



Citation: *JL v Minister of Employment and Social Development*, 2025 SST 1270

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

# **Decision**

**Appellant:** J. L.  
**Representative:** J. I.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated March 26, 2025 (issued by Service Canada)

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**Tribunal member:** James Beaton  
**Type of hearing:** Teleconference  
**Hearing date:** November 25, 2025  
**Hearing participants:** Appellant  
Appellant's representative  
Interpreter  
**Decision date:** December 3, 2025  
**File number:** GP-25-1056

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] M. W. was born in China in May 1969, immigrated to Canada in September 2004, and died in December 2020. The Appellant applied for a CPP survivor's pension as M. W.'s survivor. They had been married since September 1991.<sup>1</sup>

[4] The Minister of Employment and Social Development (Minister) refused the application. The Minister said it could not pay the survivor's pension because M. W. didn't contribute to the CPP for enough years.<sup>2</sup>

[5] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

## What I have to decide

[6] I have to decide if the Appellant is eligible for the CPP survivor's pension.

## Reasons for my decision

[7] The Appellant isn't eligible for the CPP survivor's pension because M. W. didn't contribute to the CPP for enough years.

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<sup>1</sup> See GD2-12 to 15 and GD3-6. The Appellant's application gives M. W.'s date of death as December 21, 2000 (GD2-12). This was a mistake. The death certificate gives December 21, 2020, as the date of death (GD3-7).

<sup>2</sup> See the Minister's initial decision at GD2-9. The Minister maintained this decision on reconsideration. The reconsideration decision is at GD2-4.

## The contribution requirements

[8] A survivor's pension may only be paid if a contributor (in this case, M. W.) contributed to the CPP for enough years.<sup>3</sup> A contributor can meet this requirement in two ways.

[9] Option 1 is to contribute to the CPP for 10 years. M. W. only contributed for five years.<sup>4</sup>

[10] Option 2 is to contribute to the CPP for at least 1/3 of the years in the contributory period, but no less than 3 years. Contrary to the Appellant's belief, this doesn't mean only 3 years are required. It is the **higher** amount (either 3 years or 1/3 of the years in the contributory period) that is required.

[11] This means I need to figure out when M. W.'s contributory period began, when it ended, and if any months in between can be excluded.<sup>5</sup>

### – When did the contributory period begin?

[12] A contributor's contributory period begins with the **latest** of these dates:

- a) January 1966 (when the CPP started)
- b) the month after they turned 18

[13] M. W. turned 18 in May 1987 and the month after that was June 1987.

[14] The latest date in this case is June 1987.

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<sup>3</sup> See section 44(1)(d) of the *Canada Pension Plan*.

<sup>4</sup> See M. W.'s Record of Earnings at GD2-16.

<sup>5</sup> The rules for calculating a contributory period are in sections 2(2), 44(3), and 49(b), (c), and (d) of the *Canada Pension Plan*.

– **When did the contributory period end?**

[15] A contributor’s contributory period ends with the **earliest** of these dates:

- a) the month before they started getting a CPP retirement pension
- b) the month they turned 70
- c) the month they died

[16] The earliest date in this case is December 2020. That was the month M. W. died.<sup>6</sup>

– **Can any months be excluded from the contributory period?**

[17] The following months are excluded from a contributor’s contributory period:

- any month that was excluded by reason of disability under the CPP—this is called the **disability exclusion**
- any month when they were the primary caregiver for a child under the age of seven, if their earnings for the year were below the “basic exemption”—this is called the **family allowance exclusion**
- any month in a year after the year they turned 65, if their earnings for the year were below the “basic exemption”—this is called the **age exclusion**<sup>7</sup>

[18] In this case, the disability exclusion applies. The months that can be excluded are February 2018 to December 2020. I will explain how I got these dates.

[19] The Minister applied the disability exclusion beginning in May 2018, the month before M. W. started getting a disability pension.<sup>8</sup> This is incorrect. The period to be excluded begins with the month in which M. W. was deemed to be disabled for the purposes of a disability pension.<sup>9</sup> The month in which she was deemed to be disabled is

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<sup>6</sup> The Minister’s initial decision letter incorrectly used November 2020 as the date of death (GD2-9).

<sup>7</sup> The amount of the basic exemption changes each year according to a formula set out in section 19 of the *Canada Pension Plan*.

<sup>8</sup> See the Minister’s reconsideration decision (GD2-4) and submissions (GD4-7). The Minister’s initial decision letter didn’t reference the disability exclusion at all (GD2-9).

<sup>9</sup> See *KD v Minister (Employment and Social Development)*, 2020 SST 631. This decision is not binding on me, but I find it persuasive.

not given in the appeal file. However, I can work backwards from June 2018 (when her payments started) to arrive at February 2018, since there is a four-month waiting period before payments start.<sup>10</sup>

[20] The Minister applied the disability exclusion until December 2020, the month of M. W.'s death. There is no evidence to indicate that she stopped getting a CPP disability pension before she died, so I agree with this date.

– **What was the contributory period?**

[21] By putting all of these rules together, I find that M. W.'s contributory period was from June 1987 to January 2018. This is 32 whole or partial years.<sup>11</sup> One-third of 32 is 10.7 years. Partial years must be rounded up. So, 10.7 years is rounded up to 11 years.<sup>12</sup> This is more than 10 years. At most, the law requires M. W. to have made 10 years of contributions.

– **Did M. W. contribute to the CPP for at least 10 years?**

[22] M. W.'s Record of Earnings shows that she only contributed to the CPP for five years: 2011, 2014, 2015, 2016, and 2017.<sup>13</sup> She didn't contribute for enough years under either option 1 or option 2.

**The Appellant's argument about Charter rights can't succeed**

[23] Early in the appeal process, the Appellant raised an argument under the *Canadian Charter of Rights and Freedoms* (Charter). He then changed his mind and decided not to pursue a Charter appeal.<sup>14</sup> This meant his appeal proceeded as a "regular" appeal.

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<sup>10</sup> See section 69 of the *Canada Pension Plan*.

<sup>11</sup> Using the dates of June 1987 and May 2018, the Minister arrived at 31 years (GD4-7). Even if those dates were correct, there would still be 32 years in the Contributor's contributory period. This is because the contributory period includes whole and partial years. In other words, June 1987 to December 1987 counts as one year, and January 2018 to May 2018 counts as one year. See section 44(3)(a) of the *Canada Pension Plan*.

<sup>12</sup> See *Canada (Minister of Human Resources Development) v Skoric*, [2000] 3 FC, 2000 CanLII 17109 (FCA) at paragraph 39.

<sup>13</sup> See GD2-16.

<sup>14</sup> See GD5 and GD6.

[24] At the hearing, the Appellant’s representative (his son) argued that denying the Appellant a survivor’s pension breached his Charter rights. I explained that I could not consider whether his Charter rights were breached because there are critical steps that must be followed for a Charter appeal. Those steps are set out in section 1 of the *Social Security Tribunal Regulations, 2022*. The Appellant didn’t follow those steps because he abandoned his Charter argument earlier in the appeal process.

[25] The Appellant’s representative then turned his attention to Charter values. He believes that Charter values mean section 49 of the *Canada Pension Plan* should be interpreted so that the contributory period for immigrants to Canada (like M. W.) starts when they immigrate and not before.

[26] The relevant portion of section 49 says: “The contributory period of a contributor is the period commencing January 1, 1966 or when he reaches eighteen years of age, whichever is the later ....” To put this in context, section 44(1)(d) says a contributor must have made sufficient contributions for their minimum qualifying period to qualify their survivor for the survivor’s pension. Section 44(3) defines the minimum qualifying period by referring to the contributory period. Section 49 defines the contributory period.

[27] If M. W.’s contributory period started when she immigrated in September 2004, then her contributory period would include 15 whole or partial years. One-third of 15 is 5 years. She contributed for five years. So, if I take the Appellant’s approach, he would qualify for a survivor’s pension.

## **The Appellant’s argument about Charter values can’t succeed**

### **– What Charter values are**

[28] Charter values are related to Charter rights, but they are not the same. Charter rights are explicitly set out in the text of the Charter. Charter values are not. Rather, they are the values that underpin each Charter right and give it meaning.<sup>15</sup> They “cannot be broader than, undercut or do an end run around” the scope of Charter rights.<sup>16</sup>

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<sup>15</sup> See *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at paragraph 36.

<sup>16</sup> See *Sullivan v Canada (Attorney General)*, 2024 FCA 7 at paragraph 11.

[29] One example of a Charter right is the right of Canadian citizens to enter, remain in, and leave Canada. Another example is the right to be secure against unreasonable search or seizure.<sup>17</sup>

[30] Examples of Charter values include liberty, human dignity, equality, autonomy, and the enhancement of democracy.<sup>18</sup>

– **When tribunals must consider Charter values**

[31] Tribunals (administrative decision-makers) must consider Charter values whenever they are interpreting statutes that give them discretion (the ability to decide between options), even if those statutes appear to be clear and unambiguous. The consideration of Charter values should be part of statutory interpretation even if there has been no breach of a Charter right.<sup>19</sup>

– **Why Charter values don't help the Appellant**

[32] Charter values don't help the Appellant for several reasons.

[33] First and most importantly, section 49 leaves me no room for discretion. So Charter values don't apply. According to the Federal Court of Appeal, "Charter values cannot be used to invalidate legislative provisions that administrative decision-makers must follow."<sup>20</sup> Applying the text of section 49 inevitably leads to the result that M. W.'s contributory period started in June 1987. This is so even though she didn't immigrate to Canada until September 2004. The text doesn't make an exception based on where she was born or when she immigrated to Canada.

[34] The Appellant relies on a case called *Re Rizzo and Rizzo Shoes Ltd* to argue that statutes should not be interpreted in a way that leads to an absurd result.<sup>21</sup> In his opinion, it is absurd that he doesn't qualify for a survivor's pension based on M. W.'s

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<sup>17</sup> See sections 6(1) and 8 of the *Canadian Charter of Rights and Freedoms*.

<sup>18</sup> See *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at paragraph 88.

<sup>19</sup> See *Commission scolaire francophone des Territoires du Nord-Ouest v Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31 at paragraphs 76 and 77. See also *Doré v Barreau du Québec*, 2012 SCC 12.

<sup>20</sup> See *Sullivan v Canada (Attorney General)*, 2024 FCA 7 at paragraph 12.

<sup>21</sup> See *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at paragraph 27.

inability to contribute to the CPP before she immigrated to Canada. He says this result is absurd because it is inconsistent with the purpose of the CPP. He says the purpose of the CPP is to give people benefits based on their attachment to Canada, and that it is part of Canada's social safety net.

[35] I disagree with the Appellant's characterization of the CPP's purpose. The Supreme Court of Canada explains the CPP's purpose like this:<sup>22</sup>

The CPP was designed to provide social insurance for Canadians who experience a loss of earnings owing to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which Parliament has defined both the benefits and the terms of entitlement, including the level and duration of an applicant's financial contribution.

[36] Given that the CPP is a contributory plan with strict rules for entitlement to benefits, I find that it is **not** absurd that only some people qualify for CPP benefits while others (like the Appellant) do not. My interpretation of section 49 is consistent with its text, its context within the *Canada Pension Plan*, and the purpose of the CPP.

[37] Second, the Appellant didn't clearly identify **what** Charter values he believes are relevant to his case.

[38] Perhaps he is arguing that the Charter value of equality is engaged here—he believes that the law treats immigrants and native-born Canadians differently.

[39] But this brings me to the third problem: "all Charter arguments, whether based on rights, freedoms or values[,] must be supported by a rich evidentiary record."<sup>23</sup> In my opinion, the Appellant hasn't provided the sort of evidence that is required to support an argument based on Charter values. All he has done is assert that the outcome for him should be different because M. W. could not contribute to the CPP until she immigrated to Canada.

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<sup>22</sup> See *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28 at paragraph 9.

<sup>23</sup> See *Sullivan v Canada (Attorney General)*, 2024 FCA 7 at paragraph 8.

[40] Lastly, I note that the Tribunal recently considered a Charter argument much like the one the Appellant is making here, although the Appellant is relying on Charter values instead of Charter rights. The Tribunal in that case dismissed the appeal.<sup>24</sup> While I am not relying on that case to dismiss the Appellant's appeal, I think it is important for the Appellant to know that the case exists.

### **I can't consider the Appellant's financial or health situation**

[41] The Appellant wants me to consider his financial and health situation when I decide his appeal.

[42] I must follow the law. This means I can't allow the appeal just because I want to help the Appellant in difficult circumstances. I can't ignore the contribution requirements.<sup>25</sup>

### **A final comment**

[43] The Minister's submissions argue that this appeal had no reasonable chance of success, so it should have been summarily dismissed (without a hearing) under section 53(1) of the *Department of Employment and Social Development Act*.<sup>26</sup> That section was repealed in December 2022 and is no longer part of the law. The law now requires the Tribunal to hold a hearing even if an appeal has no reasonable chance of success.

### **Conclusion**

[44] I find that the Appellant isn't eligible for a CPP survivor's pension.

[45] This means the appeal is dismissed.

James Beaton  
Member, General Division – Income Security Section

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<sup>24</sup> See *BH v Minister (Employment and Social Development)*, 2025 SST 1032.

<sup>25</sup> See *Miter v Canada (Attorney General)*, 2017 FC 262.

<sup>26</sup> See GD4-2 and 8.