



Citation: *BL v Minister of Employment and Social Development*, 2023 SST 1667

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

# **Decision**

**Appellant:** B. L.

**Respondent:** Minister of Employment and Social Development

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

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**Tribunal member:** Brianne Shalland-Bennett

**Type of hearing:** Videoconference

**Hearing date:** November 14, 2023

**Hearing participants:** Appellant

**Decision date:** November 20, 2023

**File number:** GP-23-1322

## Decision

[1] The appeal is allowed.

[2] The Appellant, B. L., is entitled to the disabled contributor's child benefit (DCCB) under the Canada Pension Plan (CPP) for his grandchildren, A. K., and O. K.

[3] This decision explains why I am allowing the appeal.

## Overview

[4] The Appellant is receiving a CPP disability benefit. He applied for the DCCB on August 9, 2021, on behalf of his grandchildren, A. K., and O. K.

[5] The Minister of Employment and Social Development (the Minister) denied his application. So, he appealed the Minister's decision to the Social Security Tribunal's General Division.

[6] The Minister says the Appellant's grandchildren aren't eligible for the DCCB. The Appellant has a kinship care agreement with an agency. His grandchildren are wards of the agency. They are not his dependent children. They can't get the DCCB because he doesn't have custody and control of them.<sup>1</sup>

[7] The Appellant agrees that his grandchildren are wards of the agency, but he says he has had custody and control of them since he picked them up in 2015.

## What the Appellant must prove

[8] The DCCB is a benefit that is paid under certain circumstances for each child of a person getting a CPP disability benefit.<sup>2</sup>

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<sup>1</sup> See GD5.

<sup>2</sup> See section 44(1)(e) of the *Canada Pension Plan*.

[9] The person getting the disability benefit is called a contributor. A child of a contributor includes an individual of whom the contributor has custody and control, either legally or in fact.<sup>3</sup>

[10] If the child hasn't reached 18 years of age, the DCCB goes to a person or agency who has custody and control of a child.<sup>4</sup>

[11] For the Appellant to succeed, he must show he has custody and control of his grandchildren. If he proves this, it will mean they are each his "child" under the *Canada Pension Plan*. Because they are under 18 years old, it will also mean the DCCB is paid to him on their behalf.

### **What custody and control means**

[12] The *Canada Pension Plan* and the *Canada Pension Plan Regulations* don't define custody and control.<sup>5</sup>

[13] The Tribunal has previously accepted the definitions below of custody and control:<sup>6</sup> I agree with these decisions.

[14] Custody means physical care and control or day-to-day care and control of a child. That includes the rights and obligations associated with physical daily care and control of a child. It also includes 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 welfare of the child."<sup>7</sup>

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<sup>3</sup> See section 42(1) of the *Canada Pension Plan*.

<sup>4</sup> See section 75 of the *Canada Pension Plan*.

<sup>5</sup> I must look at the ordinary meaning of the words, how other cases have defined these words, and related statutory provisions to understand the word's meaning.

<sup>6</sup> For example, see how "custody" and "control" are defined in *MM v KM and Minister of Employment and Social Development*, 2022 SST 575 and *RO v Minister of Employment and Social Development and RM*, 2021 SST 240.

<sup>7</sup> See *Abbott v Abbott*, 2001 BCSC 232.

[15] Control is retained by the person who is responsible for the child's maintenance, schooling, and participation in sports, and who is financially responsible for the child's welfare.<sup>8</sup>

### The purpose of the DCCB

[16] Both the Minister and I agree that the DCCB is intended to help with the costs connected to providing care to the child of a disabled contributor.<sup>9</sup>

[17] The Minister says the Appellant doesn't have **legal** custody of A. K., and O. K. The agency does. For that reason, it says the Appellant doesn't meet the eligibility requirements to get the DCCB.

[18] I disagree.

[19] Legal custody and control over a child aren't enough of a reason to give a person or agency the DCCB. Factual custody is the critical factor in deciding who should be getting the benefit. This means, who is **actually** taking care of the child, and not who has **legal** control of the child.<sup>10</sup> As noted above, the definition of "child" says that custody and control can be "either legally or in fact."<sup>11</sup>

[20] A recent case at the Appeal Division of the Tribunal agrees. The case says the DCCB is to benefit the child of a disabled contributor. The purpose of the DCCB shows the person with custody and control is the person who is most intimately knowledgeable about the child's needs. This is the person who feeds them, puts a roof over their head, and takes care of their day-to-day needs. It makes no sense to give the benefit to a parent or agency with only the thinnest of custodial rights.<sup>12</sup>

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<sup>8</sup> See *Minister of Human Resources Development v Warren* (December 10, 2001) CP 14995 (PAB).

<sup>9</sup> See GD5-4.

<sup>10</sup> See *KM v Minister of Employment and Social Development and MM*, 2021 SST 693.

<sup>11</sup> See section 42(1) of the *Canada Pension Plan*.

<sup>12</sup> See *MM v KM and Minister of Employment and Social Development*, 2022 SST 575.

## Reasons for my decision

[21] I find the Appellant has custody and control of his grandchildren. They are his children, as defined in the *Canada Pension Plan*. He is entitled to be paid the DCCB on their behalf.

[22] The Appellant says he picked up the children in 2015. This is because his daughter lost custody of them because of her substance abuse disorder.

[23] The agency confirms the children are its wards. It also confirms the Appellant has been the primary caregiver for A. K., and O. K. since July 2015.<sup>13</sup> The Appellant confirmed they have lived with him since.

[24] The Appellant said when he picked up his grandchildren, he made sure they had their own bedrooms and a safe space. He makes sure they are taken care of because of love, family, and culture. Although they are his grandchildren, he calls them his children. His only concern is that they grow up with love and care. He says he is going to stick with them until they find their way in life. He says:

- He and his wife make sure they are fed.
- He got them their Metis Nation cards.
- He takes them fishing and hunting.
- He teaches them their cultural ways.
- He takes them to swimming and gymnastics.
- He monitors and controls any interaction they may have with their mother.

[25] The Appellant says the agency isn't involved in the children's day-to-day care. They provide the Appellant with a social assistance payment to help with the children's daily needs.<sup>14</sup> If the children want to do a certain activity or program, he sees if they can access it through the agency. If not, he will find and fund it himself. He explained he usually goes above what is given to him by the agency for the children out-of-pocket.

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<sup>13</sup> See GD2-14, GD2-42, and GD5-6.

<sup>14</sup> See GD6-2.

[26] The Appellant says he and his wife make the decisions for the children. This includes making sure the children attend and participate in school.<sup>15</sup>

[27] The Appellant says he makes sure the children get medical care. A. K. has a hearing impairment. So, the Appellant makes sure he gets the care he needs. This includes going to speech therapy, meetings, and taking him to Toronto to get implants. They also make sure O. K. has medical care and a family doctor.<sup>16</sup>

[28] The evidence shows the Appellant has custody and control of A. K., and O. K. He is the most knowledgeable about A. K., and O. K.'s needs.<sup>17</sup> He is responsible for their physical and emotional well-being. He is responsible for their day-to-day living, extracurricular activities, schooling, spiritual development, and all other parts of their development.

## **Conclusion**

[29] I find the Appellant is eligible for a DCCB for his grandchildren, A. K., and O. K. This is because he has custody and control of them.

[30] This means the appeal is allowed.

Brianne Shalland-Bennett  
Member, General Division – Income Security Section

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<sup>15</sup> See GD1-9 to 10, GD1-12, and GD2-16 to 17.

<sup>16</sup> See GD1-11 and GD1-13.

<sup>17</sup> I acknowledge the Appellant works with his wife to care for the children.