



Citation: *EB v Minister of Employment and Social Development*, 2023 SST 1159

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: E. B.

Respondent: Minister of Employment and Social Development
Representative: Andrew Kirk

Decision under appeal: General Division decision dated November 21, 2022
(GP-21-2264)

Tribunal member: Neil Nawaz

Type of hearing: In person

Hearing date: August 1, 2023

Hearing participant: Respondent's representative

Decision date: August 23, 2023

File number: AD-23-170

Decision

[1] The appeal is dismissed. The Appellant isn't eligible for the Canada Pension Plan (CPP) death benefit.

Overview

[2] The Appellant applied for CPP death benefit after his mother died in September 2020. The Minister of Employment and Social Development (Minister) refused the application, because the Appellant's mother had not made any contributions to the CPP during her working life.

[3] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. The Appellant argued that his father's CPP contributions covered his mother as well. He noted that his parents lived in a traditional marriage, with his father as the family's only income earner. He said that a portion of his father's contributions were made for the benefit of his mother and were therefore held in trust on her behalf.

[4] The General Division summarily dismissed the appeal after finding that it had no reasonable chance of success. It found that, since the Appellant's mother made no contributions to the CPP herself, there was nothing in the law that entitled him to a death benefit.

[5] The Appellant appealed the General Division's summary dismissal to the Appeal Division. Earlier this month, I scheduled a hearing to discuss the merits of the Appellant's claim in full.

Preliminary Matters

– The Appeal Division now holds *de novo* hearings

[6] After the General Division summarily dismissed the Appellant's appeal, the rules governing the Social Security Tribunal changed.¹ Under the new rules, the Appeal

¹ Changes to the *Department of Employment and Social Development Act* (DESDA) came into effect on December 5, 2022.

Division now holds *de novo*, or fresh, hearings about the same issues that were before the General Division.

[7] The new rules also eliminated the General Division's power to dispose of matters by way of summary dismissal. Existing summary dismissals issued under the old system are subject to appeal, but they must be brought within 90 days after the new rules came into effect. Unlike other General Division decisions, summary dismissals do not require the Appeal Division's permission to appeal.²

– This appeal proceeded despite the Appellant's decision to not appear

[8] On June 14, 2023, at the Appellant's request, the Tribunal scheduled an in-person hearing to be held in Calgary on August 1, 2023.³

[9] On July 26, 2023, the Appellant sent the Tribunal an email seeking an adjournment of the hearing date. He said that he was working on August 1, 2023 and could not afford to miss one hour of work, much less a whole day, to attend the hearing.⁴ He also said that he had been waiting in vain to speak to someone from the Tribunal since February 2023.

[10] The following day, I refused the Appellant's request.⁵ I noted that the Appellant had requested an adjournment with only three working days left before the hearing, which had been scheduled six weeks earlier. I noted that the Appellant could have made his request earlier but, with arrangements now in place for an in-person hearing, it was too late.

[11] On July 31, 2023, after working hours, the Appellant sent the Tribunal another email requesting an adjournment.⁶ I received the email the morning of the hearing but decided that, with the Appellant having received adequate notice of the hearing, there was no reason not to proceed.

² See DESDA transitional provision section 240(1)

³ See notice of hearing dated June 14, 2023, AD0.

⁴ See email dated June 26, 2023 from Appellant to Tribunal, GD5.

⁵ See letter from Tribunal to Claimant dated July 28, 2023.

⁶ See Claimant's email dated July 31, 2023, AD7.

[12] The hearing took place in the Appellant's absence.

– The Tribunal made a reasonable effort to contact the Appellant

[13] I have also looked into the Appellant's claim that the Tribunal ignored him.

[14] The Tribunal employs a team of so-called "navigators" — staff members who are tasked with guiding unrepresented claimants through the appeals process. It is important to keep in mind that nothing in the law requires the Tribunal to offer this service. It is a courtesy intended to provide claimants with procedural information and to help them prepare for their hearing.

[15] The record shows the following sequence of events:

- On February 22, 2023, a navigator left the Appellant an initial telephone message.⁷ In response, the Appellant immediately emailed the Tribunal asking for a phone call or videoconference on the afternoon of March 2, 2023.⁸
- On February 23, 2023, the navigator left a message with the Appellant saying he would call him on March 2, 2023 at 1:00 p.m. (MST). The navigator said that, if the time wasn't good, the Appellant should let the Tribunal know.⁹
- On March 1, 2023, the Appellant sent the Tribunal an email saying, "please, please only communicate with me via email unless we have previously agreed to a tc at a set time."¹⁰
- On March 2, 2023 at 1:00 p.m. (MST), the navigator called the Appellant in keeping with his request. There was no answer, so the navigator left a message offering to set up a time for the following week. He asked the Appellant to call him back or send him an email.¹¹

⁷ See Tribunal's telephone memo dated February 22, 2023.

⁸ See Appellant's email dated February 22, 2023.

⁹ See Tribunal's telephone memo dated February 23, 2023.

¹⁰ See Appellant's email dated March 1, 2023.

¹¹ See Tribunal's telephone memo dated March 2, 2023.

- Several weeks went by with no communication from the Appellant. On April 10, 2023, the Appellant reminded the Tribunal that he was still waiting for a telephone call or videoconference that would provide him with “insights into the appeal process.”¹²
- On April 12, 2023, the navigator sent the Appellant an email offering to schedule a telephone call for April 14 or sometime the following week.¹³ On April 14, 2023, the Appellant replied by email with this message: “Why don’t we aim to chat next Thursday, April 20, 2023, at 11 a.m. MST?”¹⁴
- There is no indication on file that the navigator responded to this email or that the call under discussion ever happened. The Tribunal did not hear from the Appellant again until his email of July 26, 2023, asking for an adjournment.

[16] The record shows that the navigator made several unsuccessful attempts to contact the Appellant in the weeks after he filed his appeal. One of those attempts involved scheduling a call for a date and time specifically suggested by the Appellant. But when the navigator called him on the appointed date and time, the Appellant did not answer.

[17] It is true that the navigator did not follow up on the Appellant’s request for a call in April, but that does not change the fact that the Appellant missed several prior opportunities to communicate with the Tribunal, possibly because of a reluctance to answer the phone. As noted, the Tribunal offers the navigator service, but there is nothing in the law that requires it do so. It remains the primary responsibility of claimants to familiarize themselves with the Tribunal’s processes and procedures. The navigator is a tool to help claimants achieve that objective, but it is ultimately up to them to take active steps to use that tool. After the failed attempt to connect in April, it was open to the Appellant to request another teleconference. In the more than three months that passed until the hearing date, he did not do so.

¹² See Appellant’s email dated April 10, 2023, AD3.

¹³ See Tribunal’s telephone memo dated April 12, 2023.

¹⁴ See Appellant’s email dated April 14, 2023.

[18] In all, I find that the navigator in this case made a reasonable attempt to reach out to the Appellant. Morally and legally, he wasn't required to do anything more than that.

Issue

[19] In this appeal, I had to decide whether the Appellant was entitled to the CPP death benefit.

Analysis

[20] Now that I have considered the available evidence and applicable law, I have concluded that the Appellant can't succeed. Since his mother never contributed to the CPP, the Appellant is not entitled to the death benefit.

– The contributory period started January 1966 and ended April 1998

[21] A contributory period under the *Canada Pension Plan* is the time during which a person can contribute to the CPP. The period starts at age 18 (or January 1, 1966, whichever is later).¹⁵ It ends when the contributor turned 70, started receiving a CPP retirement pension, or died, whichever happens first.¹⁶

[22] The law says that a death benefit becomes payable when a deceased person (in this case, the Appellant's mother) has made CPP contributions for at least the minimum qualifying period.¹⁷ The minimum qualifying period is one-third of the years in the contributor's contributory period (with a minimum of three years), provided it is at least 10 years.¹⁸

– The Appellant's mother needed 10 years of CPP contributions

[23] In this case, the Appellant's mother had a contributory period that started on January 1, 1966 and ended in April 7, 1998, when she turned 70 years old. There were

¹⁵ See section 49(a) of the *Canada Pension Plan*. January 1, 1966 is the date the CPP started.

¹⁶ See section 49(b) of the *Canada Pension Plan*.

¹⁷ See section 44(1)(c) *Canada Pension Plan*.

¹⁸ See section 44(3) of the *Canada Pension Plan*.

32 years in her contributory period, so she would have had to contribute to the CPP for at least 10 years for her son to be eligible for the death benefit.

– The Appellant’s mother did not make any valid contributions to the CPP

[24] The information on file shows the Appellant’s mother made no contributions to the CPP.¹⁹ According to the law, that means no death benefit is payable on her behalf.

– The law of constructive trust does not apply in this case

[25] The Appellant argues that he should be entitled to the death benefit even though his mother didn’t make contributions on her own behalf. He says that his father’s CPP contributions were as much hers as his and that they should be deemed to have been held in trust on her behalf.

[26] I fail to see merit in this argument. The Appellant has not cited any authority for this novel interpretation of the law. As it is, the *Canada Pension Plan* sets out clear and precise rules governing eligibility for the death benefit. Nothing in the *Plan* contemplates that contributions may be regarded as being held in trust, constructive or otherwise.

[27] As a member of an administrative tribunal, I must follow the letter of the law. I don’t have any discretionary power to simply grant the death benefit as I see fit.²⁰

Conclusion

[28] The Appellant’s late mother did not have sufficient contributions to qualify her estate for the CPP death benefit. The appeal is therefore dismissed.



Member, Appeal Division

¹⁹ See Service Canada record of earnings and contributions, GD2-24.

²⁰ See *Pincombe v Canada* (Attorney General), [1995] F.C.J. No. 1320 (Fed. C.A.).