



Citation: *SS v Minister of Employment and Social Development*, 2026 SST 180

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: S. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 30, 2024 (issued by
Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Videoconference

Hearing date: February 12, 2026

Hearing participants: Appellant
Respondent's representative

Decision date: March 11, 2026

File number: GP-25-580

Decision

[1] The appeal is dismissed.

[2] The Appellant, S. S., isn't eligible for Canada Pension Plan (CPP) disabled contributor's child's benefit (DCCB) payments before May 2023 in respect of her second child.

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

Overview

[4] The Appellant is 51 years old. She began receiving a CPP disability pension in September 2008, because she is epileptic and has cerebral palsy. She also began receiving the DCCB for her daughter who was born in 2007, at the time her pension was approved.

[5] The Appellant applied for an additional DCCB for her second child, born in July 2015. She submitted her application for this benefit to the Minister of Employment and Social Development (Minister) on April 29, 2024.

[6] The Minister approved the Appellant's second DCCB in June 2024. The effective date for payment of the benefit was May 2023.¹

[7] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division (Tribunal) because she wants her payments to begin earlier.

[8] Throughout the appeal process, the Appellant based her appeal on the issue of financial hardship. She said she didn't apply for the DCCB earlier in error.² She provided extensive documents about her financial situation. She also made written submissions

¹ See GD2R-24.

² See GD1-68.

before the hearing that the Minister should have known that she had a second child and automatically enrolled her child for the DCCB after she was born.

[9] At the hearing, the Appellant made a further argument that she was incapacitated and could not apply for the DCCB earlier than she did. She gave no notice to the Minister or the Tribunal that she would be raising these additional significant grounds for her appeal. She had no explanation for not raising the incapacity argument at any point before the hearing.

[10] The Minister says that the law doesn't allow the Appellant's payments to start earlier than May 2023. There is an exception to this rule in the law. It's called the incapacity rule. This is the rule that the Appellant is now relying on in support of her appeal.

[11] The Appellant says she meets the requirements of the incapacity rule. She says she has been incapacitated her entire life because of her epilepsy and seizures. She says she could not have applied for a DCCB at an earlier date.

What the Appellant must prove

[12] DCCB payments can't start earlier than 11 months before a person applies for them.³

[13] If a person meets the requirements of the incapacity rule, their application will be treated as if it was made earlier than it was. In that case, the payments would start earlier.

[14] For the Appellant to succeed, she must prove that the incapacity rule applies to her. This means she must prove that she was incapable of forming or expressing an intention to apply for the DCCB before April 2024. She must also prove that her incapacity was continuous.⁴

³ See sections 74(2) of the *Canada Pension Plan*.

⁴ See sections 60(8), (9), and (10) of the *Canada Pension Plan*.

[15] The Appellant must prove this on a balance of probabilities. This means she must show that it is more likely than not to be true.

Matters I have to consider first

I can't consider the Appellant's financial hardship

[16] The Appellant asked me to use the principle of equity to order more than the maximum amount of retroactive DCCB payments available under the law. Equity is a legal concept that can be applied to rules to reach a fair result.

[17] This Tribunal doesn't have the powers of equity. This means I can't ignore what the law says because I want to help the Appellant, or because I sympathize with her situation. I must follow what the law says.

The law requires an appellant to submit an application

[18] The Appellant argued that the Minister should have known she had a second child and automatically enrolled her second child for the DCCB.⁵

[19] The law says that no benefit is payable to a person unless an application for the benefit has been made by them, or on their behalf.⁶ This means that the Appellant's argument that the Minister should have started the DCCB without an application isn't one I can accept.

Reasons for my decision

[20] I find that the incapacity rule doesn't apply to the Appellant. There is no evidence before me that supports that she was incapacitated at any point in time.

The test for incapacity is strict

[21] It isn't easy to prove incapacity. It isn't the same thing as being disabled, or having mental health conditions. It isn't related to a person's inability to regularly work or

⁵ See GD12.

⁶ See section 60(1) of the *Canada Pension Plan*.

hold a steady job. A person with a disability may still be able to form or express the intention to apply for benefits.

[22] Under the test for incapacity, it doesn't matter if the Appellant didn't think about applying for the DCCB, or could not make, prepare, process or complete the application by herself. What matters is if she was able to form or express an intention to apply.⁷

[23] A person's capacity to form or express an intention to apply for a CPP benefit is generally the same as the capacity to form or express an intention to make other decisions in their daily life.⁸

[24] In deciding whether the Appellant met the test for incapacity, I had to consider:

- the Appellant's evidence about her limitations
- any medical, psychological, or other evidence in support of the Appellant's claim for incapacity
- evidence of the Appellant's activities during the period she says she was incapacitated
- what these activities show about the Appellant's capacity to form or express an intention to apply for a DCCB during that period.

[25] There is no medical evidence to support that the Appellant was incapable of forming or expressing an intention to apply for benefits at any point in time. The Appellant's activities also show that she didn't meet the strict test for incapacity.

– **The Appellant's evidence about incapacity**

[26] The Appellant bases her claim for incapacity on her medical conditions. She says she has had epilepsy since she was an infant, and it causes regular seizures that result in incapacity.

⁷ See *Canada (Attorney General) v Danielson*, 2008 FCA 78; *Canada (Attorney General) v Hines*, 2016 FC 112; and *Maloshicky v Canada (Attorney General)*, 2021 FCA 211.

⁸ See *Sedrak v Canada (Social Development)*, 2008 FCA 86; and *Canada (Attorney General) v Kirkland*, 2008 FCA 144.

[27] The Appellant says that her father or her ex-husband made decisions for her all her life. She says her ex-husband paid all the bills in the house and controlled the finances.

– **What the medical evidence says about incapacity**

[28] I find there is no medical evidence to suggest the Appellant was incapacitated at any point in time. There is no medical evidence in the Tribunal file.

[29] The Appellant didn't file any medical evidence as part of her appeal and could not direct me to any medical evidence to support her claim of incapacity. At the hearing, she referenced some medical information in her file. However, the information she referenced was the Minister's summary of medical records she submitted in 2008 as part of her disability pension application.

[30] The Minister's summary of documents isn't medical evidence. However, I will point out that there is no information in the Minister's summary that suggests the Appellant was incapable of forming or expressing an intention in 2008.⁹

– **The Appellant's activities don't show that she was incapacitated**

[31] The Appellant's activities before April 2024 show that she wasn't incapacitated. They show that she was able to form and express intentions.

[32] The Appellant filed documents with the Tribunal to show her financial hardship.

[33] The Appellant is employed and working part-time. She says she felt the urge to go back to work in August 2022. She got a referral to an employment coach at a local community centre. She signed up for and attended employment classes every day for a few months.

[34] The Appellant applied to a job with a store after working with her coach. She sent in her resume and attended an interview. The Appellant said she got the job in July 2024 at the hearing. In her appeal form, she wrote that she got the job in January

⁹ See GD2R-110.

2024.¹⁰ She filed paystubs with her submissions that show she was earning approximately \$350 every two weeks, and by July 2024 she had earned about \$4,250.¹¹ I find that it's likely the Appellant started her job by at least January 2024, based on her earnings.

[35] The Appellant's employment activities before April 2024, including her intention to return to work and her decision to start employment coaching and apply for a job, show that she wasn't incapacitated. The intention to apply for work and show up for work on a regular basis is no different than having an intention to apply for the DCCB.

[36] While the Appellant said that her ex-husband controlled the finances, she told me that she went out and got her own bank account. She can't remember the date she did this, but it was before she separated from her ex-husband in October 2023. She says she got her own bank account because her ex-husband was careless with money and wasted it on his own entertainment.

[37] The Appellant's decision to open her own separate bank account to save money for herself before October 2023 shows that she wasn't incapacitated. Setting an intention to open the account and save money is like being able to set an intention to apply for a benefit.

[38] The Appellant also filed credit card statements to support her claim of financial hardship. These records show that she had a credit card in her own name by at least January 2024.¹² She was making regular monthly payments on her account. This shows that the Appellant applied for a credit card and was managing that account before April 2024, when she applied for the DCCB. It is evidence that she wasn't incapacitated.

¹⁰ See GD1-66.

¹¹ See GD1-33.

¹² See GD1-36.

[39] The Appellant suggested at the hearing that she was incapable of taking care of her children from 2015 to 2023. However, in her appeal form she said that she was responsible for staying home and caring for her children for their entire lives.¹³

[40] The Appellant told me that the school would call her if there was an illness or emergency. This suggests that she is capable of forming and expressing intentions to make decisions and do things in the best interests of her children.

[41] The Appellant filed a copy of her documents in relation to her custody battle. In those documents, she confirmed for the family court that she is solely responsible for the care of her children, including providing consent to their medical treatment, providing parental consent for activities, and for the financial matters related to the household.¹⁴ This evidence is contrary to what the Appellant told me at the hearing, and it shows that the Appellant has capacity to form and express intentions.

[42] The Appellant says that she can go to her medical appointments alone. She says her doctor will break things down for her so she can understand. The fact that the Appellant can make decisions about her medical care and the care of her children shows that she wasn't incapacitated.

[43] The Appellant also confirmed that she has never required a power of attorney or a substitute decision-maker to be appointed on her behalf.

[44] The Appellant's activities before April 2024 show that she wasn't incapacitated. She was able to set intentions to get employment counselling, find and start working at a job, make decisions about her children, and open and manage financial accounts. The Appellant has also been able to consent to her own medical treatment.

[45] This evidence confirms that the Appellant wasn't incapacitated before April 2024.

¹³ See GD1-68.

¹⁴ See GD1-74.

Conclusion

[46] I find that the Appellant isn't eligible to have DCCB payments begin before May 2023 in respect of her second child, because she hasn't proven that she was incapacitated.

[47] This means the appeal is dismissed.

Sarah Sheaves
Member, General Division – Income Security Section