



Citation: *MB v Minister of Employment and Social Development*, 2025 SST 3

# **Social Security Tribunal of Canada**

## **General Division – Income Security Section**

# **Decision**

**Appellant:** M. B.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 17, 2024 (issued by  
Service Canada)

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**Tribunal member:** Jackie Laidlaw

**Type of hearing:** Teleconference

**Hearing date:** December 19, 2024

**Hearing participants:** Appellant

**Decision date:** January 2, 2025

**File number:** GP-24-1842

## Decision

[1] The appeal is dismissed.

[2] The Appellant, M. B., isn't eligible for a higher amount of his Canada Pension Plan (CPP) retirement pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant applied for his CPP retirement pension in May 2024 to start on August 2023.

[4] The Appellant's birthdate is July 8, 1953.

[5] He began receiving his CPP retirement pension as of August 2023, at the enhanced rate of an additional 40% because he waited until his 70th birthday. He also received the consumer price index average adjustment annually.

[6] The amount of a retirement pension is based partly on a person's contributory period. The Appellant's contributory period is from August 1971, the month after his 18th birthday, to July 2023, the month of his 70th birthday.

[7] The Appellant appealed the amount of his retirement pension on October 22, 2024.

[8] The Appellant says it is unfair to calculate his contributory period from age 18 when he did not live in Canada. He feels it should be calculated from the day he came to Canada, or the date he became a Canadian citizen.

[9] The Appellant claims:

1. The rule is unfair to immigrants who were not living in Canada at age 18.
2. The rule does not make any reasonable sense.

[10] The Minister says the pension was correctly calculated according to the legislation.

### **What the Appellant must prove**

[11] For the Appellant to succeed, he must prove his CPP retirement pension was calculated incorrectly.

### **Reasons for my decision**

[12] The Appellant agrees that the calculation was done according to the legislation. He does not agree with the legislation.

[13] Unfortunately, I do not have the jurisdiction to alter the legislation.

### **The Legislation**

[14] The contributory period for a retirement pension begins the month of the 18th birthday and ends the earliest of the following three scenarios:

(i) the month before their 70th birthday

(ii) the month of their death

(iii) the month before the month in which the retirement pension begins<sup>1</sup>

[15] Under section 2(2) of the CPP, a specified age is deemed to be reached the month following the month they actually reached that age.<sup>2</sup>

[16] When these two sections are viewed together, it means a person is deemed to have become 18 the month following the month they actually became 18.

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<sup>1</sup> See Section 49 of the CPP.

<sup>2</sup> See Section 2(2) of the CPP.

### **Misstatement or possible miscalculation in the Minister's submissions**

[17] In the Minister's submissions, they note his contributory period began July 1971, the month after his 18th birthday, and ended May 2023, the month before his 70th birthday.<sup>3</sup>

[18] However, the Appellant has indicated his birthday is July 8, 1953,<sup>4</sup> which means the month after his 18th birthday was August 1971.

[19] As well, the legislation says the contributory period ends with the month of his 70th birthday, not the month before. I find this because section 2(2) of the CPP indicates a person **reaches** their age the month after the actual birthday. In this case, the month before he "reached" age 70, according to the legislation, would be the month of his actual birthday, which is July 2023.<sup>5</sup>

[20] Therefore, his contributory period should be August 1971 to July 2023.

[21] This miscalculation results in a higher Average Monthly Pensionable Earnings (AMPE). This ultimately has increased his pension in 2023 at the start date.

[22] This overpayment resulting from the Minister's error is not an issue in this hearing, therefore I will not make any determination about repayment.

### **Case Law**

[23] The Federal Court of Appeal upheld a judicial review involving a challenge under section 15(1) of the *Canadian Charter of Right and Freedoms* and found there was no discrimination to immigrants or violation of human dignity by starting the contributory period at age 18 for persons who arrived in Canada after their 18th birthday.<sup>6</sup>

[24] I agree with an earlier Pension Appeals Board decision, *Tan*,<sup>7</sup> which stated that it would be discriminatory if immigrants were not permitted to enter Canada and start

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<sup>3</sup> See GD 3-7.

<sup>4</sup> See GD 1-7 and his record of earnings on GD 2-22.

<sup>5</sup> See sections 2(2) and 49 of the CPP.

<sup>6</sup> See *Lezaeu v. Canada (Social Development)*, 2008 FCA 99.

<sup>7</sup> See *Tan v. Minister (Social Development)* (December 8, 20006), CP 20525 (PAB).

contributing to the *Canda Pension Plan* at age 18. But that is not the case. No one is excluded from entering Canada before age 18, strictly based on their age.

[25] If the legislation favoured people who came to Canada after age 18 by shortening their contributory period, it would provide them with a larger retirement pension because they came to Canada later in life. This would effectively discriminate against all people who have contributed since age 18, immigrants and non-immigrants alike.

[26] The legislation applies the same to all contributors, whether they have been in Canada before or after they turned 18.

## **Conclusion**

[27] I do not have the jurisdiction to alter the legislation. As the calculation for the Appellant's retirement pension was done according to the legislation, I find he is not eligible for an increased monthly amount.

[28] This means the appeal is dismissed.

Jackie Laidlaw

Member, General Division – Income Security Section