



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DS v Minister of Employment and Social Development and LS*, 2020 SST 821

Tribunal File Number: GP-19-1199

BETWEEN:

**D. S.**

Father (Claimant)

and

**Minister of Employment and Social Development**

Minister

and

**L. S.**

Mother (Added Party)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Connie Dyck

Claimant represented by: Julia Sibbald

Teleconference hearing on: August 19, 2020

Date of decision: August 23, 2020

## DECISION

[1] The Claimant (D. S.) is entitled to receive the Disabled Contributor's Child's Benefit (DCCB) on behalf of his child (D. J.) from January 2018 onward.

### Overview

[2] The Claimant (Father) and the Added Party (Mother) are divorced. They have a son together. In March 2016, the Mother was granted the DCCB benefit on behalf of her son. In November 2018, the Mother told the Minister that her son was living with his father who had custody and control.<sup>1</sup> The Father filed a DCCB on behalf of his son in December 2018. It was approved by the Minister and the benefit became payable to the Father in December 2018.

[3] The Father appealed this decision because he said he had custody and care of his son from January 2018 and this is when the benefit should have been payable to him. The Minister changed their decision and decided that the Father was not entitled to any DCCB benefit payment, but the Mother should have been in pay for this benefit the entire time. The Minister said that "as a result of a recent administrative policy change... benefits are payable to the disabled contributor when they have any relationship with the child, no matter how minimal."<sup>2</sup> The Minister reinstated pay of the DCCB benefit to the Mother. The Father appealed the decision to the Social Security Tribunal (Tribunal).

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<sup>1</sup> The telephone record is at GD 2-33.

<sup>2</sup> The Minister's reconsideration decision is at GD 2-16.

## ISSUE

[4] I must decide:

- If the DCCB is payable to the Father; and
- If yes, when does the DCCB become payable to the Father.

### **The meaning of “custody and control”**

[5] The primary issue in this appeal is which parent has custody and control of the child. The Canada Pension Plan (CPP) says that<sup>3</sup> where the DCCB is payable to a child who is under eighteen years of age, payment is to be made to the person having custody and control of the child.<sup>4</sup> The law states that, except where the child is living apart from him or her, the disabled contributor shall be presumed, in the absence of any evidence to the contrary, to be the person having custody and control of the child. However, in this case, the child is not living with the disabled contributor.

[6] The CPP does not define “custody and control”. However, there is case law regarding the interpretation of the term “custody and control”. In *Abbott v. Abbott* 2001 BCSC 232, Justice Pitfield stated:

“In the narrow sense of the word, "custody" means physical care and control or day to day care and control of a child. In the broad sense of the word, "custody" means all of the rights and obligations associated with physical, day to day care and control of a child as well as the right and obligation to nurture the child by ensuring, providing for, and making decisions in relation to, a child's physical and emotional health, education, religious or spiritual development, and all other matters that affect the

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<sup>3</sup> This is found in Paragraph 44(1)(e) of the CPP.

<sup>4</sup> This is at Section 75 of the CPP.

welfare of the child. See *Anson v. Anson* (1987), 10 B.C.L.R. (2d) 357 (C.C.B.C.).

[7] I also considered what the Pension Appeals Board (PAB) said about “control” of a child.<sup>5</sup> The PAB found that the parent who took responsibility for the child’s maintenance, schooling, sports and recreation, and who was financially responsible for the child’s welfare, retained “control” of the child. The PAB’s approach supports the argument that, in determining “control” of a child for the purposes of determining entitlement to benefits warrants a broader approach.

### **The evidence shows the Father has custody and control of the child**

[8] A person must meet both criteria – custody and control – to receive the DCCB on behalf of a child. The Minister said they followed a departmental policy when reinstating payment of the DCCB to the Mother. According to the Minister, the policy says the DCCB is payable to the disabled contributor when he/she applies for the benefit and informs the Department they have any custody and control of their child.<sup>6</sup> Benefits remain payable to the disabled contributor when they have a relationship with the child, no matter how minimal.<sup>7</sup> The Minister relied on the Questionnaire completed by the Mother wherein she indicated she has a form of custody and control of the child.<sup>8</sup>

[9] However, the Tribunal is not bound by the departmental policies of the Minister. The Tribunal is bound by the CPP. In question three of the Questionnaire, which the Minister relied on, the Mother said that her son was living with his father “100% and we visit when possible” and that her son was in the custody and control of his father on a full time basis. However, in question four, she said she has custody/control/influence

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<sup>5</sup> The PAB decision is called *Minister of Human Resources Development v. Warren* (December 10, 2001), CP 14995 (PAB). The decisions of the PAB are not binding on me, but provide guidance.

<sup>6</sup> This is at GD 6-2.

<sup>7</sup> The Minister’s decision is at GD 2-16.

<sup>8</sup> This Questionnaire is at GD 2-18.

over her child. I found the questions in the Questionnaire to be very confusing and asked the Mother to clarify what she meant by her answers. She explained what she considered to be “custody/control/influence” over her child.

[10] The Mother told me that she moved out of the home in mid-December 2017 and went to live with her sister in another town, which was between 20-50 miles away. There was conflicting evidence as to the exact distance. I find the exact distance is not important. The evidence is that the Claimant lived a distance away from her son that would require the use of a car. The Mother said she had no car and her son did not have a car. Her son was reliant on his father to borrow him the car. Therefore, they were only able to see each other a maximum of twice per month. She also said that her son was busy with school, work, a girlfriend and Cadets and he did not have a lot of time for her.

[11] However, in her Questionnaire, she said, “we communicate daily and speak about each other’s lives in detail”.<sup>9</sup> I asked her for further details about this statement. She told me that she still had influence over her son in schooling and extra-curricular activities. By “influence,” she meant they discussed what was going on in his life and she helped him make decisions things such as secondary schooling. However, when questioned further, she explained that she was not aware of what was going on in her son’s life because the Father would not allow her to communicate with her son. She also said her son did not explain things to her, such as his involvement in Cadets, because he was “struggling” and felt like he was “in the middle”. She said she did not take her son to Cadets because the Father had already arranged transportation for him.

[12] The Mother said that once her son got a vehicle, they would get together for coffee if she had appointments nearby or they would walk her dog. He did come to her town occasionally for dinner.

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<sup>9</sup> This is at GD 2-18.

[13] I have no reason to doubt the Mother's testimony. However, I do not see it as evidence of custody and control as defined by the Courts. Having some contact with a child and getting together occasionally is not "custody and control".

[14] I also gave considerable weight to the statements provided by the Mother to the Minister. She advised the Minister by phone in November 2018, that she was not the primary caregiver of her son since she moved to another place. The Minister also acknowledged in a letter to the Father dated November 19, 2018 that "We understand that you have care and custody of this child."<sup>10</sup> This understanding is based on information provided to the Minister by the Mother.

[15] As decided by the Courts, custody means the obligations associated with the physical, day to day care of the child. Control, as defined by the Pension Appeals Board, is held by the parent who is responsible for the child's maintenance, schooling, sports and recreation and financially response for the child's welfare, retained control of the child.<sup>11</sup> The Mother stated in a letter to the Tribunal that she was not providing any financial support for the child. She stated that she was using the DCCB money to survive until the marital property issues in the divorce were finalized.<sup>12</sup>

[16] Based on the testimony of the Mother, the Father provided his son with the use of his car; he arranged transportation to extra-curricular activities; he was financially responsible for providing the daily needs (food and shelter) for his son. This supports that the Father had "control" of the child.

[17] On the balance of probabilities, I found the evidence supports that the Father has custody and control of the child.

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<sup>10</sup> This letter is at GD 2-34.

<sup>11</sup> Minister of Human Resources Development v. Warren (December 10, 2001), CP 14995 (PAB).

<sup>12</sup> This information is at GD 4-1.

## **The Father's custody and control of the child began in January 2018**

[18] The parties have provided different dates when the Father gained custody and control.

[19] The Mother provided conflicting evidence as to when the Father's custody and control began. In a telephone call with the Minister's representative in November 2018, she said it was in July 2018 "since she moved to another place". However, at the hearing she said she moved out of the marital home in December 2017. She also said in her Questionnaire that she stopped residing with the child in December 2017.<sup>13</sup> I don't think it was the intention of the Mother to purposely provide conflicting information. I say this because in the Affidavit provided by the Father, the Mother said she "eventually moved out of the matrimonial home in November 2017 and removed all of my personal belongings in July 2018".<sup>14</sup> It is reasonable that she considered the day she moved her personal belongings out of the house, as the day she moved out.

[20] However, residence in the same home as the child or a different home, is not the deciding factor determining "custody and control". Whether she moved out of the house in December 2017 or July 2018, is not the issue before me. I must decide when custody and control started for the Father. I find no evidence to support that the Mother had custody and control past December 2017. Based on her testimony, there was no financial support provided by her to her son and minimal contact between her and her son between January 2018 and the months afterwards. Since January 2018, the Father was solely responsible for the daily needs (shelter and food) of the child, as well as financial support. He also was responsible for the child's extra-curricular activities in Cadets as well as ensuring he had transportation.

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<sup>13</sup> This information is at GD 2-18.

<sup>14</sup> This information is at GD 2-24.

[21] Based on this evidence, I find that the Father has had custody and control of the child since January 2018.

**CONCLUSION**

[22] The DCCB is payable to the Father for the child from January 2018 onward.

[23] The appeal is allowed.

Connie Dyck  
Member, General Division - Income Security