



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *JM v Minister of Employment and Social Development*, 2021 SST 853

Tribunal File Number: GP-21-1309

BETWEEN:

J. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: George Tsakalis

DATE OF DECISION: November 29, 2021

DECISION

[1] I am summarily dismissing the Claimant's appeal. These reasons explain why.

OVERVIEW

[2] The Claimant, J. M., was born in 1960.¹ He became disabled under the CPP in October 2007.² His former spouse applied for a division of unadjusted pensionable earnings (DUPE) in November 2020.³ A DUPE involves a division of pension credits for the years where couples were married or cohabiting in a common-law relationship.

[3] The Minister of Employment and Social Development (the Minister) allowed the spouse's DUPE application. The DUPE took effect as of December 2020. This resulted in a reduction in the Claimant's CPP disability benefits.

[4] The Claimant disagreed with the Minister's decision. He asked the Minister to allow him to receive his full CPP disability pension until he turned 65. The Minister refused to do so. The Claimant appealed the Minister's decision to the Social Security Tribunal of Canada (the Tribunal).

[5] The Claimant made the following arguments:

- a) The Minister's decision is unfair. He suffers from post-traumatic stress disorder and recently developed a heart problem that requires surgery. The Claimant finds himself in difficult financial circumstances. The reduction in his disability benefits will affect his ability to care for himself.
- b) If his former spouse had waited until 65 years to receive CPP, he would not have had his benefit reduced. He feels that he has been treated unfairly. If he had been single and never married, he would not have had his CPP disability benefits reduced.⁴

¹ See GD2-6

² See GD3-3

³ See GD2-36-39

⁴ See GD1-5

ANALYSIS

[6] I must summarily dismiss an appeal if it has no reasonable chance of success.⁵ An appeal has no reasonable chance of success where it is plain and obvious on the record that the appeal is bound to fail.⁶

I must summarily dismiss this appeal

[7] I must summarily dismiss this appeal because it has no reasonable chance of success. The Minister properly applied the DUPE and properly calculated the monthly amount of the Claimant's CPP disability pension after applying the DUPE.

[8] I gave the Claimant notice in writing of my intent to summarily dismiss this appeal as required by section 22 of the *Social Security Tribunal Regulations*. I did not receive further submissions from the Claimant. However, the Claimant made submissions when he asked the Minister to reconsider its decision.⁷ He also made submissions when he appealed the Minister's decision to the Tribunal.⁸

[9] After reviewing the Claimant's submissions, I find the Minister properly applied the DUPE and properly calculated the monthly amount of the Claimant's CPP disability pension after applying the DUPE.

[10] The evidence shows the Claimant's former spouse applied for a DUPE in November 2020.⁹

[11] The CPP provides for a DUPE for the years during which separated married or former common-law partners cohabited.¹⁰ A DUPE involves an equal division of pension credits between two parties during their cohabitation period.¹¹

⁵ See subsection 53(1) of the *Department of Employment and Social Development Act*

⁶ See *The Estate of J.B. v. Minister of Employment and Social Development*, 2018 SST 564

⁷ See GD2-31

⁸ See GD1-5

⁹ See GD2-36-39

¹⁰ See subsection 55.1(4) of the CPP

¹¹ See subsection 55.2(5) of the CPP

[12] The *CPP Regulations* show how pension credits are split during a cohabitation period.¹² The *CPP Regulations* say that the cohabitation period starts with the first month of the year in which the parties marriage was solemnized or in which they started cohabiting in a conjugal relationship.¹³

[13] The *CPP Regulations* say that parties are considered to not have cohabited at any time during the year in which they were divorced, or their marriage annulled or in which they started to live separate and apart.¹⁴

[14] The Claimant and his former spouse married in 1983.¹⁵ That means the cohabitation period for the purposes of a DUPE started in 1983.

[15] The Claimant and his former spouse separated in 2011.¹⁶ That means the cohabitation period for the purposes of a DUPE ended in 2010.

[16] The Minister therefore properly awarded the Claimant's former spouse a DUPE for the years 1983 to 2010.

[17] The Claimant's former spouse receiving a DUPE affected the amount of the Claimant's CPP disability pension.¹⁷ This is because a CPP disability pension is based on the Claimant's average monthly pensionable earnings plus a fixed amount.¹⁸ The DUPE reduced the Claimant's CPP disability pension payments because it reduced the amount of the Claimant's average monthly pensionable earnings.

[18] The Minister reduced the Claimant's CPP disability pension from \$1,316.19 per month to \$1,115.08 per month in December 2020. Starting in April 2021, the Claimant will receive \$1,126.23 per month in CPP disability benefits, as opposed to \$1,329.35 per month.

¹² See subsection 78.1(1) of the *CPP Regulations*

¹³ See paragraph 78.1(1)(a) of the *CPP Regulations*

¹⁴ See paragraph 78.1(1)(b) of the *CPP Regulations*

¹⁵ See GD2-42

¹⁶ See GD2-38

¹⁷ See subsection 55.2(9) of the *CPP*

¹⁸ See section 56 of the *CPP*

[19] The Minister provided detailed calculations as to how it recalculated the Claimant's monthly CPP disability benefits.¹⁹ I do not see any errors in the Minister's calculations. The Claimant did not point out any specific calculation after I invited him to make submissions.²⁰

[20] The Claimant feels the Minister's decision is unfair. However, the Tribunal is created by law. This means the Tribunal has to apply the rules set out in the CPP.²¹ I find the Minister applied the rules set out in the CPP when it awarded the DUPE and reduced the Claimant's monthly CPP disability pension.

CONCLUSION

[21] The appeal has no reasonable chance of success. It is plain and obvious on the record that the appeal is bound to fail.

[22] This means the appeal is summarily dismissed.

George Tsakalis
Member, General Division - Income Security

¹⁹ See GD3

²⁰ See GD4

²¹ See *R. v. Conway*, 2010 SCC 22