



Citation: *Minister of Employment and Social Development v AR*, 2023 SST 1279

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Ian McRobbie

Respondent: A. R.
Representative: I. R.

Decision under appeal: General Division decision dated December 28, 2022
(GP-21-615)

Tribunal member: Neil Nawaz

Type of hearing: Videoconference
Hearing date: September 8, 2023
Hearing participants: Appellant's representative
Respondent's representative

Decision date: September 15, 2023
File number: AD-23-297

Decision

[1] I am allowing this appeal. The Respondent has not been a full-time student since he turned 18. That means he is not entitled to a Canada Pension Plan (CPP) disabled contributor's child's benefit (DCCB).

Overview

[2] The Respondent has autism and severe obsessive-compulsive disorder. When he was a child, his mother became disabled. As result, he started receiving the DCCB from the Minister of Employment and Social Development (Minister).

[3] The Respondent turned 18 in April 2019. Under the CPP, that meant he could receive the DCCB only if he was in school or university full-time.

[4] In October 2020, the Respondent applied for the DCCB for the 2018–19, 2019–20, and 2020–21 school years. The Minister refused the application after finding that the Respondent was not a full-time school or university student during the periods in question.

[5] The Respondent appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by videoconference and allowed the appeal in part. It found that the Respondent wasn't a full-time student during the 2018–19 school year. However, it found that, although he was absent for most of 2019–20 and 2020–21, he was nevertheless a full-time student during those school years.

[6] The Minister then asked the Appeal Division for permission to appeal. Among other things, she alleged that the General Division made a legal error by ignoring a section of the *Canada Pension Plan Regulations* (CPPR) requiring DCCB applicants to provide a declaration from a school or university certifying their full-time attendance.

[7] In March, one of my colleagues on the Appeal Division granted the Minister permission to appeal. Earlier this month, I held a hearing to discuss the Minister's allegations in full.

[8] Now that I have considered submissions from both parties, I have concluded that the Respondent was not entitled to the DCCB after his 18th birthday.

Preliminary Matter

[9] On December 5, 2022, the law governing the appeals to the Social Security Tribunal changed.¹ Under the new law, the Appeal Division, once it has granted permission to proceed, must now hold a *de novo*, or fresh, hearing about the same issues that were before the General Division. As I explained at the outset of the hearing, that meant I would not be bound by any of the General Division's findings. I also made it clear that I would be considering all available evidence, including new evidence, about the Respondent's entitlement to the DCCB.

Issues

[10] In this appeal, I had to decide the following questions:

- What do DCCB claimants need to prove that they are full-time students under the law?
- Was the Respondent a full-time student after he turned 18?

Analysis

[11] I have applied the law to the available evidence and concluded that the Respondent was not a full-time student for any of the 2018–19, 2019–20, and 2020–21 school years. According to the CPPR, the Respondent had to file a declaration certifying his full-time enrollment in a school or university. He did not do so, and none of his other evidence indicated full-time enrollment either.

¹ See section 58.3 of the *Department of Employment and Social Development Act*. This appeal is subject to the new law, because the Minister's application for permission to appeal was filed with the Tribunal on March 24, 2023, after the new law came into force.

The CPP requires full-time attendance at school

[12] A child of a disabled CPP contributor can receive the DCCB only if they are between the ages of 18 and 25 and “in full-time attendance at a school or university.”²

[13] The CPP doesn’t say what “full-time attendance” means, but section 67 of the CPPR sets out what is needed to prove it:

An applicant or beneficiary shall, in support of his claim that a dependent child of 18 or more years of age

- (a) is or has been enrolled in a course requiring full-time attendance at a school or university, file with the Minister a declaration signed by a responsible officer of the institution, certifying to such enrolment; and
- (b) is or has been for a period of time in full-time attendance at a school or university, file with the Minister a declaration of such attendance signed by the child.³

[14] This means that DCCB claimants must provide declarations from themselves and from their educational institution saying that they are a full-time student.

– A law’s meaning depends on its text, context, and purpose

[15] The Minister argues that whether a claimant is attending school or university full-time depends on the two declarations set out in section 67 of the CPPR. She maintains that, without a school or university’s declaration of full-time attendance, a claimant can’t be deemed a dependent child after 18 and would no longer be eligible for the benefits designed for dependent children.

[16] The Respondent disagrees. He argues that his failure to provide a school declaration should not decide the matter. He says that the Tribunal can look beyond the

² See CPP, sections 42(1) and 44(1)(f). Section 42(1), which defines the term “dependent child.” A dependent child includes a child of a contributor who is (a) under 18; (b) between 18 and 25 and attends school or university full-time; or (c) over 18 and disabled. It must be noted that section 42 also contains a definition for “disabled contributor’s child” that encompasses the definition for “dependent child” while **specifically excluding** a child described in paragraph (c).

³ See CPPR, section 67.

absence of such a declaration and make their own determination about a claimant's status based on testimony and other written evidence.

[17] When interpreting the law around the DCCB, I have to follow some guiding principles:

- If the words in the legislation are clear, then I must give significant weight to the ordinary meaning of those words;⁴
- I have to take a close look close look at the legislation's text, context, and purpose;⁵ and
- I must interpret the legislation generously and in a way that is most compatible with what it was designed to do.⁶

[18] According to the Supreme Court of Canada, the words of a statute must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."⁷

– Text: The wording of section 67 suggests that a declaration full-time attendance is essential

[19] A plain reading of the text of section 67 of the CPPR indicates that a dependent child over the age of 18 requires two things to receive an DCCB:

- A declaration from their school or university certifying their full-time attendance; and
- A declaration from the child certifying their full-time attendance at the school or university.⁸

[20] There are several things to note about the wording of this provision:

⁴ See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

⁵ See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).

⁶ See section 12 of the *Interpretation Act*.

⁷ See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).

⁸ See section 67 of the CPPR.

- It does not ask for an open-ended description of the child’s status at the school or university, but for a specific declaration confirming the child’s **full-time** enrollment;
- It says that an applicant or beneficiary “shall” file the above declarations with the Minister; it does not say “may” file or “can” file; and
- It uses the word “and” rather than “or” to separate the items, suggesting that both are required.

[21] The construction of section 67 suggests that a claimant who wants to receive the DCCB has no choice but to provide a document from their school confirming their “full-time” attendance—or words to that effect.

– **Context: The CPPR permits supplementary evidence about school attendance**

[22] At first glance, the CPPR’s requirement to show full-time enrollment is strict. Section 67 says that DCCB claimants need to produce declarations from themselves and from their school—but nothing more.

[23] Can decision-makers look at other evidence beside these two documents? Another provision in the CPPR suggests that they can.

[24] Section 52 of the CPPR sets out the information and evidence that is required by all CPP claimants. It sets out a long list of items that claimants, where applicable, “**shall**” furnish in writing when requested to do so by the Minister. One those items acknowledges the CPP’s requirement that dependent children over the age of 18 be full-time students:

- (j) where a dependent child of the disabled or deceased contributor is 18 or more years of age, whether that child is and has been in full-time attendance at a school or university;

[25] The list ends with a discretionary item that solicits other evidence relevant to the preceding items:

- (n) such additional documents, statements or records that are in the possession of the applicant or beneficiary or are obtainable by him that will assist the Minister in ascertaining the accuracy of the information and evidence referred to in paragraphs (a) to (m).

[26] Between them, these two items permit DCCB claimants to file **any** evidence that will “assist the Minister in ascertaining the accuracy” of whether a child over the age of 18 “has been in full-time attendance at a school or university.” Such evidence potentially goes beyond the two declarations listed in section 67 and, in my view, could include material that calls into question the accuracy or integrity of a school or university’s declaration of attendance. However, nothing in section 52 relieves the claimant from having to provide the declaration in the first place.

– Purpose: The DCCB is meant to support the education of children between 18 and 25 whose parent has lost their income through disability

[27] The CPP is a contributory scheme that provides certain benefits to people who have paid into it or who qualify based on specific criteria.⁹ It is not a social welfare regime that provides benefits to all. The CPP’s viability and affordability depend on limiting who qualifies. It is Parliament’s job to pass legislation that defines those limits, and it is my job to interpret what that legislation means.

[28] The DCCB and the similar orphan’s benefit were intended to provide a measure of monetary support to children of disabled or deceased CPP contributors. If the recipient remains in school or university full-time between the ages of 18 and 25, the benefits continue to help defray fees and other costs that would have been otherwise paid for by the disabled or deceased contributor.

[29] As benefits-conferring legislation, the CPP must be interpreted in a way that is consistent with its purpose. The purpose of the DCCB and the orphan’s benefit is furthered if the Minister has an accurate, objective, and efficient process to verify that the child of a disabled or deceased contributor is in fact pursuing their education past

⁹ The courts have described the purposes of the CPP in *Granovsky v Canada (Minister of Employment and Immigration)*, 2000 SCC 28 and *Miceli-Riggins v Canada (Attorney General)*, 2013 FCA 158.

the age of 18. In that light, it makes sense that Parliament would want the Minister or any other authorized decision-maker to rely in part on a certification from the educational institution itself. It is also clear that Parliament did not intend such a certification to be the final word on whether a claimant is in full-time attendance—hence the right in section 52 to submit supplementary evidence about the declaration.

– I disagree with *Attewell* and the cases that follow it

[30] As far as I can tell, the courts have never ruled on what it takes to prove full-time attendance at a school or university. There is a decision called *Attewell*, which considered section 67 in the 1990s.¹⁰ Since it was issued by the Pension Appeals Board (PAB), a predecessor of this Tribunal, I am not bound by it.

[31] More than that, I don't find it persuasive. *Attewell* involved a claimant for the CPP orphan's benefit who enrolled in what sounds like a drawn-out high school equivalency program.¹¹ The evidence showed that he was in class between two and eight fours per week. He was unable to produce a declaration or certificate of full-time attendance from his school and instead pointed to a remark from one of his teachers in his report card: "Good attendance." Despite that, the PAB found that the claimant was entitled to the orphan's benefit, dismissing the formal requirements of section 67 as a "procedural, rather than substantive," matter.

[32] I disagree. The two declarations required by section 67 are essential to a finding of full-time attendance at a school or university, which are in turn essential to a finding of entitlement to the orphan's benefit or the DCCB. Decision-makers don't have the right to dispense with those declarations, particularly the school or university's certification of full-time attendance. Decision-makers do have the right to consider evidence beyond

¹⁰ See *Minister of Human Resources Development v Attewell* (January 15, 1999), CP 9435. *Attewell* has since been cited a number of times to justify dispensing with the need for a declaration from a school or university certifying the applicant's full-time attendance. See, among others, the SST General Division cases *L.M. v Minister of Employment and Social Development*, 2021 SST 220; *V.B. v Minister of Employment and Social Development*, 2019 SST 419; and *S.E. v Minister of Employment and Social Development*, 2015 SSTGDIS 118.

¹¹ Like the DCCB, the orphan's benefit requires applicants between the ages of 18 and 25 to show that they are "dependent children" attending school or university on a full-time basis.

the two declarations but only if, in accordance with section 52(n) of the CPPR, that evidence “will assist the Minister in ascertaining [their] accuracy.”

[33] The CPPR is constructed to force decision-makers to rely on the two declarations set out in section 67. Those declarations may be called into question by supplemental evidence, but nothing in the regulations relieves claimants from having to provide the two declarations in the first place. *Attewell*, which does not appear to have been informed by the appropriate principles of statutory interpretation, skirted the meaning and intent of the CPP’s rules for determining full-time student status.

The Respondent was not a full-time student

[34] The Respondent and his parents argue that he was a full-time secondary student in the two years after he turned 18. They have filed written evidence supporting this position and, although the Respondent did not appear before the Appeal Division, his parents did. They testified that, although their son struggled to stay in class, he was nonetheless enrolled in school.

– The Respondent did not provide a declaration from his school

[35] As noted, one of the essential requirements of proving full-time attendance at a school or university is a declaration to that effect signed by a responsible officer of the institution.

[36] The Respondent failed to provide such a declaration for any year after his 18th birthday. The file contains several Service Canada forms entitled, “Declaration of Attendance at School or University.” Most of them were partly filled out, with only the first two sections completed and signed by the Respondent, with the third, to be completed by the school or university, left blank.¹²

[37] The file does contain one fully completed form, but it does not fulfill the CPPR’s requirements. On June 21, 2019, the principal of X declared that the Respondent was a

¹² See Declarations of Attendance at School or University dated August 11, 2020 (GD2-32) and October 5, 2020 (GD2-18).

full-time student, but he did so more than two months before the beginning of the school year. He added, "A. will begin with us in September 2019."¹³

[38] However, section 67(a) of the CPPR requires the responsible officer of a school or university to certify that a dependent child "**is or has been** enrolled in a course requiring full-time attendance [emphasis added]." Use of the present and past tenses in this provision suggests that a declaration about a possible **future** enrollment is not enough to prove that a claimant over 18 remains a dependent child.

– The Respondent's other evidence does not demonstrate full-time attendance

[39] The Respondent's claim must fail because he did not provide a declaration from a school or university that fulfilled the requirements of section 69(a) of the CPPR. But even if he had provided such a declaration, he would still not be entitled to the DCCB, because none of his remaining evidence showed that he ever actually attended school on a full-time basis:

- The Respondent was placed on an individualized education program in March 2017,¹⁴ but this occurred well before his 18th birthday and had little relevance to whether attended school full-time after April 2019.
- The Respondent lived in a group home from August 2018 to February 2019, but there is no evidence it involved schooling and, in any event, he left it before he turned 18.
- The Respondent was the subject of a plan of care developed while he was at the group home, but it merely said that it had been "decided" that he would attend school in September 2018, not that he actually did so.¹⁵

¹³ See Declaration of Attendance at School or University date stamped June 28, 2019, GD2-56.

¹⁴ See undated documents from the Y School Board (GD4-2) and X School (GD4-3).

¹⁵ See plan of care from L covering the period from August 9 2018 to September 9 2019, AD12-2.

- The Respondent was approved for alternative transportation to and from the X school for 2018–19,¹⁶ but this approval falls short of showing that he actually attended school full-time during any part of that school year.

[40] The Respondent’s mother and father outlined what their son was doing after he turned 18, but their testimony only confirmed that he spent very little time in school. The Respondent attended a group home for most of the 2018–19 academic year and, while he was registered for school, never actually attended classes after he returned home in early 2019.

[41] The Respondent was registered for school for the 2019–20 academic year but left early. Although the school accommodated the Respondent—it let him come to school in the afternoon because he couldn’t sleep at night—he was unable to attend classes for more than an hour a day. Even with this accommodation, the Respondent stopped going to school on September 25, 2019.¹⁷

[42] There is no record of the Respondent being registered for school in the 2020–21 academic year, although his mother testified that he did attend for one day.¹⁸ She also said that online learning was not a realistic option for the Respondent, because he needed personal instruction.

– The Respondent’s non-attendance at school did not qualify as an absence under the CPPR

[43] Section 66 of the CPPR says that a dependent child who is absent because of illness can still be considered a full-time student if they meet these requirements:

- They were in school full-time at the beginning of an academic year;
- They became absent or could not go back to school full-time because of their illness;

¹⁶ See letter dated July 2018 from Z Student Transportation Services, AD11-2.

¹⁷ See email dated May 26, 2022 from C. B., principal of X School, GD13-1.

¹⁸ Refer to recording of Appeal Division hearing at 35:00. See also student’s Declaration of Attendance at School or University date stamped October 7, 2020, GD2-19.

- Right after their illness, they went back to school full-time in the same academic year; and
- If they could not go back to school full-time in the same academic year, they went back to school full-time in the “next ensuing academic year.”¹⁹

[44] Do these provisions allow the Respondent to be deemed a full-time student despite his absence from school? In my view, they do not. First, there is no evidence to show that he was in fact a full-time student at the beginning of any academic year. Second, there is no evidence to show that he resumed school in the same academic year or the next ensuing academic year.

[45] As the Minister rightly notes, section 66 of the CPPR is intended to account for unforeseen circumstances in a full-time student’s studies, such as an accident or some other interruption due to illness. It is not intended to allow individuals with a pre-existing disability to briefly attend school, only to have them fail because of that disability, but then nevertheless be deemed a full-time student for the entire year.

[46] The fact that the orphan’s benefit and DCCB are reserved for full-time students is significant. When Parliament amended the CPP in 1974, it excluded claimants over the age of 18—including those with pre-existing disabilities—from obtaining the DCCB unless they could attend school full-time.²⁰ If Parliament had wanted to set a lower standard for disabled individuals who, by reason of their disability, are only able to attend school part-time, then it would have done so. Allowing such individuals to be deemed full-time students for the entire year based on only a fleeting presence in school goes against the context in which section 66 was drafted and enacted.

Conclusion

[47] This is a difficult case. The Respondent’s parents plainly did everything possible to keep their son in school, but it wasn’t enough to qualify him for the DCCB after he

¹⁹ See CPPR, section 66(2).

²⁰ See Minister’s submissions: *An Act to Amend the Canada Pension Plan*, 1974 s 23 (AD6-17) and House of Commons Committees, 29th Parliament, 2nd Session: Standing Committee on Health, Welfare and Social Affairs, Volume 1, Issue 9, Appendix O, in particular, paragraph 17 (AD6-21).

turned 18. That is because he failed to produce a declaration of full-time attendance from school for any of the 2018–19, 2019–20, or 2020–21 school years, as required by section 67 of the CPPR.

[48] In the absence of such a declaration, I didn't have to consider the Respondent's other evidence. I did so anyway, but none of it suggested that the Respondent was in fact attending school on a full-time basis after he turned 18. Nor could he claim that his non-attendance somehow qualified as absences under section 66 of the CPPR.

[49] For these reasons, the appeal is allowed.



Member, Appeal Division