



Citation: *CC v Minister of Employment and Social Development*, 2025 SST 865

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated April 29, 2025
(GP-24-1787)

Tribunal member: Kate Sellar

Decision date: **August 13, 2025**

File number: AD-25-520

Decision

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

Overview

[2] The Claimant's husband died on January 4, 2020. The Claimant applied for a Canada Pension Plan (CPP) survivor's pension on October 27, 2021. The Minister of Employment and Social Development approved the application with payments beginning November 2020 (11 months before the Claimant applied).

[3] The Claimant asked the Minister to reconsider, but the Minister didn't change the November 2020 payment start date. The Claimant appealed to this Tribunal. The General Division dismissed the appeal.

[4] The General Division found that the Claimant's payments started as early as the law allows (11 months before the application). The General Division decided that the Claimant's application couldn't be considered to have been made earlier due to incapacity. The Claimant wasn't able to show that she was incapable of forming or expressing the intention to apply earlier.¹

Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made any error in the way it considered the Claimant's visits to the doctor as evidence of capacity?
- b) Is there an arguable case that the General Division misrepresented some of the Claimant's evidence and arguments in a way that meant it failed to observe a principal of natural justice?

¹ See sections 44(1)(d), 60(8), and 72 of the *Canada Pension Plan* (CPP) for the rules about survivor's benefits and when they start.

- c) Does the application set out new evidence that wasn't presented to the General Division that could justify giving the Claimant permission to appeal?

I'm not giving the Claimant permission to appeal

[6] 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.²

[7] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.³

[8] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence that relates to any issue on appeal, I refuse to give the Claimant permission to appeal.

There's no arguable case that the General Division made an error by considering the Claimant's visits to the doctor as evidence of her capacity.

[9] The Claimant argues that it's unfair to consider her doctor's visits "against her." She says it's not fair to find those visits to be evidence of capacity when those same visits were necessary to document her incapacity and therefore supported her request for reconsideration.⁴

² See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

³ *Department of Employment and Social Development Act*, section 58.1(c)

⁴ See AD1-3.

– **The General Division considered the Claimant’s doctor’s visits when deciding whether the Claimant was incapable.**

[10] The General Division explained that to decide whether the Claimant was incapable of forming or expressing the intention to apply for the survivor’s benefit, it must follow the case law which requires considering the following:

- the Appellant’s evidence about the nature and extent of her limitations
- any medical or other evidence in support of her claim of incapacity
- evidence of her activities during the claimed period of incapacity
- the extent to which these activities cast light on her capacity to form or express an intention to apply for a survivor’s pension.⁵

– **There’s no arguable case for an error in the General Division decision about the doctor’s visits.**

[11] The Claimant raises no issue with the General Division’s interpretation of the factors it must consider according to the Federal Court of Appeal.

[12] The Claimant raises no argument that the General Division made an error of fact by finding that she became anxious, depressed, unable to sleep, and that she actively participated in her healthcare during the period in which she states she was incapacitated.⁶

[13] The Claimant raises no legal argument that the General Division cannot rely on the medical evidence to conclude that mental health suffered that year, but not that the same medical evidence could show that she was capable of forming or expressing an intention to apply for a benefit.

[14] The Claimant questions the fairness of the General Division’s reasoning (that is, using her own medical evidence to reach a conclusion she doesn’t agree with).

⁵ See paragraph 17 in the General Division decision, citing the Federal Court of Appeal’s decision in *Blue v Canada (Attorney General)*, 2021 FCA 211.

⁶ See paragraphs 21 and 22 in the General Division decision for these findings.

However, it's only possible unfairness in the General Division's process that can form the basis for permission to appeal. There's no evidence here that the General Division failed to allow the Claimant a fair opportunity to make her case about incapacity.

[15] In my view, the Claimant's appeal takes issue with the idea that capacity to form or express an intention to apply for a survivor's pension is generally no different from having the capacity to form or express an intention to make other decisions in life. However, that is a binding authority from the Federal Court of Appeal that the General Division followed, so it doesn't give rise to a possible error of law.⁷

[16] The General Division decided the Claimant's participation in her healthcare helped to show that she wasn't incapable of forming or expressing the intention to appeal. The Claimant disagrees with that conclusion, but she hasn't shown an arguable case that the General Division made any error in that conclusion that could form the basis for giving her permission to appeal.

The Claimant argues that the General Division misrepresented some arguments she made in a way that means it failed to observe a principle of natural justice.

[17] The Claimant focuses on two paragraphs in the General Division decision that she says shows the General Division misrepresented her arguments in a way that violates principles of natural justice as follows:

- Paragraph 14 in the General Division decision misrepresents the arguments she made at the Tribunal about:
 - (i) documents missing from the Minister's disclosure at the General Division level; and

⁷ See paragraph 22 in the General Division decision, relying on *Sedrak v Canada (Social Development)*, 2008 FCA 86; and *Canada (Attorney General) v Kirkland*, 2008 FCA 144; and *Blue v Canada (Attorney General)*, 2021 FCA 211.

(ii) the reasons why she filed an Access to Information and Privacy (ATIP) request.

- Paragraph 15 in the General Division decision misrepresents why the Claimant had to file the ATIP request and misrepresents the Minister's actions during the application process for the survivor's benefit.

[18] The Claimant argues that these misrepresentations by the General Division are evidence that it failed to observe a principle of natural justice.

– **The General Division addressed the issues the Claimant raised by explaining what it had the power to decide.**

[19] The paragraphs in the decision that the Claimant is concerned about fall under matters that the General Division decided before deciding the main issue.⁸

[20] In paragraph 14, the General Division decided that it was satisfied that the Minister provided the documents required under section 46(2) of the *Social Security Tribunal Rules of Procedure*.

[21] In paragraph 15, the General Division explained that it's independent from the Minister and Service Canada. The General Division explained that it has no jurisdiction over (and doesn't involve itself in) ATIP requests about the Minister.

– **The Claimant hasn't raised an arguable case that the General Division misrepresented her evidence or arguments in a way that breached any principle of natural justice.**

[22] The Claimant hasn't explained how anything the General Division communicated in these paragraphs is connected to principles of natural justice (fair process). A fair process is one where the Claimant knows the case she has to meet, has an opportunity to respond, and has an impartial decision maker consider her case fully and fairly.⁹

⁸ The heading in the General Division decision is "Matters I have to consider first."

⁹ See paragraph 10 in *Kuk v Canada (Attorney General)*, 2024 FCA 74; and paragraph 31 in *Muang v Canda (Attorney General)*, 2020 FC 74.

[23] I see no arguments here that suggest the Claimant was prevented in any way from making her arguments about incapacity in the context of the Tribunal's process.

[24] In addition, the Claimant has raised no specific possible error of fact or law related to the findings in these paragraphs of the General Division's decision. The General Division was satisfied that the Minister had provided the documents required by the Tribunal's rules. The General Division was clear that discussing or deciding anything about the ATIP request was not within its powers. The Claimant hasn't explained what the General Division got wrong with respect to those findings.

[25] I cannot grant permission to appeal based on the Claimant's concerns about these paragraphs in the General Division decision.

There's no new evidence that could justify granting the Claimant permission to appeal.

[26] Under the section for new evidence in the application form, the Claimant stated that she had evidence that the General Division already had but that neither she nor the General Division had "presented it for discussion."¹⁰

[27] The Claimant explained that a Service Canada agent told her that she would succeed in her reconsideration because the agent was good friends with the team lead. The Claimant argues this shows the General Division's failure to observe a principle of natural justice.

[28] Regardless of whether this evidence is new (that is, whether the Claimant presented this information to the General Division or not), I find that it cannot form the basis for permission to appeal.

[29] Service Canada and the General Division of the Tribunal are different organizations. The General Division makes its own independent decisions about the CPP. Accordingly, any new evidence about what a Service Canada representative may have told the Claimant during the application process cannot form the basis for an

¹⁰ See AD1-4.

appeal here. This appeal is focussed on the Claimant's capacity (and therefore the correct payment date for the survivor's pension). The General Division doesn't have a general power to remedy issues Claimants might experience in their communications with Service Canada more generally.

[30] I've reviewed the written record.¹¹ I'm satisfied that the General Division didn't overlook or misunderstand any important evidence that could change the outcome for the Claimant.

[31] The start date for the survivor's pension remains unchanged.

Conclusion

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

Kate Sellar
Member, Appeal Division

¹¹ For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.