



Citation: *CC v Minister of Employment and Social Development*, 2025 SST 866

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: C. C.
Representative: M. B.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 10, 2024
(issued by Service Canada)

Tribunal member: James Beaton
Type of hearing: Videoconference
Hearing date: April 25, 2025
Hearing participants: Appellant
Appellant's representative
Decision date: April 29, 2025
File number: GP-24-1787

Decision

[1] The appeal is dismissed.

[2] The Appellant, C. C., isn't eligible for a Canada Pension Plan (CPP) survivor's pension before November 2020. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant's husband and partner of 43 years, G. C., died suddenly of a heart attack on January 4, 2020, while he and the Appellant were in California.¹ The Appellant applied for a CPP survivor's pension on October 27, 2021.² The Minister of Employment and Social Development approved the Appellant's application with payments beginning as of November 2020. This was 11 months before she applied. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division because she wants her payments to begin earlier.

[4] The Minister says the law doesn't allow the Appellant's payments to begin earlier than 11 months before she applied. There is a possible exception to this called the "incapacity rule." But the Minister says the rule doesn't apply to the Appellant.³

[5] The Appellant says the rule does apply. She says she was incapable of forming or expressing an intention to apply for a survivor's pension from January 2020 until December 2020. She chose those dates because she was grieving and taking an antidepressant during that time.⁴

What the Appellant must prove

[6] Generally, a person isn't eligible for survivor's pension payments earlier than 11 months before they applied.⁵

¹ See the certificate of cremation at GD2-18.

² See GD2-10 to 16.

³ See GD12 and GD15.

⁴ See the hearing recording.

⁵ See section 72 of the *Canada Pension Plan*.

[7] There is an exception called the incapacity rule. If the incapacity rule applies, a person's application is deemed to have been made earlier than it actually was. In that case, a person may be entitled to earlier pension payments.

[8] To succeed in her appeal, the Appellant must prove that the incapacity rule applies to her. This means she must prove that she was incapable of forming or expressing an intention to make an application before October 2021. The period of incapacity must be continuous.⁶

[9] The Appellant must prove it is more likely than not that the incapacity rule applies.⁷

[10] The legal test for incapacity is strict. Under the test for incapacity, it doesn't matter whether the Appellant:

- knew that the survivor's pension existed
- knew that she had to apply for the pension
- thought about applying for the pension
- could make, prepare, process or complete an application by herself⁸

[11] I explained this to the Appellant in a letter on November 21, 2024 (GD5).

Matters I have to consider first

We had technical difficulties at the hearing, but it was still fair

[12] At the end of the hearing, technical difficulties prevented me from hearing the Appellant. Since I had already heard her testimony and arguments, heard her representative's arguments, asked the Appellant my questions, and asked her if she had anything else to add, it wasn't necessary to schedule a continuation of the hearing.

⁶ See sections 60(9) and (10) of the *Canada Pension Plan*. See also *Hussein v Canada (Attorney General)*, 2016 FC 1417.

⁷ See *Grosvenor v Canada (Attorney General)*, 2018 FC 36.

⁸ See *Canada (Attorney General) v Danielson*, 2008 FCA 78; *Canada (Attorney General) v Hines*, 2016 FC 112; and *Maloshicky v Canada (Attorney General)*, 2018 FC 51.

[13] However, in case there was anything that the Appellant didn't get a chance to say, I allowed her to email the Tribunal after the hearing. In her email, she confirmed that we "thoroughly covered all pertinent aspects that needed to be covered by both sides before the technical difficulties occurred. Anything I would have said in the closing minutes would have been a repetition of prior comments ..."

The Appellant thinks documents were excluded from the appeal file

[14] The Appellant thinks that the Minister might have excluded some documents from the appeal file (GD2) that it sent to the Tribunal. However, she provided copies of those documents (GD16) to the Tribunal herself. They didn't add anything substantive to the information in the appeal file. She didn't give evidence that any other documents were missing. I am satisfied that the Minister provided the documents that it was required to under section 46(2) of the *Social Security Tribunal Rules of Procedure*.

The Tribunal is not involved in access-to-information requests

[15] The Appellant made an access-to-information request to the Minister. She wonders why it is taking so long to process. The Tribunal can't answer that question as it is not involved in access-to-information requests that are made to other entities. The Tribunal is independent and separate from the Minister and Service Canada.

Reasons for my decision

[16] I find that the incapacity rule doesn't apply to the Appellant.

[17] To make this decision, I must consider:⁹

- 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

⁹ See *Blue v Canada (Attorney General)*, 2021 FCA 211.

[18] I will consider these factors under the following headings:

- the Appellant's limitations and what they say about incapacity
- the Appellant's activities and what they say about incapacity
- what the Appellant says about why she didn't apply earlier
- the significance of Declaration of Incapacity forms

The Appellant's limitations and what they say about incapacity

[19] The Appellant's testimony and medical evidence support that she was overwhelmed by her husband's sudden passing, but not that she was incapacitated.

[20] Before Mr. G. C.'s death, the Appellant and Mr. G. C. had been trying to sell a building that they had bought through their small business, which operated in the restaurant sales and services industry. With Mr. G. C.'s passing, the Appellant was faced with navigating the sale and attending to the business's accounting on her own. In March 2020, the Covid-19 pandemic disrupted "normal" life for many people, including the Appellant, and this compounded her stress. It also dampened the prospects of being able to sell the building at a good price, which would have impacted her retirement plans.¹⁰

[21] As a result of these stressors, the Appellant became anxious, depressed, and unable to sleep. She saw her family doctor, Dr. Leung, several times in 2020.¹¹

- On January 18, she said she could not sleep and she was feeling anxious.
- On January 23, she asked to change her cholesterol medication.
- On February 18, she said she was depressed and having trouble controlling her anxiety. She was stressed about taking over responsibility for the finances. She wanted to see a specialist. Dr. Leung prescribed citalopram, an antidepressant.

¹⁰ See GD2-21, 22, GD14, and the hearing recording.

¹¹ See GD2-51 to 53.

- On March 5, she said she was doing much better with the grieving process. She was sleeping better. She wanted to know how to decrease the dosage of citalopram.
- On June 1, she said her mood was much better, but her sleep was interrupted by coughing fits.
- On September 28, she said she was feeling better. Dr. Leung agreed to decrease the dosage of citalopram.

[22] The medical evidence supports that the Appellant's mental health suffered after her husband's death. Importantly, it also shows that she was able to actively participate in her healthcare. She took the initiative to see her doctor and she made decisions about her medications. This doesn't support that she was incapacitated. The focus of the test is on the Appellant's capacity to form or express an intention to apply for a survivor's pension. This is generally no different than having the capacity to form or express an intention to make other decisions in life.¹²

The Appellant's activities and what they say about incapacity

[23] The Appellant says that, although she could attend to other tasks, she was too overwhelmed to think about getting money from her husband's death. However, the evidence shows that she **was** able to attend to important tasks related to Mr. G. C.'s death shortly after he died.

- On January 13, 2020, she contacted Service Canada to notify them of Mr. G. C.'s death so that they could stop his CPP retirement pension payments.¹³
- She sent Service Canada Mr. G. C.'s death certificate, which Service Canada received on March 2, 2020.¹⁴

¹² See *Sedrak v Canada (Social Development)*, 2008 FCA 86; *Canada (Attorney General) v Kirkland*, 2008 FCA 144; and *Blue v Canada (Attorney General)*, 2021 FCA 211.

¹³ See GD8.

¹⁴ See GD2-100.

- On March 10, 2020, she called Service Canada to discuss applying for a CPP death benefit and survivor's pension.¹⁵

[24] In addition, the Appellant took over financial responsibilities like paying bills and filing the year-end tax returns for their business.¹⁶

[25] This supports that she could form and express the intention to apply for a survivor's pension throughout the claimed period of incapacity.

What the Appellant says about why she didn't apply earlier

[26] The Appellant says she didn't apply earlier because she was too overwhelmed, she was on medication, and she thought it would not matter when she applied.

[27] Being overwhelmed doesn't mean the Appellant could not at least form or express the intention to apply for a survivor's pension. The fact that she contacted Service Canada in March 2020 to ask about applying is convincing evidence of this.

[28] There is no indication that she had side effects from medication that rendered her unable to make decisions or communicate.

[29] I find that the Appellant didn't apply earlier mainly because she thought it would not matter when she applied. She says Service Canada told her that there was no deadline to apply. She then "breathed a sigh of relief and went about trying to heal [herself] and save the business."¹⁷

The significance of Declaration of Incapacity forms

[30] The Appellant submitted a Declaration of Incapacity form completed by Dr. Leung on June 29, 2023.¹⁸ Dr. Leung wrote that the Appellant was incapable of forming or expressing the intention to apply for benefits from January to December 2020

¹⁵ See GD8.

¹⁶ See GD2-21, 22, and GD14.

¹⁷ See GD2-22. The Appellant asked the Minister to investigate whether it gave her erroneous advice regarding the limit on retroactive benefit payments. The Minister concluded that it did not. Only the Federal Court can overturn that decision. See GD5.

¹⁸ See GD2-46.

due to depression. The Appellant and her representative urge me to put significant weight on Dr. Leung's opinion, since he treated the Appellant throughout the time period in question and for decades before that.

[31] These types of forms aren't determinative. They are just one factor for me to consider.¹⁹

[32] In this case, I must weigh the form against the considerable evidence showing that the Appellant was **not** incapacitated. That evidence includes Dr. Leung's own notes, which don't mention any limitations that severely impacted the Appellant's ability to make decisions or communicate. The Appellant's activities are further evidence that she wasn't incapacitated. I accept Dr. Leung's opinion that the Appellant was depressed, but not that she was incapacitated as defined by the *Canada Pension Plan*.

The Appellant's other arguments

[33] The Appellant argues that incapacity is a flexible concept: "Incapacity is not an absolute, fixed or immutable concept. There is a variable element to it. It may change and evolve over time—and I am suggesting to you that a broader and more time-sensitive interpretation of incapacity is appropriate in this instance. It is also a matter of fairness and natural justice" under section 58.1 of the *Income Tax Act*. She believes that I should make a decision based on guiding principles of compassion, equity, and fairness.²⁰

[34] Unfortunately, incapacity is not a flexible concept. It is clearly defined by the *Canada Pension Plan* and the Federal Court has interpreted the concept narrowly. I am bound by the law and by the Federal Court's interpretation of it.²¹

[35] Concepts of fairness and natural justice apply only to the extent that the appeal process must be procedurally fair and I must apply the law fairly. They don't mean I can

¹⁹ See *Flaig v Canada (Attorney General)*, 2017 FC 531.

²⁰ See GD14 and GD16.

²¹ See *Miter v Canada (Attorney General)*, 2017 FC 262.

take a flexible approach to a strict legal test to give the Appellant the result she believes is fair, even on the basis of compassion or equity.

[36] The *Income Tax Act* isn't relevant. The Tribunal makes decisions under the *Canada Pension Plan*, *Old Age Security Act*, and *Employment Insurance Act*.²²

Conclusion

[37] I find that the Appellant isn't eligible for a CPP survivor's pension before November 2020 because she wasn't incapacitated from forming or expressing an intention to apply.

[38] This means the appeal is dismissed.

James Beaton

Member, General Division – Income Security Section

²² See section 1(2) of the *Social Security Tribunal Rules of Procedure*.