



Citation: *The Estate of HR v Minister of Employment and Social Development*, 2023 SST 1804

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** The Estate of H. R.

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

---

**Decision under appeal:** General Division decision dated November 7, 2023  
(GP-23-894)

---

**Tribunal member:** Kate Sellar

**Decision date:** December 15, 2023

**File number:** AD-23-1026

## Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed to the next step. These are the reasons for my decision.

## Overview

[2] The Applicant is the estate of H. R. (contributor), as represented by her father. The contributor was a self-employed professional with a private practice in clinical psychology.

[3] On January 5, 2023, the Minister of Employment and Social Development (Minister) received a form, “Medical Report for a Canada Pension Plan Disability Benefit” completed by Dr. Irrinki and dated December 22, 2022.<sup>1</sup> The medical report confirmed that the contributor had pancreatic cancer. She was 39 years of age, and her condition was grave.

[4] The contributor died on January 7, 2023.

[5] The Minister acknowledged receipt of the medical report on January 9, 2023.<sup>2</sup> The Minister asked the contributor to send the disability benefit application form within 30 days of receiving the letter.<sup>3</sup> The letter did **not** explain that an estate cannot apply for a disability benefit after the contributor's death.

[6] The Minister received a form from the contributor's estate, the “Terminal Illness Application for Disability Benefits Under the Canada Pension Plan” on January 27, 2023. It appears that her father sent the application after the contributor's death but within the 30-day deadline<sup>4</sup>.

---

<sup>1</sup> See GD2-78.

<sup>2</sup> GD2-40.

<sup>3</sup> See GD2-40.

<sup>4</sup> See GD2-21 to 33.

[7] The Minister refused the application initially and on reconsideration. The Minister explained that it cannot approve an application received after a contributor's death, regardless of the date it was completed and signed.

[8] The estate does not take the position that the medical report constituted an application for the disability pension. Instead, the estate clarifies that the application was for "terminal illness benefits" not the CPP disability pension. The estate argues that the CPP allows the Minister to accept a terminal illness benefits application from an estate if it is received within 12 months of contributor's death.

## **Issues**

[9] The issues in this appeal are:

- a) Does the application raise an arguable case that the General Division made an error of law by finding that the contributor's application could not be accepted even though it was completed by the estate after her death?
- b) Does the application set out evidence that wasn't presented to the General Division?

## **I am not giving the estate permission to appeal**

[10] I can give the estate permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or

- made an error applying the law to the facts.<sup>5</sup>

[11] I can also give the estate permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>6</sup>

[12] Since the estate hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

**There is no arguable case for an error of law about the estate's ability to apply after the contributor died.**

[13] The estate argues that properly interpreted, the CPP allows the Minister to pay benefits to an estate if the estate makes an application within 12 months after the death of the contributor.<sup>7</sup> The exception to that rule allowing estates to make applications is only for post-retirement disability benefits or disability pension benefits where the application is received after 1997.<sup>8</sup> The estate argues that since the application for the contributor is for a terminal illness benefit, the exceptions don't apply, and the Minister can accept the application from the estate.

[14] The estate hasn't raised an arguable case for an error of law. The estate is correct that the CPP allows for payment in some cases when estates make applications within 12 months of the contributor's death. However, the exception to that rule applies here. The estate applied for a disability pension, and disability pension applications cannot be made by an estate. There is no such thing as a terminal illness benefit that is in any way separate and apart from a disability pension under the CPP. There is no reference whatsoever to a separate benefit called a terminal illness benefit under the CPP or its regulations.

[15] Service Canada has a form called the "Terminal Illness Application for Disability Benefits Under the Canada Pension Plan." If the Minister receives and approves this application, the contributor is eligible for a disability pension under the CPP from the

---

<sup>5</sup> See sections 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

<sup>6</sup> See section 58.1(c) in the Act.

<sup>7</sup> See section 60(2) in the *Canada Pension Plan* (CPP).

<sup>8</sup> See section 60(2.1) in the CPP.

date the disability became severe and prolonged until the month the contributor dies or turns 65.

[16] The form begins with information and instructions explaining that applications from people with a terminal medical condition receive priority handling, and that the goal is for Service Canada to decide the application within five business days.<sup>9</sup> The application goes on to explain how to qualify for the disability pension. The form refers to the requirements in terms of age, contributions, and the need to show that there is a disability that is severe and prolonged within the meaning of the CPP.

[17] In other words, a terminal illness application form is a faster route for applying for a disability pension under the CPP. The estate's argument that there is a terminal illness benefit, and that it is "designed to be a short-term vehicle for financial relief and is not to be considered a pension" has no basis in the CPP or its regulations. If the Terminal Illness Application had been completed and approved before the contributor died, she may have received the CPP disability pension backdated to the date of onset of her disability, and those benefits would have continued monthly until she died.

[18] I cannot grant the estate permission to appeal based on the argument that the General Division misunderstood the way a terminal illness application works under the CPP.

### **The estate did not set out new evidence.**

[19] The estate did not set out new evidence that wasn't presented to the General Division, so that cannot form a reason for granting permission to appeal.

### **Final notes**

[20] I have reviewed this appeal closely and considered whether the General Division may have ignored or misunderstood any other evidence that could result in an error of fact.<sup>10</sup> The estate pointed out regrettable errors in the overview that I have not

---

<sup>9</sup> See GD2-13.

<sup>10</sup> The Federal Court discusses the need for this type of review in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

reproduced here. Those errors don't rise to the threshold of an arguable case. I am satisfied that there is no arguable case for an error of fact that the estate failed to raise.

[21] The Minister received significant medical information about the contributor mere days before she died. The medical evidence shows that the contributor had pancreatic cancer and that her doctor recommended that she stop working in the summer of 2022. She had sufficient contributions to establish a coverage period. She was only 39 years of age, and she had a grave illness.

[22] The Minister did not have a completed application form before the contributor died. An application can be date protected to when the Minister receives a medical report, but the Minister still requires the signed application prior to the contributor's death.<sup>11</sup> And while the Minister has a separate form meant to hasten processing of disability pensions for people with terminal illness, the CPP does not allow estates to make disability pension applications on the terminal illness form after the contributor dies.

[23] As a decision-maker, I must follow the law as it is written, and as I understand it. I fully acknowledge and endorse that the estate's inability to apply for a disability pension on behalf of the deceased contributor in this matter is a difficult outcome. I say this because of the content of the Medical Report in strong support of the contributor's application, and because it seems to me that the nature of her illness and treatment would likely have contributed to the delay in applying.

[24] This family assisted the contributor financially during a period of grave illness. Allowing estates to make the application after the terminally ill contributor has died would afford families dealing with terminal illness the simple courtesy of something they lacked with their loved one: time.

---

<sup>11</sup> See GD4, paragraph 11.

## **Conclusion**

[25] I refuse the estate permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division