



Citation: *JB v Minister of Employment and Social Development*, 2025 SST 965

## Social Security Tribunal of Canada General Division – Income Security Section

# Decision

**Appellant:** J. B.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated November 25, 2024  
(issued by Service Canada)

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**Tribunal member:** Virginia Saunders

**Type of hearing:** Videoconference

**Hearing date:** August 28, 2025

**Hearing participants:** Appellant  
Appellant's witness

**Decision date:** September 16, 2025

**File number:** GP-25-294

## Decision

[1] The appeal is dismissed.

[2] The Appellant, J. B., isn't eligible to receive the Canada Pension Plan (CPP) orphan's benefit (also known as the surviving child's benefit) before September 2020. This decision explains why I am dismissing the appeal.

## Background

[3] The orphan's benefit is paid to a dependent child of a deceased person who made enough contributions to the CPP.<sup>1</sup> If the child is under age 18, the benefit is paid to the person or agency who has decision-making responsibility for the child.<sup>2</sup>

[4] The Appellant's friend gave birth to a daughter, K., in November 2015. Her friend died in January 2017. In March 2018, K. was placed in the Appellant's care. She has lived with the Appellant ever since.

[5] At first, the Appellant's authority to care for K. came from a kinship agreement through the Children's Aid Society. She was granted sole decision-making responsibility and primary residence of K. by a court order in August 2021.<sup>3</sup>

[6] In May 2024, the Appellant applied for the orphan's benefit on K.'s behalf.<sup>4</sup> The Minister of Employment and Social Development (Minister) approved the application, with payments starting as of June 2023.<sup>5</sup> This was because the law doesn't allow payments to begin more than 11 months before the Minister received the application.<sup>6</sup>

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<sup>1</sup> A dependent child is a child who is under age 18, is between ages 18 and 25 and attending school or university, or has been disabled continuously since the later of when they turned 18 or when their parent died. See section 42(1) of the *Canada Pension Plan*.

<sup>2</sup> See section 75(1) of the *Canada Pension Plan*.

<sup>3</sup> See GD2R-23.

<sup>4</sup> See GD2R-7.

<sup>5</sup> The Minister operates the CPP through Service Canada.

<sup>6</sup> See section 74(2) of the *Canada Pension Plan*.

[7] The Appellant objected to the start date, but the Minister would not change it.<sup>7</sup>

[8] The Appellant appealed to the Social Security Tribunal's General Division. She says payments should start in March 2018, when she began looking after K.

[9] The Appellant says she couldn't apply for the orphan's benefit before May 2024 due to circumstances beyond her control. K.'s mother had not registered her birth, so the Appellant had trouble getting a birth certificate. She had no legal authority to deal with this issue until she got sole decision-making responsibility in August 2021. Then it took several years to resolve. K.'s birth was finally registered in March 2024.<sup>8</sup>

[10] The Minister now says payments should start as of September 2020. This is because the Minister accepted an August 2021 application for a different CPP benefit as an application for the orphan's benefit. Eleven months before August 2021 is September 2020.<sup>9</sup>

## **What I have to decide**

[11] I have to decide if the Appellant is eligible to be paid the orphan's benefit before June 2023.

## **Reasons for my decision**

### **The Appellant applied for the orphan's benefit in August 2021**

[12] I find that the Appellant applied for the orphan's benefit in August 2021.

[13] A CPP benefit can't be paid unless someone has applied for it and their application has been approved. The application must be in writing and must be submitted to the Minister.<sup>10</sup>

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<sup>7</sup> See GD2R-4 to 5.

<sup>8</sup> See GD10-2 to 3 and GD2R-16. The Appellant and her sister also described this at the hearing.

<sup>9</sup> See GD9-6 to 7.

<sup>10</sup> See sections 60(1) and 60(3) of the *Canada Pension Plan* and section 43(1) of the *Canada Pension Plan Regulations*.

[14] When the Appellant applied for the orphan's benefit in May 2024, she used the form that was specifically meant for that benefit.<sup>11</sup> However, the Minister has now accepted an August 2021 application for a CPP disabled contributor's child's benefit (DCCB) as an application for the orphan's benefit.

[15] The Appellant and her sister (who has been helping her get K.'s documentation and benefits in order) recalled that they intended to apply for the DCCB because K.'s father, J., was receiving it. They learned about it through J.'s girlfriend, and they called Service Canada to ask for an application.<sup>12</sup>

[16] However, I agree with the Minister's view that the August 2021 application was an application for the orphan's benefit. I will explain why.

[17] At a case conference, the Minister's representative said it sent the wrong application to the Appellant when she asked for it in 2021. It should have sent her the application for the orphan's benefit. The Appellant completed the application as if it were an application for an orphan's benefit. In particular, she gave her friend's name as the CPP contributor. She didn't name J..<sup>13</sup> It's unlikely she would have done this if she had intended the application to be for the DCCB and not for the orphan's benefit.

[18] The Minister has now accepted the August 2021 application as being for the orphan's benefit. I see no reason to decide otherwise.

### **The law limits retroactive payments to 11 months**

[19] I find that the Minister was right to start paying the orphan's benefit as of September 2020.

[20] The law says the orphan's benefit is payable for each month starting with the later of:

- the month after the month the contributor died

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<sup>11</sup> See GD2R-7.

<sup>12</sup> They said this at the hearing.

<sup>13</sup> See GD2R-19 to 20.

- the month after the month in which the child was born

[21] However, this is subject to another rule, which says that **in no case** will payment start earlier than 11 months before the Minister received the application.<sup>14</sup>

[22] This means that the benefit might have been payable before September 2020, but only if someone had applied for it. Because no one did, the Minister was right to start payment based on the August 2021 application.

### **The Tribunal has limited powers**

[23] I sympathize with the Appellant, but I don't have legal authority to decide in her favour.

#### **– The Tribunal can't ignore the law in special circumstances**

[24] The Appellant has a good explanation for why she didn't apply before August 2021. She contacted Service Canada soon after K. came into her care. They told her she needed K.'s birth certificate to get the orphan's benefit. She didn't have the authority to register K.'s birth and apply for the birth certificate until August 2021. The delay wasn't the Appellant's fault.

[25] Unfortunately, for the purposes of this appeal, it doesn't matter whether the Appellant has a good explanation for the delay. The Tribunal doesn't have any equitable power. This means I can't disregard the law for compassionate reasons or because there are exceptional circumstances. I can only decide if the Minister's decision to start payment as of September 2020 was based on the law. It was.

#### **– The Tribunal can't investigate possible errors by Service Canada**

[26] At the case conference, the Minister's representative suggested that the Appellant should have applied for the orphan's benefit right away and submitted K.'s

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<sup>14</sup> See section 74(2)(b) of the *Canada Pension Plan*.

paperwork later. The Appellant said no one told her this. If they had, she would have applied sooner.<sup>15</sup>

[27] The Appellant may believe that Service Canada gave her bad advice when she first called them about getting the orphan's benefit. The *Canada Pension Plan* calls this "erroneous advice or administrative error." It says the Minister may investigate whether someone was denied a benefit because of mistakes by government employees and may decide to compensate them.<sup>16</sup>

[28] If the Appellant wants to pursue this possibility, she should contact Service Canada and ask for an investigation. I want to stress that the Tribunal doesn't have any authority over this process.<sup>17</sup> If the Minister decides not to investigate, or the Appellant isn't happy with the outcome of an investigation, she must apply for judicial review at the Federal Court of Canada.

## **Conclusion**

[29] I find that the Appellant isn't eligible for the orphan's benefit to be paid before September 2020.

[30] This means the appeal is dismissed.

Virginia Saunders  
Member, General Division – Income Security Section

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<sup>15</sup> She said this at the hearing.

<sup>16</sup> See section 66(4) of the *Canada Pension Plan*.

<sup>17</sup> See *Lee v Canada (Attorney General)*, 2019 FC 1189.