



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *The Estate of L. H. v. Minister of Employment and Social Development*,
2017 SSTADIS 771

Tribunal File Number: AD-17-914

BETWEEN:

The Estate of L. H.

Applicant

and

Minister of Employment and Social Development

Respondent

and

J. V.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: December 28, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] The Applicant applied for and began to receive Guaranteed Income Supplement payments in 2008 as a single person. He passed away in 2012. After his death the Respondent determined that he had been overpaid because he had been married during the time that he received this benefit, and the combined income of him and the Added Party, his wife, was greater than what was permitted to qualify to receive this benefit. The Respondent sought repayment of approximately \$7,000 from the Applicant. The Respondent maintained this decision on reconsideration. The Added Party appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal) as the Applicant's representative. The Tribunal's General Division dismissed the appeal on October 29, 2016. An application for leave to appeal this decision has been filed with the Tribunal, but placed in abeyance pending the outcome of this proceeding.

[3] The Added Party also made an application to rescind or amend the General Division decision. This application was dismissed on September 20, 2017. The Added Party filed an application for leave to appeal this decision (Application) on November 8, 2017. This is the Application before me.

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.

[5] The only grounds of appeal available to the Appeal Division under the DESD Act are 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.

[6] Subsection 58(2) of the DESD Act provides that leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[7] For the reasons set out below, I am satisfied that the Added Party has not presented a ground of appeal under subsection 58(1) of the DESD Act that may have a reasonable chance of success on appeal.

[8] The Added Party presents numerous arguments to support the Application. First, she complains about her treatment by the Ontario Disability Support Program and related criminal charges, and refers to numerous documents and hearings that were required in this venue. The Tribunal has no authority with respect to these matters. Leave to appeal cannot be granted on the basis of the Added Party's interactions with the Ontario Disability Support Program or other provincial authorities.

[9] Similarly, the Added Party sets out how she had to provide ongoing care for the Applicant as he was ill and not capable of making decisions for himself before he died. While I have great sympathy for the time, money and effort that the Added Party has spent on these matters, they are not relevant to the issues before this Tribunal and do not point to any ground of appeal under the DESD Act.

[10] The Added Party also complains about the Respondent's delay in raising the overpayment issue, doing so years after the Applicant's death. While I can understand the Added Party's frustration with this, it is not something that this Tribunal has any authority to resolve. The Tribunal has only the authority given to it under the DESD Act, which does not include any ability to sanction the Respondent for not addressing issues in a timely way.

[11] The Applicant also states that she was not advised of a location. It is not clear what she means by this. In the matter before me, the General Division held an in-person hearing and the Added Party attended and gave evidence. I am therefore satisfied that she knew of the case she had to meet, and was given an adequate opportunity to present her case. This statement therefore does not suggest any ground of appeal under the DESD Act that may have a reasonable chance of success on appeal.

[12] Additionally, the Added Party contends that she was not aware of nor given a copy of the General Division decision made in October 2016 until she went to her Member of Parliament's office. This argument may be relevant to the appeal of that decision, but not to the decision that is before me. It does not relate to the General Division hearing or decision in September 2017.

[13] The Added Party also suggests that a reference to the *Employment Insurance Act* on page 11 of the decision would cause confusion. The relevant section of the DESD Act is set out in full at the top of page 11 of the decision. It states what new facts are in a matter related to the *Employment Insurance Act* and the *Canada Pension Plan*. This argument does not point to any error under subsection 58(1) of the DESD Act such that leave to appeal should be granted.

[14] The Added Party argues further that the General Division erred because neither she nor the Applicant's estate financed his funeral. While this may be so, I am not satisfied that this error could have been made perversely, capriciously or without regard for the material that was before the General Division. This fact was not material to the decision made, and if an error was made, it would have no impact on the outcome of the appeal.

[15] In addition, the Added Party requests leave to appeal so that she can clarify that her income and that of the Applicant were not co-mingled as hers was kept in a separate business account. This statement is contrary to the Added Party's testimony at the hearing, where she stated that they had a joint account and that their money was co-mingled (paragraph 30 of the decision). However, even if the General Division erred regarding what account the parties' incomes were deposited to, such an error was not made perversely, capriciously or without regard for the material before it as the evidentiary basis is set out in the decision.

[16] Finally, the Added Party repeated that she and the Applicant were separated from 2006 to 2012 although they shared the same house so they could care for each other. This evidence was presented to the General Division and considered by it. Its repetition does not point to any ground of appeal under the DESD Act.

[17] The facts in this matter are not in dispute. I am satisfied that no important facts were overlooked or misconstrued, and the Added Party does not suggest that they were.

[18] I am also satisfied that the General Division did not make an error of law or neglect to observe the principles of natural justice.

[19] As the Added Party has not raised a ground of appeal under subsection 58(1) of the DESD Act that may have a reasonable chance of success, the Application must be refused.

Valerie Hazlett Parker
Member, Appeal Division