



Citation: *HK and MK v Minister of Employment and Social Development*, 2023 SST 431

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

Decision

Appellants: H. K.
M. K.

Added Party: M. K.

Representative: M. K. (for H. K.)

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decisions dated June 15, 2022 (issued by
Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing dates: March 2, 2023
March 23, 2023

Hearing participants: Appellants

Decision date: April 21, 2023

File numbers: GP-22-1195
GP-22-1182

Decision

[1] The appeals are dismissed.

[2] The Appellants, H. K. and M. K., aren't eligible for the disabled contributor's child benefit (DCCB). This decision explains why I am dismissing the appeals.

Overview

– What this decision is about

[3] This decision is about two appeals. In one appeal (GP-22-1195), H. K. is the Appellant, and M. K. is an Added Party as well as the Appellant's representative. In the other appeal (GP-22-1182), M. K. is the Appellant. H. K. is M. K.'s son. These appeals were joined and heard together.

– The disabled contributor's child benefit, or DCCB

[4] The DCCB is a monthly payment that is payable to the child of a parent who is getting a Canada Pension Plan (CPP) disability pension. To get the DCCB, the child must be under 18 years old, or between 18 and 25 years old and in full-time attendance at school. This includes attendance at a college or university.¹

– M. K.'s DCCB application

[5] M. K. applied for a CPP disability pension on April 20, 2010.² The Minister of Employment and Social Development (Minister) approved the application and started paying M. K. a disability pension.

[6] When an applicant applies for a disability pension, the application asks them if they have:

- a child born after December 31, 1958
- custody and control of a child under the age of 18

¹ See sections 42(1) and 44(1)(e) of the *Canada Pension Plan*.

² See GD2-48.

[7] If the applicant says yes to either of these questions, then the Minister knows that the applicant might be eligible for the DCCB.

[8] In M. K.'s disability pension application, he indicated that he **did not** have a child born after December 31, 1958, nor did he have custody and control of a child under the age of 18.³ But this was incorrect. His son H. K. was born in August 2001. His other son, U. K., was born in May 2000.⁴

[9] Eventually, M. K. applied for the DCCB on H. K. and U. K.'s behalf. The Minister received M. K.'s application on April 1, 2022.⁵ The earliest the DCCB could have been paid was May 2021 (11 months earlier).⁶ At that time, H. K. and U. K. were both over 18 years old. The law says that the child of a disabled contributor must make **their own** application for the DCCB if they are over 18 years old.⁷ So the Minister refused M. K.'s application. M. K. asked the Minister to reconsider. The Minister maintained its decision.

[10] M. K. says he should get the DCCB for the following reasons:

- English is his second language. He didn't understand the disability pension application form when he filled it out.
- The Minister didn't process M. K.'s disability pension application correctly. Alternatively, the Minister gave M. K. wrong advice or failed to give him advice about the DCCB.
- M. K. didn't know about the DCCB before.
- M. K. needs the money.
- M. K. lacked the capacity to form or express the intention to apply for the DCCB before. He says he was depressed and had a head injury.⁸

³ See GD2-49.

⁴ See GDJ2-11.

⁵ See GDJ2-12.

⁶ The Minister's submissions about M. K.'s appeal are at GD7.

⁷ See sections 74(1) and 75 of the *Canada Pension Plan*.

⁸ See GD1-4 and 9; GD9; and GDJ1-3 and 7.

– H. K.’s DCCB application

[11] H. K. applied for the DCCB himself on March 14, 2022.⁹ The Minister refused his application. H. K. asked the Minister to reconsider. The Minister maintained its decision. The Minister says the earliest the DCCB could be paid was 11 months before the Minister received the application.¹⁰ This means the earliest H. K. could be paid was April 2021. At that time, H. K. was 19 years old and not in full-time attendance at school.¹¹ So he wasn’t eligible for the DCCB.

[12] However, the law says a child can be **deemed** to be in school full-time if they stopped attending school “by reason of” (because of) an illness. I will call this the “illness rule.”¹² Neither the Appellants nor the Minister argued that H. K. stopped attending school because of an illness. However, there was evidence in the file that suggested H. K. stopped attending school because of anxiety.¹³ So I asked H. K. about his attendance at school and his health. I also asked the Minister for submissions (arguments) on this issue. I received the Minister’s submissions on April 20, 2023.¹⁴

[13] Apart from his illness, H. K. says he should get the DCCB for the same reasons that M. K. gave.¹⁵

Reasons for my decision

[14] The Appellants’ arguments can’t succeed. I will explain why by addressing each argument separately.

[15] First, I can’t allow an appeal because H. K. made a mistake when he applied for the disability pension. I accept that he might not have understood the form when he filled it out, since English is his second language. But that doesn’t change when his

⁹ See GD2-24.

¹⁰ The Minister’s submissions about H. K.’s appeal are at GD6 and GD14.

¹¹ See GD2-25.

¹² See sections 66(2) and (3) of the *Canada Pension Plan Regulations*.

¹³ See the Certificate of Illness at GD2-17.

¹⁴ See GD14.

¹⁵ See GD1-4 and 9; GD9; and GDJ1-3 and 7.

DCCB application was received. It also doesn't change the fact that H. K. was over 18, meaning that he had to apply, not M. K.

[16] Second, the Tribunal doesn't have the jurisdiction (authority) to decide whether the Minister made an administrative error or gave wrong advice.¹⁶ The Appellants would have to make those arguments directly to Service Canada (which represents the Minister). They would have to ask Service Canada to investigate. If they disagree with the outcome of that investigation, they could appeal that decision to the Federal Court of Canada through a process called "judicial review."

[17] Third, I can't allow an appeal because the Appellants didn't know about a benefit. Applicants are expected to make themselves aware of the benefits for which they might be eligible.¹⁷ I must make my decision based **only** on whether the Appellants met the legal requirements for the DCCB at the relevant time.

[18] Fourth, eligibility for the DCCB isn't based on financial need. Being in financial need doesn't help or hurt a person's application for the DCCB. I can't consider financial need when I make my decision. I can't allow an appeal based on compassionate or humanitarian grounds.¹⁸

[19] Fifth, M. K.'s argument about incapacity doesn't apply here.

[20] Normally, a person isn't entitled to a benefit earlier than 11 months before they applied for it. The *Canada Pension Plan* makes an exception to this rule. The exception is called the "incapacity rule." If the incapacity rule applies, a person's application is deemed (considered) to have been made earlier than it actually was. In that case, the applicant may be entitled to earlier benefit payments. The incapacity rule applies if a person was incapable of forming or expressing an intention to make an application earlier than they did.¹⁹

¹⁶ See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278; and *Pincombe v Canada (Attorney General)*, [1995] FCJ 1320.

¹⁷ See *Lee v Canada (Attorney General)*, 2011 FC 689.

¹⁸ See *Miter v Canada (Attorney General)*, 2017 FC 262.

¹⁹ See sections 60(8) and (9) of the *Canada Pension Plan*.

[21] However, the Federal Court of Appeal says the incapacity rule **does not** apply to the DCCB. It only applies to some benefits under the *Canada Pension Plan*, and the DCCB isn't one of them.²⁰ I must follow what the Federal Court of Appeal says.

– **The illness rule doesn't help H. K. qualify for the DCCB**

[22] Finally, the illness rule doesn't help H. K. H. K. started attending college full-time in September 2020. He stopped attending in November or December 2020. He didn't go back for the next semester, which would have started in January. He started a different program at a different college in September 2022.²¹

[23] H. K. wasn't attending school between April 2021 (11 months before his application was received) and March 2022 (when his application was received). He could be deemed to have been in school if he meets certain requirements. One of those is that he stopped attending school because of an illness.

[24] H. K. had an illness (anxiety) but that wasn't why he stopped attending school.

[25] He testified that he had no symptoms of anxiety when he started the college program in September 2020. Gradually, he developed more symptoms (panic attacks, shortness of breath, and hot flashes). He stopped attending in November or December 2020.

[26] He gave two reasons why he stopped attending school:

- He had severe symptoms of anxiety.
- When he started the program, classes were online, not in person. Later in the semester, more classes were transitioned to an in-person format. He lives far away from the college. He was losing interest in the program. He wasn't motivated to attend the in-person classes.

[27] It isn't enough for H. K. to have stopped attending school **while having** an illness. The illness must have been the **determinative** (causal or decisive) reason why

²⁰ See *Robbins v Canada (Attorney General)*, 2010 FCA 85.

²¹ See the hearing recording.

he stopped attending, and also the reason why he didn't start attending again earlier than he did.

[28] This is because the law (specifically section 66 of the *Canada Pension Plan Regulations*) uses the words "by reason of" to describe the relationship between a child's illness and their absence from school.²² I understand these words to mean the same thing as "because of." These words support a strong cause-and-effect relationship: illness is the cause and absence from school is the effect.

[29] This interpretation is consistent with the ordinary meaning of the words and their context within the *Canada Pension Plan*.²³ It is consistent with the purpose of the DCCB, which is "to provide financial assistance to the dependent children of a disabled contributor that the contributor would otherwise have provided if they were able to work."²⁴

[30] In other words, a child's illness can't be used to **qualify** a child for the DCCB in the first place. (It is ultimately the disabled contributor's disability that makes it possible for a child to get the DCCB.) I believe the illness rule in section 66 is meant to ensure that a child's illness doesn't cause a child to **stop** qualifying for the DCCB either. But if a child stops qualifying for the DCCB for some reason other than illness (like leaving school to change academic programs or work), section 66 doesn't allow the child to continue qualifying.

[31] In this case, I find that H. K.'s lack of motivation to attend in-person classes was the main reason for his absence from school. Put another way: if classes had remained online and he had still been interested in the program, I believe that he would have kept attending despite having some anxiety symptoms. Several factors led me to this conclusion.

²² The French version of the law uses the words "pour des raisons de maladie" and "à cause de la maladie."

²³ I must interpret the words of the law "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." See *Re Rizzo & Rizzo Shoes Ltd*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at paragraph 21.

²⁴ See *MM v KM and Minister (Employment and Social Development)*, 2022 SST 575 at paragraph 48.

[32] First, H. K. didn't see his family doctor, Dr. Arif, about anxiety until October 2021—about a year after he stopped attending school.²⁵

[33] Second, H. K.'s symptoms don't appear to have been significant even at that time. Dr. Arif referred H. K. to a psychiatrist, Dr. Bottas. At H. K.'s first appointment with Dr. Bottas in November 2021, Dr. Bottas wrote:

- H. K.'s medical history was “unremarkable.”
- H. K. described his current symptoms as worry and overthinking.
- H. K. didn't have social anxiety. Dr. Bottas didn't mention panic attacks, shortness of breath, or hot flashes in her notes.
- H. K.'s symptoms weren't “debilitating.” They didn't cause “significant functional impairment.”
- H. K.'s symptoms didn't warrant medication, but he could participate in therapy if he wanted to.²⁶

[34] Furthermore, when describing H. K.'s background, Dr. Bottas noted that he started attending college, “but did not continue. He has now applied to some other programs that he thinks might be better suited to him.” (In fact, H. K. testified that he began applying for other programs in early 2021. He didn't start attending in the September 2021 term because he didn't get into his desired program.) It is significant that Dr. Bottas didn't draw a connection between his symptoms and his decision to stop attending college.

[35] In the follow-up report from Dr. Bottas in February 2022, she wrote that H. K.'s anxiety was “very well under control” without medication, and he was working part-time.²⁷ Based on H. K.'s testimony, I understand that he was working at a grocery store. He continued working there for three or four months, and eventually worked full-time before leaving that job.

²⁵ See the hearing recording.

²⁶ See GD2-20 to 22.

²⁷ See GD2-18 and 19.

[36] I acknowledge that Dr. Arif completed a Certificate of Illness for H. K. on March 15, 2022.²⁸ Dr. Arif stated that H. K.'s illness (generalized anxiety) started in October 2020 and that he would probably return to school in August 2022. I don't give this Certificate any weight. Dr. Arif didn't see H. K. until October 2021. So he wasn't in a position to actually observe H. K. around the time that he stopped attending school.

[37] In conclusion, H. K. might have felt anxious in 2021, but that isn't why he stopped attending school.

– **U. K. didn't apply for the DCCB**

[38] At the hearing, M. K. asked why I didn't ask about U. K.'s attendance at school. M. K. says his DCCB application was on behalf of both H. K. and U. K. He provided a copy of U. K.'s request for reconsideration of the Minister's decision.²⁹ He asked me to make a decision about U. K.'s eligibility for the DCCB.

[39] The reason I didn't consider U. K.'s attendance at school, or his eligibility for the DCCB, is because M. K.'s appeal can't succeed even if U. K. attended school. As I explained earlier, M. K. could not apply for the DCCB on U. K.'s behalf when he did. U. K. was already 18 years old when the Minister got M. K.'s application. That means U. K. had to apply on his own.

[40] It appears that he did this, the Minister refused his application, and he asked the Minister to reconsider. But U. K. didn't appeal the Minister's reconsideration decision to the Tribunal. H. K. did. That is why I considered H. K.'s attendance at school, but not U. K.'s.

²⁸ See GD2-17.

²⁹ See GD11.

Conclusion

[41] The Appellants aren't eligible for the DCCB.

[42] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section