



Citation: *Estate of MA v Minister of Employment and Social Development*, 2025 SST 1023

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Estate of M. A.

Respondent: Minister of Employment and Social Development
Representative: Yanick Bélanger

Decision under appeal: General Division decision dated February 19, 2025
(GP-24-1085)

Tribunal member: Neil Nawaz

Type of hearing: In person

Hearing date: September 23, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: October 6, 2025

File number: AD-25-363

Decision

[1] I am dismissing this appeal. The estate of M. A. is not entitled to additional retroactive Canada Pension Plan (CPP) survivor's pension payments. The late M. A. was not incapacitated from applying for the pension between August 2018 and March 2023.

Overview

[2] N. A., a contributor to the CPP, passed away in August 2018. His widow, M. A., was eligible a CPP survivor's pension, but she didn't apply for one until March 2023.¹ Their daughter Z. A. says that, since her mother was incapable of doing so on her own behalf, she was the one who finally completed and submitted the application. M. A. passed away in December 2023.

[3] Service Canada, the Minister's public-facing agency, approved the application effective April 2022 — 11 months before the application date and the maximum period of retroactivity usually allowed under the law.

[4] Z. A., in her capacity as representative of her mother's estate, appealed the start date to the Social Security Tribunal's General Division. She wanted the survivor's pension to start as of August 2018, the month after her father's death. She claimed that her mother was incapacitated and was not able to make an application herself.

[5] The General Division held a hearing in person and dismissed the appeal. It found insufficient evidence to show that M. A. was incapable of forming or expressing an intention to make an application before March 2023. The General Division found that, although M. A. had many health problems, there was no evidence that she had a cognitive impairment.

[6] In May, one of my colleagues on the Appeal Division granted M. A.'s estate permission to appeal. Last month, I held a hearing to discuss the estate's claim in full.

¹ See M. A.'s application for the CPP survivor's pension dated March 18, 2023, GD2-34.

Issue

[7] In this appeal, I had to decide whether M. A. was incapacitated from applying for the CPP survivor's pension between August 2018 and March 2023.

Analysis

[8] Estates of deceased persons claiming incapacity must prove that the deceased was unable to form or express an intention to apply for the survivor's pension.² That inability must be continuous from the date that they supposedly became incapacitated to the date that an application was actually submitted.³ I have reviewed the information on file, and I have concluded that the estate didn't meet these tests. I have no doubt that M. A. had health problems, but I simply didn't find enough evidence to show that they prevented her from making an application.

The evidence doesn't point to incapacity

[9] M. A. clearly faced significant challenges in her later years. She was elderly. She had lost her husband, on whom she was dependent. She was isolated, having never learned English. She suffered from numerous health conditions, including diabetes, kidney disease, and coronary artery disease.

[10] However, none of these things necessarily meant that she was incapacitated from making an application for the survivor's pension.

The test for incapacity is precise and focused

[11] The *Canada Pension Plan* imposes a high threshold for incapacity. It doesn't require consideration of the capacity to prepare, process, or complete an application for benefits, only the ability to make or communicate a decision to do so.⁴ Capacity is to be considered in light of the ordinary meaning of the term and determined based on the medical evidence and on the claimant's activities. The *Canada Pension Plan's* definition

² See *Canada Pension Plan*, section 60(8).

³ See *Canada Pension Plan*, section 60(10).

⁴ See *Canada (Attorney General) v Danielson*, 2008 FCA 78.

of capacity is similar to the capacity to form or express an intention with respect to other life choices.⁵

[12] The test for incapacity has been recently illuminated by two Federal Court of Appeal cases. *Blue* involved a claimant who was functional in many ways (for instance, she was raising her young daughter as a single mother), yet she was still found to be incapacitated for CPP purposes.⁶ However, Ms. Blue introduced specific psychiatric evidence that the very thought of having to formally document her mental health issues before a government authority sent her into a paralyzing dissociative state. M. A.'s estate has no comparable evidence.

[13] The Court made it clear that *Blue* was exceptional:

Before concluding, it must be noted that this is a most unusual case. In many cases, the ability of an individual to carry on ordinary life activities may well be indicative of their capacity to formulate or express the intent to apply for a disability pension. However, in this case, Ms. Blue's disability, while severe, is narrowly focussed, with both her trauma and her mental health issues arising out of or relating to engagement with hospitals, the medical profession and persons in authority.⁷

[14] As if to reinforce that point, the Federal Court of Appeal soon issued a decision in a case called *Walls* that upheld a finding of capacity, even though the claimant suffered from physical and mental impairments that put him into a "vegetative zombie-like mental state."⁸ In that case, the Court found that Mr. Walls, unlike Ms. Blue, did not produce the kind of psychological evidence needed to discount his day-to-day activities during his claimed period of incapacity.

[15] That is true of this case too. M. A.'s estate has submitted evidence indicating that she faced a language barrier and suffered from medical issues, but it didn't show that she lacked the ability, when presented with specific options, to make informed life

⁵ See *Sedrak v Canada (Minister of Social Development)*, 2008 FCA 86

⁶ See *Blue v Canada (Attorney General)*, 2021 FCA 211.

⁷ See *Blue*, *supra*, paragraph 45. The incapacity test for CPP disability benefits is the same as that for the CPP survivor's pension.

⁸ See *Walls v Canada (Attorney General)*, 2022 FCA 47, paragraph 12.

choices during the relevant period. As we will see, M. A. might not have been aware of the CPP survivor's pension, and she might have lacked the energy and initiative to apply for it, but those are not the same things as incapacity.

An inability to speak and understand the dominant language can't be equated to incapacity

[16] Much of the estate's case was seemingly based on the fact that M. A. did not speak English, despite her many years in Canada. She could speak, read, and write her native Serbian, but she never learned to say or understand more than a few simple words in the dominant language of her community.

[17] The estate's early submissions to Service Canada strongly suggested that language was the main, if not the only, factor that prevented M. A. from making an application sooner:

To summarize, my father N. A. passed away on August 24, 2018, and at that time, my mother M. A. was unaware and could not apply for the CPP survivor's pension due to her very limited understanding of the English language, both oral and written. I became aware of the requirement to apply for the CPP survivor's pension when I was given Power of Attorney over my mother's affairs in late 2022. As a result, I applied for the CPP survivor's benefit on my mother's behalf in early 2023.⁹

[18] The above passage is from Z. A.'s letter to Service Canada explaining the delay in her mother's application. It did not cite cognitive impairment or, for that matter, any other medical problem. Only later, after the estate became aware of the precise standard for incapacity, did it submit evidence about M. A.'s medical conditions.

[19] It is well established that incapacity has nothing to do with whether a claimant is aware of a benefit.¹⁰ M. A.'s inability to speak or understand English may have sealed her off from information about the survivor's pension, but that doesn't mean she couldn't

⁹ See Z. A.'s letter dated March 22, 2024 to Service Canada requesting reconsideration, GD2-22.

¹⁰ See *Canada (Attorney General) v Danielson*, 2008 FCA 144.

have formed or expressed (in Serbian) an intention to apply for it if its existence had been made known to her.

M. A. was able to perform limited activities

[20] The estate submitted that M. A. had “always” been incapacitated. However, much of the evidence suggested that she managed to carry on many of the normal functions of daily life within the strictures imposed by her increasing physical ailments and by her inability to speak English.

[21] Z. A. testified that her mother was a stay-at-home mom, who raised three children. As she grew older, she developed heart problems. Her health declined and, by her early seventies, she had ceased to do domestic chores such as cooking and cleaning. By the time her husband died, in 2018, she had lost most of her mobility. She had to use a walker and was later confined to a wheelchair. She couldn’t fix a meal by herself. She began to sleep most of the day.

[22] Still, she occasionally watched a Serbian language TV variety show, and she continued to read, although only Serbian church literature. Asked when she first started to notice her mother’s mental decline, Z. A. replied that it became noticeable after her heart attack, which occurred when she was around 70.

[23] Z. A. insisted that, because her late mother could only speak Serbian, she was completely dependent on others, first her husband, later her daughters. She could only have simple conversations. She couldn’t talk about finances or other complex subjects. She had never had her own bank account or credit card; it was her father who handled the money.

[24] I asked Z. A. what her mother’s response would have been if, during the relevant period, she had been told that she was likely eligible for the CPP survivor’s benefit and that, if approved, she would get a monthly payment of several hundred dollars. Could she have formed an intention to make an application? Z. A. replied that her mother wouldn’t have known what to do — she didn’t understand anything about money.

[25] While I don't doubt that M. A. had great difficulty in functioning without assistance from her family, I don't believe her mental faculties were so diminished that she couldn't have made a choice to seek money from the government. M. A. may not have known "what to do" to make an application for benefits but, given her ability to read in her native language, I am satisfied that she at least had the capacity to decide whether it would be a good idea if somebody applied on her behalf.

M. A.'s medical reports didn't indicate incapacity

[26] The estate maintains that M. A. was incapacitated for many years, but the available medical evidence doesn't strongly support that claim. She was in her late seventies and early eighties during the relevant period, and she suffered from a variety of age-related ailments, but there was little in the record to suggest she was unable to make important life decisions.

[27] In early 2016, M. A. saw a nephrologist, whose reports documented a history of chronic kidney disease, diabetes mellitus, hypertension, myocardial infarction with coronary stenting, and cognitive dysfunction.¹¹ That last condition was presumably communicated by M. A. or her daughter, who was present at the appointments, presumably to provide English-Serbian translation. However, the reports were otherwise entirely concerned with M. A.'s kidney condition, and they contained no other information to substantiate mental impairment.

[28] In January 2020, M. A., accompanied by her daughter, was seen for longstanding pain in her upper extremities.¹² The examining neurologist noted a history ischemic myocardial disease, arthritis and diabetes, but she did not say anything about a cognitive impairment.

¹¹ See reports dated May 3, 2016 (GD20-9) and June 9, 2016 (GD20-11) by Dr. E.J.F. Carlisle, nephrologist.

¹² See report dated January 14, 2020 by Dr. Dina Savelli, specialist in neurology and internal medicine, GD20-15.

[29] In September 2022, a registered practical nurse assessed M. A.'s need for personal support services.¹³ She indicated that M. A. couldn't use stairs and needed assistance with walking showering, dressing, and using the bathroom, but she also found that M. A. was oriented with respect to person, place, and time.

[30] In May 2023, Z. A. applied for accessible transportation on behalf of her mother.¹⁴ In the application, M. A.'s family physician, Dr. Boutros, indicated that M. A. needed a support person because of cognitive, behavioural, and communication issues.

[31] In August 2024, several months after M. A.'s death, Dr. Boutros filled out a declaration of incapacity.¹⁵ In it, she said that M. A.'s incapacity started in March 2010 and continued until December 2023, when she passed away. She also said that M. A.:

- Had a very limited grasp of both oral and written English;
- Could not understand critical information to make an informed decision;
- Needed her daughter to be present at every appointment to help with communicating and making decisions; and
- Became depressed after her husband's death, which further impaired her ability to function on a day-to-day basis.

[32] Dr. Boutros added that M. A. had the following diagnoses:

...cognitive impairment (difficulty with understanding the English language to make decisions), diabetes, arthritis, osteoporosis, tinnitus, deconditioning (transitioned to a walker and then a wheelchair) and past heart attack with stent insertion... Consequently, M. A. was not able to manage her own personal affairs due to a lack of mental/cognitive and physical abilities.

¹³ See CBI Health Support Services Assessment Form completed by Miranda Keenan, registered practical nurse, on September 19, 2022, GD20-20.

¹⁴ See City of Hamilton Application for Accessible Transportation Services completed by Z. A. on May 24, 2023 (GD1-13) and Dr. Jacqueline Boutros, general practitioner, on July 7, 2013 (GD1-18).

¹⁵ See Declaration of Incapacity completed by Dr. Boutros on August 15, 2024, GD6-5.

[33] I gave Dr. Boutros' declaration only limited weight. First, she seemingly conflated cognitive impairment with her patient's difficulty with the English language. Second, she said that M. A.'s incapacity started in March 2010, a date that struck me as an oddly specific. At the hearing, it became apparent that March 2010 was probably when Dr. Boutros first began to treat M. A. That happened to align with Z. A.'s repeated assertions that her mother had "always" been incapacitated, but it also raised a question: if her mother's mental capabilities had been so diminished for her entire life, how had managed to raise three children with a husband who went to work every day?

[34] Z. A.'s response was unsatisfactory. She acknowledged that her mother had worked hard to manage her household and family for many years and that she had done so despite not understanding English. But this acknowledgment only reinforced my impression that M. A.'s supposed incapacity had more to do with language than with cognition.

[35] I can understand a family physician's desire to help the family of one of her deceased patients, but Dr. Boutros' declaration of incapacity could not, and did not, decide this matter.¹⁶ By itself, it didn't strongly suggest that M. A.'s mental condition rose to the level of the CPP's standard of incapacity. In context, it was outweighed by other evidence suggesting that M. A. did, indeed, have the ability to at least form an intention to apply for benefits.

M. A. made major medical and legal decisions

[36] The biggest factor in my decision was evidence that, during the relevant period, M. A. gave and withheld her consent for significant life choices.

[37] Z. A. testified that she was responsible for administering her mother's medications; she didn't have the understanding or capacity to take them on her own. She said that, during medical appointments, she communicated with doctors on

¹⁶ See *Flaig v Canada (Attorney General)*, 2017 FC 531.

her mother's behalf. She said that mother would tell her if she had pain, a headache, or some other issue, and she would relay that information to the doctor.

[38] Z. A. denied that her mother had any agency at all but, by her account, her role was more about providing translation for her mother than unilaterally making decisions about her health care. At least one of the available medical reports suggested that M. A. was capable of giving a history and refusing consent for a procedure:

On examination, pleasant lady reports that she's had cataract surgeries in fact and still has issues with floaters... She denies neck or shoulder pain and has relatively well-maintained range of movement for these.

[...]

She spends a great deal of time indicating her pain and "knocking" in the right upper limb. Patient refused EMG examination, therefore testing is limited.¹⁷

[39] Z. A. insisted that it was her decision, and not her mother's, to refuse the EMG. She said that she had not even bothered to translate the option for her mother, because she had undergone the same investigation, followed by a carpal tunnel release, a few years earlier with no benefit. However, I found it more likely that M. A. had actually made a conscious decision to withhold consent. The language in the report quoted above was explicit, and physicians are usually scrupulous about canvassing treatment options with their patients and documenting their preferences.

[40] An even stronger indication of capacity comes from the fact that M. A. granted her daughter power of attorney in December 2022.¹⁸ Z. A. testified that, although she was making all financial and medical decisions for her mother, she came to realize that she needed formal control over her mother's affairs. It was becoming increasingly difficult for her mother to attend doctors' appointments, and she needed the authority to act on her behalf in her absence. She called a lawyer to their home, who arrived with prepared documents for her mother to sign. She doesn't recall the lawyer asking her

¹⁷ See Savelli's report dated January 14, 2020, GD20-15.

¹⁸ See power of attorney signed by M. A. on December 16, 2022, GD2-32.

mother whether she was of sound mind or making any inquiry into her competence to sign legal documents.

[41] The very act of signing a power of attorney raises questions about whether M. A. was incapacitated. A power of attorney is a legal document of tremendous import, but it has no legal validity if the person signing it is not competent to do so.

[42] Z. A. testified that her mother didn't know what she was signing, but I find that unlikely. If M. A. were truly incapacitated as of December 2022, Z. A. would have properly had to get a court order declaring her guardian of her mother's person and property. That obviously never happened. Instead, she had a power of attorney drafted by a lawyer, who also acted as one of the witnesses to its signing. That lawyer was under an ethical obligation to satisfy herself that M. A. understood what she was signing. I must assume that, if she had had any doubts about her client's mental capacity, she wouldn't have allowed the power of attorney to be executed.

Conclusion

[43] The available written and oral evidence suggests that, in the four-plus years after her husband's death, M. A. was capable of activities that were not dissimilar from forming an intention to make an application for benefits.

[44] It is significant that the estate's early submissions on this issue cited language difficulties, not medical problems or cognitive impairment, for M. A.'s failure to apply earlier. Later, M. A.'s daughter submitted medical reports and, although three of them — one by her nephrologist, two by her family physician — mentioned cognitive difficulties, they did so only in passing as part of larger histories relayed by M. A. or her daughter. None of the available reports were by a psychologist, psychiatrist or other specialist qualified to assess mental capacity. There was no evidence that M. A. has ever undergone a formal cognitive assessment such as the Mini-Mental State Examination or the Montreal Cognitive Assessment.

[45] And even if I had accepted that M. A. had intellectual limitations, to what extent? There are many potential levels of cognitive impairment, and they don't all necessarily meet the *Canada Pension Plan's* standard of incapacity.

[46] There were also M. A.'s everyday activities. Her daughter testified that she was able to watch TV and read church literature in her native language. M. A. may have been dependent on a family member about financial matters, but the evidence showed that was always the case — even years ago when she was busy raising a family. But that longstanding dependency didn't necessarily mean she was incapacitated: it more likely meant that she deferred to others because of other factors such as language, education, upbringing, or personality.

[47] Above all, there was evidence that M. A. was able to give histories to her doctors — mediated by translation from Serbian to English — and withhold consent for a medical procedure. She also signed a power of attorney in the presence of a lawyer who would have been alert to signs of cognitive impairment.

[48] On balance, the estate failed to prove that M. A. lacked the capacity to form or express the intention to apply for a CPP survivor's pension before March 2023, the date on which she finally did apply. For that reason, she is not entitled to receive additional retroactive pension payments.

[49] The appeal is dismissed.



Member, Appeal Division