



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *DV v Minister of Employment and Social Development*, 2020 SST 978

Tribunal File Number: GP-19-1362

BETWEEN:

D. V.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

DATE OF DECISION: July 14, 2020

DECISION

I find that the appeal has no reasonable chance of success for the reasons set out below.

OVERVIEW

[1] On December 7, 2017, the Appellant applied for a survivor's allowance¹ (Allowance). The application was initially approved, but on further review of the file, the Minister changed its decision and determined that the Appellant did not meet all the conditions to be eligible for the Allowance. The Appellant requested a reconsideration of the decision. The Minister denied the application on reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on August 22, 2019.

[2] Section 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.²

ANALYSIS

[3] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions, as provided under section 22 of the *Social Security Tribunal Regulations* (Regulations). The Appellant submitted that she still disagreed and asked again that the Minister's initial determination that she was eligible for the Allowance be restored.

[4] In her Allowance application, the Appellant indicated that she was in a common-law relationship after her partner's death.

[5] The Appellant also completed a statutory declaration of common-law union³ indicating that, following her partner's death, she had been in a common-law relationship that began on October 1, 1973.

¹ GD2-3.

² *Miter v Canada (AG)*, 2017 FC 262.

³ GD2-10.

[6] According to the evidence, the Allowance application was approved on April 28, 2018. A few days later, on April 30, 2018, on further review of the file, the Minister changed its decision and determined that the Appellant did not meet all the conditions to be eligible for the Allowance.

[7] The Minister submitted that, after verification of the Appellant's file on April 30, 2018, further review of the April 27, 2018, decision was requested.⁴ A representative of the Minister contacted the Appellant on April 30, 2018, to verify her marital status, and she confirmed that she was in a common-law relationship for three years after her partner's death. The Minister determined that the Appellant did not meet all the conditions to be eligible for the Allowance. Consequently, the Appellant was never paid the amount calculated at the time of the initial decision, dated April 27, 2018. On April 30, 2018, the Minister sent the Appellant a denial letter.⁵ The Minister also submitted that the Appellant's file was checked and it contained no copy of the letter prepared on April 27, 2018, because it was not valid.

[8] The *Old Age Security Act*⁶ provides for the payment of an income-tested Allowance to individuals age 60 to 64 who meet the minimum residence requirements and whose spouses or common-law partners have died. To receive the Allowance, the surviving spouse or common-law partner must not have become the spouse or common-law partner of another person since the death of the spouse or common-law partner.

[9] Under the *Old Age Security Regulations*,⁷ the Minister may, at any time before or after approval of an application, make an investigation into a person's eligibility.

[10] As a legislative entity, I have only the powers that the law gives me. I am required to interpret and apply the provisions as they are set out in the *Old Age Security Act*.

[11] While the Minister may have initially decided to approve the Appellant's Allowance on April 27, 2018, a few days later, on further review, it was decided that she did not meet the

⁴ GD2-36.

⁵ GD2-23.

⁶ Sections 2 and 21.

⁷ Section 23.

eligibility criteria for this Allowance. The Appellant cannot receive the Allowance; it would be contrary to the *Old Age Security Act*. As the Minister submitted, the initial decision was not valid.

[12] The provisions of the *Old Age Security Act* do not allow an applicant to receive the Allowance if the applicant was in a common-law relationship after their partner's death. The evidence shows that the Appellant was in a common-law relationship. As a result, I find that the appeal has no reasonable chance of success.

CONCLUSION

[13] The appeal is summarily dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section