



Citation: *Estate of MA v Minister of Employment and Social Development*, 2025 SST 145

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: Estate of M. A.
Appellant's representative: Z. A.

Respondent: Minister of Employment and Social Development
Respondent's representative: Victoria Burt

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated April 4, 2024 (issued by
Service Canada)

Tribunal member: Brianne Shalland-Bennett

Type of hearing: In person

Hearing date: February 4, 2025

Hearing participants: Appellant's representative
Respondent's representative

Decision date: February 19, 2024

File number: GP-24-1085

Decision

[1] The Appellant, the Estate of M. A., isn't eligible for a Canada Pension Plan (CPP) survivor's pension before April 2022.

[2] This decision explains why I am dismissing the appeal.

Overview

[3] N. A. passed away in August 2018. He was M. A.'s husband. M. A. passed away in December 2023. Their daughter, Z. A., represents M. A.'s estate in this appeal.

[4] Z. A. applied for a survivor's pension on her mom's behalf in March 2023. The Minister approved her application with a start date of April 2022.

[5] Z. A. disagrees with the start date of the Appellant's survivor's pension. Z. A. asked the Minister of Employment and Social Development (Minister) to reconsider its decision. The Minister maintained its decision. Z. A. appealed the Minister's decision to the Social Security Tribunal (Tribunal) on the Appellant's behalf.

[6] Z. A. says her mom was incapacitated and could not have made her application for the pension earlier. Her mom had a cognitive impairment (inability to speak English) and physical limitations. Z. A. got power of attorney over her mom's affairs in 2022. That's when Z. A. became aware of the pension and applied. She wants the start date of the pension to be retroactive to the date of her father's death.

[7] The Minister says M. A. got the most retroactive payments the law allows. It also says the evidence doesn't show M. A. was incapacitated within the meaning of the CPP.

What the Appellant must prove

[8] For the Appellant to succeed, it must prove that the survivor's pension should have been paid earlier than April 2022. This may be possible if M. A. could not have applied earlier because she was incapacitated, as defined by the CPP.

[9] The Appellant must show M. A. was incapable of forming or expressing the intention to make her application earlier than March 2023 to meet the incapacity test.

Reasons for my decision

[10] The Appellant got the maximum amount of retroactive benefits allowed under the CPP. It hasn't proven M. A. met the test for incapacity under the CPP.

[11] I will explain the reasons for my decision below.

The Appellant got the maximum retroactive benefits allowed under the CPP

[12] A CPP survivor's pension can't be paid more than 11 months before the application is received by the Minister.¹

[13] The Minister got the application in March 2023. Eleven months before then is April 2022. The Minister approved her application with a start date of April 2022. By doing so, it gave the Appellant the maximum retroactive benefits allowed.

M. A. doesn't meet the test for incapacity

[14] The only way the Appellant's application date can be deemed to have been made earlier is if M. A. met the CPP's test for incapacity.

[15] I find the Appellant hasn't shown M. A. met the test for incapacity as defined by the CPP. I will explain the law and my findings next.

– What the law says about incapacity

[16] The legal test for incapacity is strict.² To satisfy the CPP's incapacity test, the Appellant must prove it is more likely than not that M. A. lacked the capacity to form or express the intention to apply for a benefit.³ The capacity to form or express an intention

¹ See section 72 of the *Canada Pension Plan*.

² See *Walls v Canada (Attorney General)*, [2022] FCJ No 399, 2022 FCA 47.

³ See sections 60(8) and (9) of the *Canada Pension Plan*.

to apply for benefits is similar to the capacity to form or express an intention with respect to other choices in life.⁴

[17] The law also says the Appellant had to show M. A. was continuously incapable of forming or expressing an intention to make a CPP survivor's pension application during the entire period of the alleged incapacity.⁵

[18] To assess M. A.'s incapacity, I must consider the following:⁶

- the evidence about the nature and extent of her physical and mental limitations
- the available medical or psychological evidence supporting her limitations
- evidence about her activities during the relevant period
- the extent to which these activities cast light on her capacity to form or express an intention to form an intention to apply for a CPP survivor's pension during that period

– **M. A.'s period of incapacity**

[19] I asked Z. A. when she claims M. A. was incapacitated. Z. A. says M. A. has been incapacitated her whole life.

[20] I acknowledge Z. A.'s response, but I will use the period from when N. A. passed away (August 2018) to the date the Minister received M. A.'s application (March 2023). The start is when the Appellant is asking for the survivor's pension payments to start. It is also when M. A. may have been approved for the pension, had she applied earlier.

– **What Z. A. says about M. A.'s incapacity, limitations, and activities**

[21] Z. A.'s main argument is that M. A. was incapacitated because of her inability to speak, read, or write in English. She says these are cognitive limitations. She says that her limitations prevent her from effectively communicating to access essential services, potentially leading to challenges in healthcare, finances, employment, and other aspects

⁴ See *Sedrak v. Minister (Social Development)*, 2008 FCA 86.

⁵ See section 60(10) of the *Canada Pension Plan* and *Flaig v Canada (Attorney General)*, 2017 FC 531.

⁶ See *Blue v Canada (Attorney General)*, 2021 FCA 211.

of daily life. She says her inability to speak English is considered a form of disability impacting her ability to fully participate in society.⁷

[22] Z. A. explained M. A.'s native language is Serbian, and she had a limited education. She had a hard time learning, speaking, and making decisions. She spoke Serbian to communicate with her friends, family, and in her daily life. She could only have simple conversations. She could not talk about finances or complex topics.

[23] Z. A. says M. A.'s ability to communicate in English is very limited. She could respond to someone saying "hi," or "how are you," but that was the extent of her ability to communicate in English.

[24] Z. A. says M. A. could not understand critical information to make an informed decision or lack of decision. She always needed someone to be with her to speak on her behalf. This is because of her inability to communicate in English.

[25] Z. A. said when M. A. went to the doctor, she would communicate on her mom's behalf. Z. A. said M. A. would tell her if she had pain, a headache, or another issue. Z. A. would relay that information to the doctor.

[26] Z. A. said she would tell M. A. about any medical treatment. For example, they would go together to get X-rays. M. A. also had a blister pack to organize her medications. Z. A. would take them out for her, and M. A. would take them. Z. A. said there was no way M. A. could take her insulin on her own because she didn't have the medical capacity or understanding to do it. Z. A. said M. A. knew she had to take the medication and why but needed help to do it.

[27] Z. A. also says M. A. had physical limitations. M. A. was mobile when N. A. passed away. She could use a walker to help her get around. She could walk, but needed to take breaks or she would get dizzy. The decline in her mobility was gradual. By late 2022, M. A. was no longer mobile. She could get up to use the washroom because she had a commode beside her, but she generally could no longer walk. Z. A.

⁷ See the Appellant's submissions from GD20-2 to 6 and at GD24.

had to get a personal support worker to come in and help with her care. She stopped being able to transfer positions towards the end of her life.

[28] Z. A. said M. A. never went out on her own or did things independently her whole life. She never lived alone. She never worked. She always had someone with her. It was usually Z. A. or N. A., before he passed away.

[29] Z. A. said she had to help M. A. with tasks and personal care. She helped her use the bathroom and dress. She did the cooking and the cleaning.

[30] Z. A. said that M. A. led a very sedentary life. She slept most of the time. She watched her weekly TV programs in Serbian. Sometimes, she would knit. She went to church when she could use her walker after N. A. died. Eventually, she stopped going and read church literature from home. Sometimes, her friends would come to visit, and they would have simple conversations in Serbian.

[31] I asked Z. A. if there was ever a time when M. A. was home alone after N. A. passed away.

[32] Z. A. said she mostly worked from home.⁸ On the days she didn't work from home, she would get M. A. up, help her change, help her with breakfast, and put her on the couch. She had a commode next to her so she could use the washroom. She would call M. A. during the day or come home at lunch to check up on her. She prepared meals before she left so M. A. could eat during the day.

[33] After M. A.'s loss of mobility, the Appellant decided to get power of attorney over her affairs. This was in December 2022.⁹

[34] I asked Z. A. if she explained to M. A. why she was seeking power of attorney. Z. A. said she did. She told M. A. that she could not walk anymore or go to the doctor

⁸ Z. A. said she retired early. She stopped working sometime in the pandemic.

⁹ See GD2-32 to 34.

and that Z. A. needed to make decisions on her behalf. She said she used very simple language to explain what was happening.

[35] I asked Z. A. if M. A. was able to understand what was being said to sign the power of attorney. She responded, “yes.” In her most recent submission, she said M. A. was “fine” with her decision. She said M. A. understood she would always continue to make decisions on her behalf as she was unable to understand critical information to make decisions on her own.¹⁰

[36] I asked Z. A. about other benefits available through the government. I referenced a signature made at the end of a Guaranteed Income Supplement form dated March 2020. I asked Z. A. if M. A. signed this document. Z. A. said M. A. instructed her to sign forms on her behalf.¹¹

– **What the medical evidence says**

[37] A nephrology clinic’s notes from May and June 2016 show M. A. had a medical history of chronic kidney disease, hypertension, myocardial infarction with stenting, and cognitive dysfunction. Z. A. was present to discuss treatment.¹²

[38] A cardiologist’s clinic note dated May 2018 shows M. A. was reviewed in their office. Z. A. attended as well. M. A.’s heart was clinically stable. And, she had no complaints of angina or dyspnea, according to Z. A..¹³

[39] An EMG report dated April 2023 shows Z. A. helped M. A. with translation. She had a history of her hands swelling and tingling. It appears she was able to be examined to allow the doctor to make findings and suggest treatment.¹⁴

¹⁰ See GD24.

¹¹ See GD2-40 to 41.

¹² See GD20-9 to 12.

¹³ See GD20-13 to 14.

¹⁴ See GD20-7 to 8.

[40] A neurology/internal medicine clinic note shows M. A. was assessed in January 2020. Z. A. attended to help translate. She reported pain in her upper body, carpal tunnel symptoms, and ulnar neuropathy. She used a walker to move around.¹⁵

[41] In September 2022, a registered practical nurse filled out a services assessment form. It shows M. A. was deconditioned. Here is what was found:¹⁶

- Her cognition was assessed, and she was oriented to person, place, and time.
- She could not use the stairs and had weakness and deconditioning in her legs.
- She needed assistance with using the bathroom, showering, dressing, walking, and transferring.
- She sat on a walker to be pushed.
- She had glasses for reading and hearing aids.
- She could feed herself.

[42] In May 2023, Z. A. filed an application for accessible transportation with the support of Dr. Boutros (M. A.'s family doctor) on behalf of M. A. It shows M. A. had functional limitations related to her health. It shows ¹⁷

- She needed a walker and a wheelchair.
- She could not independently walk or use stairs.
- She could not independently follow directions.
- She didn't understand safety risks in the community.
- She could not be left safely unattended.
- She needed support for her communication and cognitive limitations.

[43] In August 2024, Dr. Boutros filled out a Declaration of Incapacity. She said M. A.'s incapacity started in March 2010. Here is what she says about M. A.:¹⁸

- She has a very limited understanding of both oral and written English.

¹⁵ See GD20-15 to 16.

¹⁶ See GD20-21 to 22.

¹⁷ See GD1-13 to 21.

¹⁸ See GD6-5 to 7.

- She could not understand critical information to make an informed decision.
 - She needed Z. A. to be present at every appointment to help with communicating and making decisions on her behalf.
 - Her cognitive impairment was her difficulty in understanding the English language to make decisions.
 - She also had osteoporosis, diabetes, arthritis, and tinnitus.
 - She was deconditioned and transitioned from a walker to a wheelchair.
 - She had limited mobility, poor balance, and decreased range of motion.
 - She became depressed after N. A.'s death, which further impaired her.
 - Her mental/cognitive and physical limitations affected her ability to handle her personal affairs.
- **Do M. A.'s activities cast light on her capacity to form or express an intention to apply for a survivor's pension?**

[44] My review of the evidence and the factors I have to consider shows M. A. likely could form or express the intention to apply for a survivor's pension.

[45] I do not doubt M. A. needed help with her daily activities, especially with her physical limitations. But, I don't find her conditions and limitations show she lacked the capacity to form or express the intention to make a survivor's pension application.

[46] M. A. was still mobile in the years after N. A.'s death, until the fall of 2022, when her body became deconditioned, and her range of motion and mobility worsened. That being said, her heart condition was stable. Her diabetes, tinnitus, and upper body pain don't show she was incapacitated. She wasn't bedridden. She could feed herself and go to the bathroom on her own. She wore glasses for her visual limitations and hearing aids for her hearing limitations. She could socialize with friends and could knit.

[47] I considered if the Appellant's claim of incapacity could be grounded in a language barrier—in this case, M. A.'s inability to communicate in English. Z. A. confirmed this is what she means when she says, "cognitive impairment."

[48] I recognize Z. A. submitted a Declaration of Incapacity form from Dr. Boutros. That being said, the form isn't determinative. It is just one factor for me to consider.¹⁹

[49] The total medical evidence doesn't support cognitive limitations outside of M. A.'s inability to communicate in English. Cognitive dysfunction is mentioned but there were no limitations provided to describe the level of dysfunction or what the dysfunction may be, including memory issues, impaired judgment, or an inability to focus or retain information or fill out a form. The evidence just shows she needed assistance from her daughter in attending the appointments and relaying information about her symptoms.

[50] I understand that M. A. needed help to communicate in public areas where English was spoken. But, she could still speak, understand, and provide direction in Serbian. The evidence shows that from August 2018, M. A.:

- could tell Z. A. about her medical symptoms to relay to the doctor
- could communicate with Z. A. on a daily basis
- could have simple conversations with her friend group
- could understand why she needed to take her medications
- could understand why a power of attorney was necessary
- could agree to the power of attorney and sign legal documents
- could direct Z. A. to sign documents on her behalf
- could communicate to Z. A. that she was oriented to person, place, and time

[51] I find M. A.'s activities show she was more than likely capable of forming or expressing the intention to apply for a CPP survivor's pension earlier than she did. The evidence shows her physical limitations were not incapacitating and she could exercise judgment and express her thoughts, although in Serbian.

– **It doesn't matter that M. A. and Z. A. didn't know about the survivor's pension**

[52] I asked Z. A. about how the application for the survivor's pension was submitted. She said after she got power of attorney, she tried to make sure M. A. was getting all

¹⁹ See *Flaig v Canada (Attorney General)*, 2017 FC 531.

the support she needed. She looked up CPP and found there was a survivor's pension. Then, she applied on her mom's behalf.

[53] Z. A. said M. A. wasn't aware of the survivor's pension before Z. A. applied on her behalf. This is because M. A. doesn't understand finances or benefits. Z. A. said that she also didn't know about the survivor's pension before she got power of attorney.

[54] Under the test for incapacity, it doesn't matter if the Appellant:²⁰

- knew the benefit existed
- knew that she had to apply for the benefit
- thought about applying for the benefit
- could make, prepare, process, or complete the application herself

[55] Z. A. only found out about the CPP survivor's pension around December 2022. Based on her research, she applied on her mother's behalf. I can't consider that she or M. A. were unaware of the benefit before then. I can only decide if M. A. could form or express the intention to apply for a survivor's pension during her period of incapacity. And, I have found that she could.

– **The Minister doesn't have to notify an appellant about a benefit or pension**

[56] Z. A. questioned why the government doesn't send out an application for the CPP survivor's pension. If she had gotten a letter in 2018, when her dad passed away, she would have applied sooner. The government should also have filled out the application on M. A.'s behalf.²¹

[57] The Federal Court says the Minister isn't required to notify Canadians of a potential entitlement to benefits. Canadians are expected to apply for the benefits for which they might be eligible.²²

²⁰ See *Canada (Attorney General) v Danielson*, 2008 FCA 78; *Canada (Attorney General) v Hines*, 2016 FC 112; and *Maloschicky v Canada (Attorney General)*, 2018 FC 51.

²¹ See the Appellant's submissions at GD24.

²² See *Lee v Canada (Attorney General)*, 2011 FC 689 at paragraph 72.

Conclusion

[58] The Appellant can't get more retroactive benefits for M. A.'s survivor's pension. M. A. got the maximum amount the CPP allows.

[59] This means the appeal is dismissed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section