



Citation: *JL v Minister of Employment and Social Development and The Estate of KL*, 2025 SST 207

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: J. L.

Respondent: Minister of Employment and Social Development

Added Party: The Estate of K. L.

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

Tribunal member: Dawn Kershaw

Type of hearing: Teleconference

Hearing date: February 26, 2025

Hearing participants: Appellant
Appellant's support person

Decision date: March 11, 2025

File number: GP-24-1711

Decision

[1] The appeal is dismissed.

[2] The Appellant, J. L., can't have more time to ask the Minister of Employment and Social Development (Minister) to reconsider its decision that he can't get his pension credits back.

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

Overview

[4] In June 2016, the Appellant's ex-wife applied for a credit split.¹ Credit splitting is intended to provide a lower income-earning spouse with more pension credits that may increase that person's access to pension benefits.²

[5] A credit split is done by totalling each person's unadjusted pensionable earnings (UPE) together and dividing them by two for each year they lived together. The equally divided UPE are then assigned to each person's CPP account.

[6] The Appellant didn't disagree with his ex-wife's application for credit splitting when it happened in August 2017.³ But after the Appellant's ex-wife died on July 14, 2024, the Appellant asked the Minister on August 6, 2024, to give him back the pension credits that went to his ex-wife when the credit split happened.⁴

[7] The Minister says they made the original credit split decision on August 11, 2017, so the Appellant's request is too late.⁵

¹ See application for credit splitting at GD2-16.

² See *Runchey v Canada (Attorney General)*, 2013 FCA 16 at paragraph 44.

³ See Service Canada's August 11, 2017, letter to the Appellant's ex-wife at GD2-24. The Minister says they sent a similar letter to the Appellant at that time, too, but they didn't have a copy of it – see Service Canada's September 4, 2024, letter to the Appellant at GD2-32.

⁴ See Appellant's August 6, 2024, request for a reconsideration at GD2-26.

⁵ See Reconsideration Decision letter at GD2-32. Even though this says it's a Reconsideration Decision letter, the letter says the Minister is refusing to do a reconsideration.

[8] This appeal is about whether the Appellant's request for a reconsideration was late and if it was, whether the Minister should give the Appellant more time to ask for a reconsideration.

What I have to decide

[9] I have to decide if the Appellant's reconsideration request was late.

[10] If the Appellant's request was late, then I have to decide whether the Minister acted judicially (made its decision properly) when it refused to give the Appellant more time to ask for a reconsideration.

The Appellant's request for reconsideration was late

[11] The Appellant's reconsideration request was late. I will explain why.

[12] An appellant has 90 days to ask the Minister to reconsider their decision.⁶

[13] If an appellant waits more than 90 days, then their reconsideration request is considered late.

[14] I don't know when the Appellant got the original 2017 decision that the Minister did the credit split because the only letter in the file is the one addressed to his ex-wife. But I know he knew about the decision because he said he didn't object to it. So, it's more likely than not that he knew about the credit split decision in 2017.

[15] The Appellant didn't object to the credit split until August 2024. The Minister says this was 2,542 days after they made the initial credit split decision.⁷

[16] The Appellant argues that his reconsideration request wasn't late because he could not ask for what he's asking for unless his ex-wife died so he could get the pension credits back that she can't use anymore. He says his request for a reconsideration isn't late.

⁶ See section 81(1) of the *Canada Pension Plan* (CPP).

⁷ See Minister's submissions at GD4-2.

[17] I understand the Appellant's argument, but the problem is that he has to make a reconsideration about a decision the Minister makes. The Minister made their decision in 2017 to split pension credits. They haven't made another decision since.

[18] So, the Appellant's request to get his pension credits back can only be tied to their decision to split them in the first place. So, his request to get his pension credits back is like disputing the credit split to begin with.

[19] That means that his current request for a reconsideration is in law about a decision the Minister made years ago.

What to consider when a reconsideration request is late

[20] The Minister can reconsider a decision even if the reconsideration request is late.

[21] For this to happen, the law says that an appellant has to convince the Minister of two things. The appellant has to show that:

- they have a reasonable explanation for why they are late
- they always meant to ask the Minister to reconsider its decision – this is called their “continuing intention”⁸

[22] If the appellant asked the Minister to reconsider its decision more than a year after the Minister told them about it in writing, then the law says that the appellant has to convince the Minister of two other things, too. The appellant has to show that:

- their reconsideration request has a reasonable chance of success
- giving them more time would not be unfair to another party⁹

[23] If the Appellant doesn't meet even one of the four factors outlined above, then he isn't entitled to have the Minister's August 2017 decision reconsidered.

⁸ See section 74.1(3) of the CPP Regulations.

⁹ See section 74.1(4) of the CPP Regulations.

The Appellant's reconsideration request doesn't have a reasonable chance of success

[24] The Appellant's reconsideration request doesn't have a reasonable chance of success for the following reason.

– Credit Splitting is Mandatory

[25] The CPP legislation says that the credit split is mandatory for couples who, among other things, have been living separate and apart for a period of one year or more, which was the case with the Appellant and his ex-wife at the time of the credit split.¹⁰

[26] There are only two situations where a credit split can be cancelled once it's done.

[27] The first is where benefits are payable to both former spouses subject to the credit split **and** the credit split would mean that the amount of benefits payable to both former spouses would have decreased.

[28] The second is if the former spouses entered into a spousal agreement in which they agreed to opt out of the mandatory credit split regime. But there are only four provinces that allow this.¹¹ Ontario isn't one of them.

[29] Neither of these situations exist in this case.

[30] The Appellant's argument is that because his ex-wife has died, those pension credits won't get used. But this argument doesn't fit into one of the two situations where a pension split can be cancelled once it's been done.¹²

¹⁰ See paragraph 55.1(a) and subsection 55.11(a) of the CPP.

¹¹ The provinces are British Columbia, Saskatchewan, Quebec, and Alberta.

¹² See *Dela Cruz v. Canada (Attorney General)*, 2020 FC 744; see also, *JB v. Minister of Employment and Social Development*, 2024 SST 909. Note that both of these cases deal with situations that are different from the situation in this case. However, they both show that there are only two ways a person can have a credit split reversed or cancelled.

[31] As the Federal Court of Appeal said, credits are split permanently and cannot be withdrawn.¹³

[32] Individuals aren't entitled to cancel a division of pension credits after the death of their former spouse.¹⁴

Conclusion

[33] I find that the Appellant can't have more time to ask the Minister to reconsider their decision to split the pension credits.

[34] This means the appeal is dismissed.

Dawn Kershaw

Member, General Division – Income Security Section

¹³ See *Conkin v. Canada (Attorney General)*, 2005 FCA 351.

¹⁴ See *Cornwell v. MHRD* (2003) (CP 19665) (PAB) (referred to in *W.L. v. Minister of Employment and Social Development*, 2019 SST 1411).