Citation: *AB v Minister of Employment and Social Development and TS*, 2025 SST 571

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	A. B.
Respondent:	Minister of Employment and Social Development
Representative:	Daniel Crolla
Added Party:	T. S.

Decision under appeal:	General Division decision dated September 3, 2024 (GP-23-1598)

Tribunal member:	Neil Nawaz
Type of hearing:	Videoconference
Hearing date:	April 25, 2025
Hearing participants:	Appellant Respondent's representative Added Party
Decision date:	May 29, 2025
File number:	AD-24-802

Decision

[1] I am allowing this appeal in part. The Appellant is entitled to a Canada Pension Plan (CPP) disabled contributor's child benefit (DCCB) as of July 2024. The Added party was entitled to the DCCB from January 2023 to June 2024.

Overview

[2] This case involves two competing claims for the DCCB, a benefit that is meant to support the children of CPP contributors who are no longer able to work.

[3] The Appellant and the Added Party were married between 2006 and 2021. They had two children together — S. and L., both now 13.

[4] The Appellant began receiving a CPP disability pension in August 2021.[1] At the same time, he began receiving the DCCB on behalf of his children.

[5] The Added Party applied for the DCCB in June 2022.[2] In her application, she claimed that the children were in her "full custody and care." Service Canada, the Minister's public facing agency, refused the application because the Appellant was already receiving the DCCB. The Minister's policy at the time was to pay the DCCB to the disabled contributor provided they had at least **some** custody and control of the children.

[6] The Added Party appealed the Minister's refusal to the Social Security Tribunal's General Division. She argued 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 those rights and was only seeing the children in person when the children were visiting their paternal grandmother in Montreal.

[7] The General Division held a hearing by videoconference and allowed the appeal. It agreed with the Added Party that she, and not the Appellant, had custody and control

[1] See the Appellant's DCCB applicated dated June 13, 2022, GD2-168.
[2] See the Added Party's DCCB applicated dated June 13, 2022, GD2-168. The Added Party made a second application for the DCCB on January 31, 2023, GD2-91.

of the children. Citing a Federal Court of Appeal case called *Sibbald*, it found that the Minister's policy was not compliant with the law.[3]

[8] The Added Party received permission to appeal from one of my colleagues on the Appeal Division. She saw an arguable case that the General Division made an error of law by disregarding the changes to section 75 of the *Canada Pension Plan* that came into effect in June 2024. Last month, I held a hearing by videoconference to discuss this case in full.

Issue

[9] In this appeal, I had to answer the following questions:

- What does the *Canada Pension Plan* say about who gets the DCCB?
- What do the changes to section 75 of the *Canada Pension Plan* mean?
- Does the old or new version of section 75 apply to this case?
- If the old version applies, did the Appellant have custody and control of the children before June 2024?
- If the new version applies, did the Appellant have less than 20 percent of parenting time after June 2024?

Analysis

[10] The DCCB is a flat-rate monthly benefit that is paid for the child of a person receiving the CPP disability pension.[4] As the benefit's very name suggests, it belongs to the child or children of a disabled contributor, not to the disabled contributor or any other caregiver. The *Canada Pension Plan* sets out a formula, revised last year, designed to pay the DCCB to the person best positioned to ensure that the child or children actually benefit from it. In this case, I have concluded that the DCCB should have been properly

[3] See General Division decision, paragraph 17, citing *Sibbald v Cananda (Attorney General)*, 2022 FCA 157.
[4] See *Canada Pension Plan*, section 44(1)(e).

paid to the Added Party up to June 2024. However, the changes to section 75 that came into effect as of that date shifted payment of the benefit to the Appellant.

[11] I have come to this conclusion for the following reasons:

The law governing payment of the DCCB changed in June 2024

[12] Until June 20, 2024, section 75 said that the DCCB was to be 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 if the child lived apart from the contributor.[5]

[13] The law didn't define "custody and control," but Service Canada used to have a policy of paying the DCCB to the contributor if he or she had **any** custody and control of a child, no matter how marginal. In 2022, the Appeal Division ruled that Service Canada's policy was inconsistent with the law. It determined that the DCCB should properly go, not necessarily to the contributor, but to the parent who was doing the lion's share of the caregiving: "[T]he essential ingredients of custody and control are proximity to, and responsibility for the child."[6] Later, in a case called *Sibbald*, the Federal Court of Appeal endorsed the Appeal Division's interpretation of the law.[7]

[14] *Sibbald* may have prompted the government to change the law. On June 20, 2024, a new version of section 75 came into effect. It now said that the DCCB had to be paid to the person with "decision-making responsibility" for the child. That person was presumed to be the disabled contributor, unless there was evidence that the contributor didn't have decision-making responsibility or that the contributor had less than 20 percent of the parenting time.[8] The *Canada Pension Plan* defines "decision-making responsibility" as the responsibility for making significant decisions about a child's well-being, including decisions about their health, education, culture, language, spirituality,

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[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.
[6] See *MM v Minister of Employment and Social Development*, 2022 SST 575.
[7] See *Sibbald v Attorney General of Canada*, 2022 FCA 157.
[8] See section 75 of the Canada Pension Plan, SC 2024, c. 17, s. 193.

and significant extra-curricular activities.[9] It also defined "parenting time" as time that the child spent in the care of a person who is their parent, whether or not they are physically with that person during that entire time.[10]

When the law changed, so did the rightful DCCB recipient

[15] When the Appellant applied for the DCCB in August 2022, Service Canada applied its policy and awarded him the DCCB. It did so despite evidence that the children spent most of their time with their mother. The fact that the Appellant had at least **some** access to the children under his divorce settlement was enough for Service Canada to concluded that he had "custody and control" over them pursuant to the old version of section 75.

[16] In light of the *Sibbald* case and for reasons that I will explore further, Service Canada made the wrong decision. At the time, the DCCB should have gone to the Added Party, who had been primarily responsible for the children's upbringing.

[17] However, things changed when the new version of section 75 came into effect on June 20, 2024. Suddenly, the Appellant, as disabled contributor, was presumed to be the rightful recipient of the DCCB. The Added Party argued that, since the DCCB application was submitted well before the new rules were enacted, then the old rules, which favour her, should apply going forward.

[18] I can't agree.

[19] Under the federal *Interpretation Act,* where a legislative provision is repealed and substituted with a new one, the repeal of the provision does not affect any acquired right or privilege, but **the procedures established by the new provision are to be followed as far as possible**.[11]

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[9] See section 42(1) of the *Canada Pension Plan*.
[10] See section 42(1) of the *Canada Pension Plan*.
[11] See sections 43 and 44 of the *Interpretation Act*, as interpreted by *R. v Puskas*, 1998, [1998] 1 SCR 1207; *Archambault c R.*, 2022 QCCA 1170; *R. v J.G.*, 2019 ONCJ 703; and *R. v Persaud*, 2020 ONSC 341.

[20] This means that the Added Party's entitlement to the DCCB under the old version of section 75 is not affected by the fact that it was replaced by a new version. But it also means that the Minister, and therefore the Appeal Division, must follow the procedures set out by the new version of section 75 as far as possible. Since I see no practical reason not to change the payee, the DCCB must move from the Added Party to the Appellant as of June 2024.[12]

The DCCB was payable to the Added Party under the old rules

[21] Under the old version of section 75, the DCCB properly went to the person who had custody and control over the children — that is, the person who was primarily responsible for their day-to-day welfare, including their financial support, their personal maintenance, and their education.

[22] In this case, the evidence shows that the Added Party has been responsible for most of L. and S.'s care:

- According to both the Appellant and the Added Party, the children have mainly resided with their mother in Ottawa since she and the Appellant separated in 2017. The Appellant confirmed that he relocated to Montreal in 2020.
- A family court divorce order stated that
  - the children's primary residence would be with the Added Party;
  - following a probationary period, the Appellant would have the children on alternate weekends with the children from Friday at 4:00 p.m. until Monday at 9:00 a.m.;
  - the Appellant and Added Party would split access to the children during Christmas and summer holidays; and

[12] After the hearing, the Minister filed a brief letter supporting this interpretation of the *Interpretation Act*. It agreed that the transitional rules required the DCCB to move from the Added Party to the Appellant on June 20, 2024 — see written submission dated May 23, 2025, AD14-1.

- the Added Party had the right to make the final decision about matters not specifically addressed in the divorce order, after considering the Appellant's input and position.[13]

[23] At the hearing, the Appellant testified that he and the Added Party have generally followed the order, although they occasionally depart from its strict terms by mutual consent. He insisted that he has been intimately involved in his children's lives, even though he now lives in a different city. He alleged that the Added Party doesn't always go out of her way to let him know what's going on, but he maintained that, when the children are with him, he provides them with ample care and support.

[24] I don't doubt that the Appellant is telling the truth, but the bulk of the evidence suggests that the Added Party has borne most of the responsibility for the children since their parents' separation in 2017. There is no doubt that the Appellant sees L. and S. and is involved in their lives, but the Added Party logs far more time with them and is primarily responsible for meeting their day-to-day needs. Under the old version of section 75, she had custody and control.

The DCCB is payable to the Appellant under the new rules

[25] Under the new version of section 75, the DCCB goes to the person with decision-making responsibility for the children. That person is presumed to be the disabled contributor, unless there is evidence that the contributor doesn't have decision-making responsibility or that the contributor has less than 20 percent of the parenting time.

[26] The wording of the provision suggests that, in this case, the Added Party had the burden of proving that the Appellant doesn't have decision-making responsibility for the children. In my view, the Added Party failed to meet that burden.

[27] First, there is evidence that the Appellant has at least some decision-making responsibility over the children. The divorce order, which both the Appellant and Added Party agree they more or less follow, sets out a detailed process for making major

[13] See Ontario Superior Court of Justice Family Court Divorce Order dated February 17, 2021, GD2-18.

decisions.[14] The process gives the final word to the Added Party in the event of a disagreement, but it nonetheless explicitly requires consideration of the Appellant's position and input.

[28] Second, the evidence shows that the Appellant has more than 20 percent of parenting time. Although the children's primary residence is with the Added Party, the divorce order gives the Appellant custodial periods that cumulatively exceed the statutory threshold. He is entitled to half of the summer vacation (approximately five weeks) plus a week during the Christmas holidays, for a total of six weeks or 42 days . During the remaining 46 weeks of the of the year, he is entitled to have the children on alternating weekends (23 visits) from Friday at 4:00 p.m. to Monday at 9:00 a.m. (65 hours), for a total of 62 days. Together, the Added Party's 104 days of access represent about 28 percent of a 365-day calendar year.

[29] Of course, court orders and written agreements are not always followed to the letter. At the hearing, I asked the Appellant and Added Party for post-hearing written submissions about their actual respective parenting times since June 20, 2024.

[30] The Appellant responded with a letter detailing the number of days in which he had actual custody of the children.[15] By his count, L. and S. had been with him for a total of 73 days between June 20, 2024 and May 19, 2025 or 21.9 percent of the time. The Added Party responded with her own account of the Appellant's visitations over roughly the same period, finding 68 days or 18.6 percent of the time.[16]

[31] The two estimates are not that far apart — one a little above the 20 percent threshold and the other a little below. In my view, both suggest that the Appellant is the rightful recipient of the DCCB. The Added Party argues that she is entitled to the DCCB because her former husband falls short of the statutory minimum, but I reject the notion that "parenting time" must be limited to periods in which a child is physically proximate to their mother or father. Time spent in telephone or video calls can be parenting time. Time spent travelling to and from visitations can be parenting time. Time spent reading,

[14] See the Divorce Order dated February 17, 2021, GD2-18.
[15] See the Appellant's letter dated May 23, 2025, AD15-28.
[16] See the Added Party's emails dated May 23, 2025 (AD16-2) and May 26, 2025 (AD17-2).

or responding to, emails from teachers or doctors can be parenting time. What matters is whether the parent is actively doing something that benefits the child.

[32] In this case, the evidence indicates that, despite living in a different city, the Appellant is a responsible father who devotes a significant amount of his time to his children's welfare, whether by visiting them, accommodating them, or communicating with them. The Added Party's estimate of physical time spent with the children falls just below the threshold, but it does not include the several times a week the Appellant speaks to L. and S. over the phone, nor the hours driving or flying between Ottawa and Montreal to see them. I have no difficulty finding that, even if I accept the Added Party's time estimate at face value, these activities push the Appellant over the 20 percent threshold.

[33] In all, there wasn't enough evidence to rebut the presumption that the Added Party, as a disabled contributor, has decision-making responsibility for the child under the new version of section 75. He appears to be an involved parent, one who supports his children whether they are with their mother in Ottawa or with him in Montreal. He participates in decision-making about their education and extra-curricular activities. He is responsible for their care for at least 20 percent of the time.

Conclusion

[34] The appeal is allowed in part. Under the old version of section 75 of the Canada Pension Plan, the Added Party was entitled to the DCCB because she had primary custody and control of the children. Under the new version, effective June 2024, the Appellant gets the benefit because, as disabled contributor, he is presumed to have some decision-making responsibility over the children. I saw nothing in the evidence to overturn that presumption.

Member, Appeal Division