



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 496

Tribunal File Number: AD-17-15

BETWEEN:

R. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: September 27, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated September 28, 2016, which determined that she had already received the allowable maximum retroactive payment of an Old Age Security survivor's allowance. The Applicant maintains that she should be entitled to greater retroactive payments, to May 2009, when she turned 60 years old, and in this regard submits that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, and that it also based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[2] Does the appeal have a reasonable chance of success?

ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[4] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that

the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] Despite being invited to address the grounds of appeal under subsection 58(1) of the DESDA, the Applicant did not particularize her allegations against the General Division.

[6] Natural justice is concerned with ensuring that an appellant has a fair and reasonable opportunity to present his or her case, that he or she has a fair hearing, and that the decision rendered is free of any bias or the reasonable apprehension or appearance of bias. There is no suggestion that, in this case, the General Division deprived the Applicant of a fair and reasonable opportunity to present her case, or that the member was biased against her.

[7] The Applicant does not dispute any of the findings of fact. Her application requesting leave to appeal indicates that she applied for a Canada Pension Plan survivor's pension in 2008, whereas, the General Division's decision suggests that she applied for the survivor's pension in November 2001, and that she began receiving the pension in September 2000. The application for the Canada Pension Plan survivor's pension bears a date-stamp of November 2001 (GD7-4 and 5) so the General Division did not err in its description, but even if the General Division had erred in describing when the Applicant applied for the survivor's pension, ultimately this fact was immaterial to the outcome of the appeal.

[8] The Applicant advises that when she applied for a Canada Pension Plan survivor's pension, no one had informed her of the availability of a survivor's allowance under the *Old Age Security Act*. It was only after she applied for a Canada Pension Plan retirement pension that she learned that she was entitled to an Old Age Security survivor's allowance, and that she had to apply for it. The Applicant applied for the survivor's allowance in September 2013 and her application was approved with payment effective October 2012. The Applicant states that she would benefit from receiving retroactive payments of the survivor's allowance to May 2009, given her personal circumstances.

[9] Subsection 58(1) of the DESDA provides for limited grounds of appeal. However, none of the considerations that the Applicant raises falls under any of the grounds under subsection 58(1) of the DESDA.

[10] Indeed, the General Division addressed these same issues. At paragraph 43, it noted that the Respondent was under no obligation or duty to inform individuals of any entitlement or benefit. The General Division also noted the requirements under the *Old Age Security Act* that, even after an applicant turns 60 years old, he or she still must apply for the survivor's pension, and that the application must be approved by the Respondent before an allowance becomes payable. The General Division also noted that the *Old Age Security Act* limits the maximum retroactive payment permitted. I see no reviewable error arising from the General Division's interpretation and application of the provisions under the *Old Age Security Act*.

[11] The General Division also examined whether the Applicant could avail herself of the incapacity provisions under the *Old Age Security Act*. The General Division found that the Applicant was unable to establish that she was incapacitated, as it found that she had the capacity to form or express an intention to apply for benefits. After all, she had remained in the workforce, other than for a brief period in February 2013 following her son's tragic and untimely death. The General Division noted that the Applicant began receiving treatment for depression a month later. In other words, the Applicant was unable to rely on the incapacity provisions for greater retroactive payments.

[12] There is no suggestion that the Applicant might have received any erroneous advice or that an administrative error might have been made, but even had that been borne out, the General Division has no jurisdiction to rectify such errors.

[13] The Applicant has not made out an arguable case and I do not see any basis upon which the Applicant is entitled to greater retroactive payment of the Old Age Security survivor's allowance.

CONCLUSION

[14] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division