



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. S. v Minister of Employment and Social Development*, 2020 SST 579

Tribunal File Number: AD-20-625

BETWEEN:

**M. S.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: July 3, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal is granted.

[2] The appeal is allowed and the matter is referred back to the General Division with directions.

### **OVERVIEW**

[3] M. S. (Claimant) applied for an Old Age Security (OAS) survivor pension and a Canada Pension Plan (CPP) survivor pension after her husband died. The Minister of Employment and Social Development refused the application for the OAS pension initially and on reconsideration. The Minister granted and paid the CPP pension to the Claimant from 2001 to 2006. It then investigated and decided that the Claimant was not entitled to receive the CPP pension because she was convicted of murdering her husband.

[4] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant appealed the Minister's decision regarding the Old Age Security pension beyond the time permitted to do so.

[5] The Claimant applied to the Tribunal's Appeal Division for leave (permission) to appeal the General Division's decision. She says that the General Division made an error because it considered an appeal of the OAS pension when she intended to appeal the Minister's decision regarding the CPP pension.

[6] Leave to appeal is granted, and the appeal is allowed on the basis of the parties' agreement. The matter is referred back to the General Division so that it can consider the appeal of the Minister's decision regarding the CPP pension. Directions are also given to the General Division regarding the appeal.

### **AGREEMENT**

[7] The parties attended two settlement conferences. At these conferences the circumstances of the Claimant's application for both the OAS and CPP survivor pensions were discussed.

During the discussions it became clear that the Claimant intended to appeal the Minister's decision regarding the CPP pension, not the OAS pension. The parties reached the following agreement.

- a) The General Division made an error. It considered an appeal of the OAS survivor pension instead of the CPP survivor pension.
- b) The Claimant's appeal of the CPP survivor pension has not been considered by the Tribunal's General Division. It must be considered by the General Division before the Tribunal's Appeal Division can make any decision regarding it.
- c) Therefore, leave to appeal is granted. The appeal is allowed because the General Division based its decision on an important factual error, made without regard for the reconsideration letter dated March 2020 regarding the CPP survivor pension.
- d) The matter is referred back to the General Division for reconsideration.
- e) The Minister's reconsideration letter, coded by the Tribunal as AD3, shall be filed in the General Division file and form part of the record for this reconsideration.
- f) The Claimant has 60 days from the date of this decision to file further documents with the General Division. If she fails to do so, the appeal shall be considered withdrawn and the appeal file closed accordingly.
- g) The General Division may set additional deadlines for all parties to file additional evidence and/or submissions for the reconsideration.

[8] I have reviewed the written record. The General Division decision is based on a review of the Minister's reconsideration decision regarding the OAS pension. The Claimant appealed the Minister's decision regarding the CPP pension. Therefore, the General Division made an error, and the Appeal Division should intervene. The Claimant's claim regarding the CPP pension has not been considered by the Tribunal's General Division. The General Division must consider a claim before the Appeal Division can do so.

[9] Therefore, I accept the parties' agreement.

**CONCLUSION**

[10] Leave to appeal is granted.

[11] The appeal is allowed in accordance with the parties' agreement.

[12] The matter is referred back to the General Division for reconsideration as set out above.

[13] AD3 shall be filed in the General Division file and be part of the written record.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVES:	M. S., Self-represented  Sandra Doucette, Counsel for the Minister
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