] The Tribunal scheduled the hearing to be by videoconference, as requested by the Appellant.¹³ A party may appear by other means if it is warranted based on their needs and circumstances.¹⁴ The Minister asked to appear by teleconference, because they weren’t able to attend by videoconference.

[32] The Tribunal sent the Minister the required information and instructions for joining the hearing by teleconference. However, no one called into the hearing for the Minister.

¹² See GD18-6 and 7.

¹³ See section 2(1) of the *Social Security Tribunal Regulations, 2022*.

¹⁴ See section 2(2) of the *Social Security Tribunal Regulations, 2022*.

[33] A hearing can go ahead without a party if they got the notice of hearing.¹⁵ I decided that the Minister got the notice of hearing because it was emailed to them on April 16, 2025. Further, the Minister acknowledged receiving the notice of hearing when it asked to appear by teleconference. The Minister did not contact the Tribunal before, during or after the hearing with any concerns about connecting.

[34] So, the hearing took place when it was scheduled, but without the Minister.

I accepted the documents sent in after the hearing

[35] At the hearing, the Appellant said she had correspondence from the Minister telling her the death benefit applications were approved. She also had tax documents from Canada Revenue Agency (CRA) related to the benefits.

[36] I asked the Appellant to send the documents to the Tribunal.¹⁶ I accepted them because they were relevant. There was no prejudice to the Minister, since some of them (the letters granting the applications) should have been in the materials the Minister provided to the Tribunal.¹⁷ The Minister already knew what was in all of the documents, so it wasn't necessary to give the Minister a chance to comment on them. Accepting them would not cause any delay.

Reasons for my decision

[37] I find that the Appellant is entitled to the CPP death benefits for E. D. and R. D. But I don't have jurisdiction to say whether or not the Minister can keep the death benefits and apply them to E. D.'s and R. D.'s overpayments.

[38] Here are my reasons.

¹⁵ Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

¹⁶ See GD18.

¹⁷ The Minister must file all relevant documents with the Tribunal within 20 days after it receives a copy of the notice of appeal. See section 46 of the *Social Security Tribunal Rules of Procedure*.

Who is eligible for a CPP death benefit

[39] The death benefit is a one-time payment that is made after the death of a CPP contributor, provided they made enough contributions to the CPP.¹⁸

[40] The law says the Minister **shall** pay the death benefit to the contributor's estate, except in certain circumstances.¹⁹ The Minister **may** pay the benefit to someone else, if the Minister is satisfied that there is no estate, or if the estate has not applied within 60 days after the contributor's death.²⁰ In such cases, the Minister may pay the death benefit to another person, in this order of priority:

- the person or institution who paid or is responsible for the funeral expenses
- the person's survivor (their married or common law partner)
- the person's next-of-kin²¹

[41] The Minister paid the death benefits to E. D.'s and R. D.'s estates, then applied them to reduce the estates' overpayments.

[42] However, the Minister didn't have the legal authority to pay the death benefits to the estates. So, the Minister should have considered whether the Appellant was eligible to be paid the death benefits as E. D.'s and R. D.'s next-of-kin. I will explain why.

The death benefits weren't payable to the estates

[43] The Minister couldn't pay the death benefits to the estates, because the estates didn't apply for them.

[44] The law says that no benefit is payable to a person unless an application has been made by them or on their behalf.²²

¹⁸ See section 44(1)(c) of the *Canada Pension Plan*.

¹⁹ See section 71(1) of the *Canada Pension Plan*.

²⁰ See section 71(2) of the *Canada Pension Plan* and section 64(1) of the *Canada Pension Plan Regulations*.

²¹ See section 64(1) of the *Canada Pension Plan Regulations*.

²² See section 60(1) of the *Canada Pension Plan*.

[45] In both applications, the Appellant stated that she was applying as the next-of-kin.²³

[46] The Appellant might be in a position to apply to a court for authority to represent her grandparents' estates, but she told me that she has not applied and she has no intention of doing so. She said that she filled in her name and address where the death benefit applications asked for information about the executor, because the person at Service Canada who was helping her told her to do that.

[47] I believe what the Appellant told me. I find that she applied for the death benefits as next-of-kin, not on behalf of the estates. There is no evidence that anyone else applied on behalf of the estates. I find that E. D.'s and R. D.'s estates did not apply for the death benefit. As a result, the death benefits could not be paid to the estates when the Minister purported to do so in July 2023.

The Minister didn't act judicially

[48] The law doesn't say that the Minister must pay the death benefit to another applicant if the estate doesn't apply within 60 days. The Minister has the discretion to pay the benefit to certain persons, in the order of priority set out in the CPP Regulations.²⁴

[49] However, the Minister has a duty to act judicially when exercising this discretion. This means that the Minister must not:

- act in bad faith
- act for the wrong reason
- consider an irrelevant factor
- ignore a relevant factor
- discriminate²⁵

²³ See GD2R-62 and GD14-3.

²⁴ See *Cormier v Canada (Minister of Human Resources Development)*, 2002 FCA 514.

²⁵ See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

[50] In my view, the Minister must act judicially when it decides **whether** to pay someone other than the estate, not just **who** to pay. In this case, the Minister didn't act judicially, because it didn't consider the possibility that the estates had not applied for the death benefits.

[51] In the Appellant's applications, she gave her name and address in the space for the executor. But the Minister ignored several relevant factors that should have alerted it to the fact that the Appellant wasn't applying on behalf of the estates.

[52] First, in E. D.'s case, his will named the Appellant's father as executor. The Appellant was the alternate executor, in case her father died or was unable or unwilling to act or continue to act as executor.²⁶ The will was probated in the United Kingdom in 2015.²⁷ The Appellant's father died in 2019. So, it's possible the Appellant had the right to apply to be the executor in Canada. But she hadn't done so. As far as the Minister knew, the Appellant didn't have the right to act for E. D.'s estate.

[53] Second, in R. D.'s case, the death benefit application said there was no will. So there could not have been an executor. The Minister should have at least questioned why the Appellant had filled in her name and address as executor. And the Minister had no reason to believe the Appellant had the right to act for R. D.'s estate.

[54] Third, in both applications, the Appellant checked off the box that said she was applying as next-of-kin.

[55] The Minister should have considered these relevant factors. They suggested that the Appellant could not apply on behalf of the estates and was not trying to do so. In that case, the Minister should have considered whether it should pay the death benefits to the Appellant or to another person, since the estates had not applied within 60 days of the deaths and had still not applied.

²⁶ See GD2R-71.

²⁷ See GD2R-68-69.

The decision the Minister should have made

[56] Because the Minister ignored these relevant factors, it didn't act judicially. This means that I must give the decision the Minister should have given.

[57] I find that, because the estates have not applied for the death benefits, the Appellant is entitled to them. As next-of-kin, her claim ranks after that of a person who paid the funeral expenses, or a survivor.²⁸ But no one except the Appellant has applied for the benefits, so she is entitled to them.

The Tribunal's jurisdiction over the set-off

[58] If a person has an overpayment, the Minister can reduce the debt by applying an amount that is payable to them or their "estate or succession" from any program the Minister administers.²⁹ The Minister used that provision to keep the death benefits when it awarded them to E. D.'s and R. D.'s estates. It's questionable whether the Minister can do the same thing with the benefits payable to the Appellant. The Minister would have to take the position that "succession" includes next-of-kin.

[59] The Tribunal doesn't have the authority to decide whether the Minister can do this. The Tribunal only has the powers the law gives to it. It has the power to hear appeals of reconsideration decisions the Minister makes under section 81 of the *Canada Pension Plan*.³⁰ Section 81 lists the types of decisions the Minister can reconsider. The list doesn't include decisions about using set-off to reduce a debt.³¹ If the Minister decides to use that power, it must inform the Appellant of the decision and tell her what she must do if she wants to challenge it.

[60] I recognize that the Appellant would like some finality about the issues surrounding the death benefits and the overpayments. They have been a real source of worry, expense, and frustration for her. She is still concerned that the Minister might

²⁸ A survivor is the married or common-law spouse of the deceased in the year immediately before they died. See sections 2 and 42(1) of the *Canada Pension Plan*.

²⁹ See section 66(2.1) of the *Canada Pension Plan*.

³⁰ See section 82 of the *Canada Pension Plan*.

³¹ The reconsideration decisions in this appeal mention that the Minister was using the power of set-off, but only as a way to explain the amount of the overpayment.

“come after” her later. I wish that I could settle all these issues. Unfortunately, I can only do what the law allows. In this case, that is deciding whether the CPP death benefits are payable to her. I can’t decide anything else.

Conclusion

[61] I find that the Appellant is eligible for the CPP death benefits for E. D. and R. D.

[62] This means the appeal is allowed.

Virginia Saunders

Member, General Division – Income Security Section