



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v BS*, 2020 SST 1084

Tribunal File Number: AD-20-789

BETWEEN:

Canada Employment Insurance Commission

Appellant

and

B. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: December 29, 2020

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, the Canada Employment Insurance Commission (Commission), paid the Respondent, B. S. (Claimant), a family supplement benefit (FS). This was during a time in early 2018 when she was receiving sickness benefits. In November 2019, the Canada Revenue Agency (CRA) updated the information that it shares with the Commission's system.¹ Based on that update, the Commission reconsidered its earlier decision to pay the FS for the period from February 18, 2018, to May 26, 2018 (the disputed period). The Commission asked the Claimant to repay the \$963.00 she had received as the FS. The Commission did not change this decision when the Claimant asked it to reconsider.

[3] The Claimant appealed to the General Division of the Social Security Tribunal. She stated that her net family income had not changed, so there was no reason she should have lost her entitlement to the FS. She supplied evidence that CRA accepted that her net family income was less than \$25,921.00 in 2017 and 2018. \$25,921.00 is the top of the highest net family income bracket in the table of FS payments (the "FS threshold").²

[4] The General Division allowed the Claimant's appeal. It found that she was entitled to the FS for the disputed period. The Commission is now appealing the General Division decision to the Appeal Division.

[5] The appeal is dismissed. I find that the General Division acted within its jurisdiction and that it did not make an error of law or an important error of fact. The Commission has not

¹ GD3-26.

² *Employment Insurance Regulations*, section 34(5) – see table.

satisfied me that the General Division was required to use the Claimant's 2016 net family income to evaluate her entitlement to the FS.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[6] "Grounds of appeal" are the reasons for the appeal. To allow the appeal, I must find that the General Division made one of these types of errors:³

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something that it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

ISSUES

[7] Did the General Division make an error of law by deciding that the Claimant was entitled to FS based only on her entitlement to the Canada Child Benefit (CCB)?

[8] Did the General Division act outside of its jurisdiction when it reassessed the Claimant's net family income?

[9] Did the General Division make an error of fact by ignoring the 2016 base income?

[10] Did the General Division make an error of law or jurisdiction by considering the Claimant's entitlement to the CCB?

ANALYSIS

Did the General Division fail to apply the complete criteria to assess the FS?

[11] The Commission has argued that the General Division made an error of law. The Commission says that the General Division based its decision that the Claimant was eligible for

³ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

the FS on her eligibility for the CCB. I presume the Commission means that the General Division's decision relied on the Claimant's entitlement to the CCB **alone**.

[12] Section 16 of the *Employment Insurance Act* (EI Act) offers the FS to claimants who have one or more dependent children and who meet the low-income family eligibility criteria. It states that the FS criteria, "are the same or similar to the criteria for receiving a Canada child benefit."⁴ To offer the CCB, CRA must find that the claimant is primarily responsible for at least one child under eighteen. The child(ren) must also be living with the claimant. Therefore, a claimant who is eligible for the CCB already meets the dependent child requirement of section 16 of the EI Act.

[13] The *Employment Insurance Regulations* (Regulations) sets out the "low-income criteria. Section 34(3) of the Regulations states that a claimant is entitled to FS if he or she "is in receipt of a Canada child benefit." The Regulations set out the amount of a claimant's FS entitlement in a table.⁵ FS entitlement varies depending on a few factors. It depends on the number of children and their ages, and on the claimant's net family income. The table identifies the FS threshold as \$25,921.00. This means that the FS payment amount is zero where a claimant's net family income exceeds that \$25,921.00.

[14] The Federal Court of Appeal has confirmed that a claimant's family income must be considered. In *Canada (Attorney General) v Shahid*,⁶ the Court said that, "broadly speaking," a claimant must meet two conditions to establish entitlement to FS benefits. It identified that the claimant must be receiving the Canada Child Tax Benefit (CCTB), as the first condition.⁷ The Court identified the second condition as "the income test", meaning the net family income.

[15] Therefore, the Commission is correct that the General Division must consider the Claimant's net family income. However, the General Division did consider the income test. The General Division did not limit its analysis to consider only the Claimant's eligibility for the

⁴ EI Act, section 16(2).

⁵ The table is found in section 34(5) of the Regulations.

⁶ *Canada (Attorney General) v Shahid*, 2013 FCA 145.

⁷ The CCB replaced the CCTB; however, references to the CCTB continue to appear within the Commission's system screenshots.

CCB. The General Division reviewed the Claimant's net family income. Its net family income findings were important to its decision.

[16] The General Division understood that no FS benefit is payable to a claimant whose net family income is more than \$25,921.00. It found that the Claimant's net family income was below \$25,921.00 for 2018, which includes the disputed period. The General Division found that she met the conditions of section 16 of the EI Act and section 34 of the Regulations. It held that the Claimant she should receive the FS benefits during the disputed period.

[17] The General Division did not hold the Claimant to be entitled to the FS just because she was entitled to the CCB. It also considered her net family income.

Did the General Division Act outside of its jurisdiction when it reassessed the Claimant's net family income?

[18] The Commission argues that the General Division made an error of law or acted outside of its jurisdiction. It asserts that the General Division substituted its view of the Claimant's family income for that of the CRA.

[19] The Commission informed the General Division that its FS decision is "linked" to information provided by CRA. This includes information on the Claimant's net family income.⁸ It explained that CRA does not communicate with the Commission through agents or documentation. The Commission's "system" communicates directly with the CRA database.⁹ When the CRA database shares information with the Commission's system, the Commission's system calculates the FS automatically. In other words, the Commission's FS decision is entirely dependent on the information supplied by CRA. This information would include whether a claimant is entitled to the CCB and information on the claimant's net family income.¹⁰

[20] No one has argued that the General Division should be able to overturn a CRA decision. The Claimant has not disputed that CRA is responsible for making the decision about her

⁸ GD4-3.

⁹ GD16-1.

¹⁰ The FS determination also includes information on the number of children under 18 living with the Claimant. This is one of the display fields on the Commission's screen. There is no dispute about the number of children under 18 at this time.

entitlement to the CCB. The General Division must accept whatever CRA has decided about the Claimant's entitlement to the CCB. It cannot make its own decision about whether the Claimant should be entitled to the CCB.

[21] However, the Commission's main argument is that the General Division is not allowed to re-evaluate the Claimant's net family income. The Commission argues that the net family income is a CRA decision, in the same way that the CCB is a CRA decision. The Commission submits that CRA has determined that the Claimant's net family income is \$52,856.00, using the base year of 2016. CRA used the 2016 net family income to determine that the Claimant was entitled to CCB from July 2017 to June 2018. According to the Commission, the General Division could not find her net family income to be some other amount for the purpose of the FS.

[22] I disagree. The General Division did not have to use the 2016 net family income to calculate her entitlement to FS in 2018.

[23] Whether the Claimant is entitled to the FS, and in what amount, may depend on information from CRA. However, it is still the Commission's job to make the FS decision. I understand that the Commission has effectively given the decision over to an automated system. That system pulls information from the CRA database and calculates the FS. However, the Commission remains responsible for the FS decision even if it has automated the process. Likewise, the General Division may still review the basis for the FS decision.

[24] I accept that the General Division did not have the authority to interfere with CRA's determination on the amount of the net family income for 2016. However, the General Division did not reach a different decision on the Claimant's net family income for 2016. It did not recalculate the Claimant's 2016 net family income. In fact, it did not use it at all. Instead, the General Division used the Claimant's net family income that related to the disputed period.

[25] I am not even satisfied that the Commission relied on the 2016 base year net family income for its original decision to pay FS to the Claimant. CRA notified the Claimant that it had calculated her CCB based on 2016 base year net family income of \$52,856.00.¹¹ This was in a notice dated August 20, 2018. Apparently, the Commission also received some sort of update in

¹¹ GD21-14,15.

in September 2018.¹² Presumably, CRA was aware of its own net family income assessment for 2016 at the time it updated the Commission. However, the Commission stated that it had found the Claimant to be **eligible** based on that September 2018 update from CRA. The Commission says that the CRA update triggered its decision to pay the Claimant the FS benefit for the disputed period.

[26] To make the FS decision, the Commission's system only needed to pull information from the CRA on two things. It needed information on the Claimant's entitlement to the CCB. It also needed information confirming that her net family income did not exceed the FS threshold.

[27] However, the 2018 CRA notice reveals that the Claimant's 2016 net family income was much higher than the FS threshold. That level of income may have been acceptable for CCB purposes but it should have been too high to trigger payment of the FS. The Commission has not suggested that its system malfunctioned. That leaves open the possibility that the Commission did not pull in 2016 net family income for its first FS eligibility decision. It may have relied on other net family income information from CRA.

[28] If the Commission did not rely on CRA's assessment of the Claimant's 2016 net family income to find her eligible in September 2018, then it is unlikely that it disqualified her in November 2019 based on the same information.

[29] Regardless, the FS decision is a separate decision from CRA's CCB decision. CRA used the 2016 net family income as the "base year" to calculate the Claimant's CCB for the July 2018 to June 2019. The Commission claims that its system uses the same net family income to calculate FS eligibility. However, none of this means that the General Division must use the 2016 net family income when it reviews the Claimant's entitlement to FS for a period in 2018.

[30] The General Division did not act outside of its jurisdiction to determine the Claimant's net family income. The General Division had evidence of the Claimant's net family income for each of 2016, 2017, and 2018 from CRA notices sent to the Claimant. CRA calculated the Claimant's net family income for 2017 at \$12,001.00, and confirmed that her net family income in 2018 was \$8,851.00. The General Division did not reach a decision on the Claimant's net

¹² GD4-1.

family income that was independent of CRA. It adopted CRA's determination of the net family income for 2018.

[31] In this case, the Claimant gave the General Division better income information for 2018 than what the Commission used for its decision. It was not an error for the General Division to use the best evidence available, rather than the older 2016 "base year" information.

Did the General Division make an important error of fact by failing to consider the 2016 base year net family income?

[32] The Commission also argues that the General Division failed to consider evidence of the Claimant's net family income in the 2016 base year. The General Division did not use the 2016 net family income when it determined that the Claimant was eligible for the FS.

[33] The General Division was aware that CRA had found the Claimant's 2016 net family income to be \$52,856.00.¹³ As I have already discussed, CRA originally used this figure to determine the Claimant's CCB eligibility.

[34] However, the General Division had no obligation to bring the 2016 net family income into its analysis of FS entitlement for a period in 2018. All of the 2016, 2017, and 2018 net family incomes were sourced from CRA. They are equally reliable **for the periods to which they relate.**

[35] If there is no better evidence, net family income from other years may sometimes stand in for net family income in the FS entitlement period. But CRA's assessment of the 2018 net family income is the best indicator of CRA's view of the Claimant's net family income in 2018.

[36] The General Division did not make an important error of fact by failing to consider the 2016 base year net family income.

¹³ General Division decision, para 19.

Did the General Division make an error when it considered the Claimant's entitlement to the CCB?

[37] For the Claimant to have been entitled to the FS in the disputed period, she would have had to be entitled to the CCB for the same period.

[38] The Commission's arguments to the Appeal Division did not directly challenge the General Division's determination that the Claimant had been entitled to the CCB in the disputed period. The Commission said only that it is "set law that the eligibility and calculation of the Family Supplement is linked with the CCB information that the CRA has."

[39] However, it is possible that the Commission meant to raise the issue in its application for leave to appeal. I presume that the Commission's argument would still centre around the General Division's jurisdiction. The CCB is a CRA decision, and CRA decisions are immune to challenge by the General Division. At the same time, the Commission seems to be suggesting that the General Division is somehow bound by the "link" between its database and the Commission's system.

[40] I do not dispute that the eligibility and calculation of the FS are "linked" to evidence of net family income and to the CCB determination. However, I do not accept that the Commission's FS decision is forever locked to the information that CRA shared through a systems link. The General Division was not obliged to defer to the net family income or to the CCB determination that was used by the Commission's system.

[41] The Commission's system imported a headnote-type of comment stating that there had been a change in CRA's "CCTB record." This notice first appears on a screenshot of the Commission's system for the week of February 18, 2018. It carries forward into each successive week until the week of May 20, 2018. In the same headnote entry, CRA stated that the Claimant was "not entitled to FS." This is a curious remark if it was entered by CRA. The FS decision belongs to the Commission—not CRA.

[42] The CRA database, on which the Commission's system relies, is a bit of a "black box." By this, I mean that I cannot examine what information CRA enters into its database. I do not know how the CRA database communicates with the Commission's system.

[43] The Commission admitted that it has the same difficulty. It could not explain what it is that CRA enters or modifies within its own database, which causes the Commission's system to recalculate the FS entitlement.¹⁴ At the Appeal Division hearing, the Commission's representative was not completely confident in how she explained the meaning of the Commission's system screenshots from the file.¹⁵

[44] I gather that someone at CRA manually enters the "headnote" information (that shows up on the Commission's screen). The headnote on each weekly screen from the week of February 18, 2018, to the week of May 20, 2018, says there has been a change in CRA's "CCTB record." I also note that a "CCTB recipient" designation appears in the Commission's system for the week of August 5, 2018,¹⁶ but does not appear in the Commission's other screens. Possibly, CRA removes "CCTB recipient" from its own system, which removes the corresponding entry from the Commission's system.

[45] The Commission noted that its own screen blanked the net family income field in each of its weekly screens beginning with the February 18, 2018, screen. It stated that its system leaves this field blank when the net family income exceeds the threshold of \$25,921.00. However, it was not clear that the Commission meant that the field is **necessarily** left blank when the value is greater than the FS threshold. The Commission may have been speaking to its own experience. It may have simply observed that the field may be left blank, or is generally left blank, in this particular circumstance.¹⁷

[46] Perhaps the Commission is correct that CRA's database had a family net income value in excess of the FS threshold, and this is why its own net family income field is blank. On the other hand, it is just as plausible that the field is blank when CRA has not entered a value for net family income, or has removed the value. CRA could have done this for the period in which it could not confirm CCB entitlement, as the Claimant argued.

[47] Whatever changes were made at CRA, the Commission's own review of its system screens caused it to assume that CRA changed the net family income. It assumed that the net

¹⁴ GD16-1.

¹⁵ GD3-30-43.

¹⁶ GD3-29.

¹⁷ GD16-1.

family income exceeded the threshold for the FS. However, the Claimant could also have been disentitled to FS if CRA had revoked her CCB entitlement for some reason.

[48] The Commission understood that CRA had reassessed the taxes of the Claimant's husband and that this reassessment caused CRA to revisit its net family income determination. This understanding must have relied on the February 18, 2020, conversation between the Claimant and a Commission agent, in which the agent reported that the Claimant said her husband had his taxes reassessed.¹⁸ There was little other evidence that could have supported the Commission's view.

[49] However, the Claimant told the General Division that the Commission agent misunderstood her. She said that she told the agent that CRA had not done her husband's taxes at that time.¹⁹ She has since submitted documentation to confirm that CRA did not assess her husband's 2019 taxes until July 3, 2020. CRA assessed her husband's 2018 taxes on December 16, 2019.²⁰

[50] Furthermore, the \$52,856.00 net family income figure could not be the result of a reassessment, as the Commission seems to be arguing.²¹ CRA notified the Claimant on August 20, 2018, that it was using the 2016 base year income of \$52,856.00 to calculate the CCB from July 2017 to June 2018. As I have already discussed, the Commission established that the Claimant was **entitled** to the FS based on a September 2018 update from CRA that followed its CCB determination.

[51] The Commission admitted that it did not know why CRA's assessment of the Claimant's husband's taxes made the Claimant ineligible for the FS.²² In other words, it did not actually know if the Claimant's net family income had increased beyond the FS threshold. It is just as likely that the Claimant's ineligibility for FS was triggered by information that she was ineligible

¹⁸ GD3-20.

¹⁹ Audio recording of General Division August 31, 2020, hearing at timestamp 00:16:05.

²⁰ GD15-2.

²¹ AD2-4.

²² GD16-1.

for CCB. If she was ineligible for CCB, this may have been because of an increase in net family income but it could have been for some other reason instead.

[52] As I mentioned earlier, the Commission received some sort of update from CRA in September 2018 that permitted it to pay the FS to the Claimant for the 2018 entitlement period. The CCB/FS entitlement screen for the week August 5, 2018, was updated in December 2019. The screen still shows that the Claimant was eligible for the FS from February 18, 2018, to May 26, 2018 (lowermost field). This could mean that none of CRA's updates between September 2018 and December 2019 had any effect on the Claimant's eligibility for the FS for February 18, 2018, to May 26, 2018. Alternatively, it could mean that CRA cannot be relied on to update its database comprehensively, or in a timely manner—a possibility that the General Division also noted.²³

[53] The Commission says that it reconsidered the Claimant's entitlement to the FS after a CRA update in November 2019. The Claimant's accountant believes that this was the result of the Claimant's failure to provide CRA with income information.²⁴ He says that CRA did not have all the information it required from October 18, 2019, to January 20, 2020. This was at about the same time that the Commission says it received CRA's update.

[54] The accountant explained to the General Division that CRA had initially paid the Claimant the CCB. However, CRA demanded repayment because it could not verify her net family income.²⁵ CRA was waiting for confirmation of her husband's income. The Claimant said that CRA's assessment of her net family income remained unchanged after CRA received her husband's income information. When it had the information, CRA reinstated her CCB entitlement retroactively.

[55] The Claimant gave the General Division evidence showing that CRA revoked her entitlement to the CCB because it required information. She submitted correspondence from CRA in which CRA demanded the return of a CCB payment of \$1400.49 for July 2019. This was in a notice dated August 20, 2019. CRA followed up in October 2019, with another notice

²³ General Division decision, para 30.

²⁴ GD21-44.

²⁵ *Ibid.*

increasing the CCB amount due back to CRA by an additional \$16,443.00. This was to recover the CCB that CRA had paid the Claimant from July 2018 to June 2019.²⁶ The total balance due for July 2019, and July 2018 to June 2019 was \$17,843.49.

[56] In its notices, CRA confirmed that it required the Claimant to pay back the CCB because the Claimant had not provided the information it needed to calculate her net family income and calculate her actual entitlement.²⁷

[57] The Claimant also gave the General Division evidence from CRA that it restored her income soon afterwards. She submitted a January 2020 notice from CRA, in which CRA credited the Claimant for CCB amounts that it had not paid. It credited \$1,400.49 for the January 2020 CCB, \$8,402.94 for the July 2019 to December 2019 CCB, and **\$16,443.00 for the July 2017 to June 2018 year**. It applied a further credit in the same amount as its August 2019 demand for repayment, in the amount of \$17,843.49.²⁸ This was for the period from July 2018 to June 2019.

[58] The General Division did not make an important error of fact when it found that the Claimant was entitled to the CCB from July 2017 to June 2018. (This was included in its finding that the Claimant met all the conditions to receive the FS.) The General Division properly considered evidence that CRA had sought to establish the income of the Claimant's husband's income in late 2019. It properly considered that CRA confirmed her entitlement to the CCB when it received the required information. Based on its assessment of the evidence, the General Division was satisfied that the Claimant had been entitled to the CCB from February 18, 2018, to May 26, 2018.

[59] I have not discovered any errors in how the General Division reached its decision.

CONCLUSION

[60] The appeal is dismissed.

Stephen Bergen

²⁶ GD21-28.

²⁷ GD21-24.

²⁸ GD21-35.

Member, Appeal Division

HEARD ON:	December 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Julie Villeneuve, Representative for the Appellant B. S., Respondent Michael Armstrong, Representative for the Respondent