



Citation: *FM v Minister of Employment and Social Development*, 2025 SST 208

**Social Security Tribunal of Canada**  
**General Division – Income Security Section**

## Decision

**Appellant:** F. M.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision  
dated June 14, 2024 (issued by Service Canada)

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**Tribunal member:** Sarah Sheaves

**Type of hearing:** Teleconference

**Hearing date:** January 30, 2025

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** February 18, 2025

**File number:** GP-24-1282

## Decision

[1] The appeal is dismissed.

[2] The Appellant, F. M., wasn't eligible for the orphan's benefit on behalf of her daughter, M. D., from January 2022 to December 2022 (the period in dispute).

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

## Overview

[4] The Appellant is the mother of M. D. She applied for, and began receiving the orphan's benefit on behalf of her daughter in July 2020, following the death of the child's father.

[5] The orphan's benefit is a monthly benefit paid to, or on behalf of, a child of a deceased contributor to the CPP. If the child is under 18, the benefit isn't paid directly to the child. It is paid to the person who has custody and control of the child.<sup>1</sup>

[6] In October 2022, the Minister of Employment and Social Development (Minister) received custody documents that said the child was no longer in the custody and control of the Appellant.<sup>2</sup>

[7] In January 2023, the Minister advised the Appellant she had received benefits she wasn't entitled to, and requested that the benefits paid for the period in dispute be repaid.<sup>3</sup>

[8] The Appellant asked the Minister to reconsider its decision. The Minister reconsidered its decision on June 14, 2024, and maintained its position that the Appellant wasn't entitled to receive the benefits for the period in dispute.

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<sup>1</sup> The law relating to the orphan's benefit changed in June 2024. I will explain the change, and why it isn't applicable in this case later in my decision.

<sup>2</sup> See GD2-34.

<sup>3</sup> See GD2-17.

[9] The Appellant appealed the Minister's decision to the Social Security Tribunal.

[10] The Appellant says the benefits were for her daughter, and have been set aside in an account for her daughter's benefit and use. She says her daughter is entitled to the benefits, and they should not have to be repaid to the Minister.

[11] The Minister says the Appellant didn't have custody and control of her daughter for the period in dispute, and should not have received the benefits. It maintains its position that the benefits should be repaid.

## **What the Appellant must prove**

[12] For the Appellant to succeed, she must prove she was the person with **custody and control** of the child for the period in dispute.<sup>4</sup>

[13] The law didn't define what "custody and control" meant. However, I agree with decisions of the Tribunal, which say that custody and control means the person who has responsibility for and is actually raising the child.<sup>5</sup>

[14] The Appellant has to prove she had custody and control on a balance of probabilities. This means that she must show that it's more likely than not that she had custody and control of her child for the period in dispute.

### **– The law changed on June 20, 2024**

[15] The law regarding payment of the orphan's benefit changed on June 20, 2024. It now says that the orphan's benefit is paid to the person with decision-making responsibility for the child.<sup>6</sup>

[16] The new law doesn't apply to this appeal because the Appellant received the benefits before the law changed. The Minister also made its decisions about the Appellant's entitlement to the benefits for the period in dispute before the law changed.

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<sup>4</sup> See section 75 of the *Canada Pension Plan*, RSC 1985, c. C-8, s 75; SC 2000, c. 12, s. 56, repealed by SC 2004, c. 17, s. 193.

<sup>5</sup> See *AL v Minister of Employment and Social Development and TT*, 2024 SST 1515.

<sup>6</sup> See section 75 of the *Canada Pension Plan*, SC 2024, c. 17, s. 193.

[17] New laws that affect an appellant's rights aren't retroactive, unless the law indicates otherwise.<sup>7</sup> The new law doesn't say or suggest it applies to previous rights, so it should not be applied retroactively.

– **I have to follow the law**

[18] I have to follow what the law says.

[19] The law doesn't give me the authority to waive overpayments that are assessed by the Minister. I'm also not able to make an order for payment plans to repay benefits. I'm not able to do these things, even if I want to help an appellant.

[20] I have to follow what the law says about who is entitled to receive an orphan's benefit.

## **What I have to decide**

[21] I have to decide if the Appellant had custody and control of the child for the period in dispute.

## **Reasons for my decision**

[22] I find that the Appellant wasn't entitled to receive the orphan's benefit for the period in dispute, because she didn't have custody and control of the child during that time.

## **The Appellant didn't have custody and control of the child**

[23] The Appellant didn't have custody and control of the child during the period in dispute.

[24] The Appellant entered into a temporary custody agreement with the child's paternal grandparents in December 2021.<sup>8</sup> The child went to live with them full-time.

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<sup>7</sup> See section 43(c) of the *Interpretation Act*.

<sup>8</sup> See GD2-12.

[25] The custody agreement confirms that the child's grandparents had physical care and control of the child. They were responsible for the maintenance, education, well-being and welfare of the child. They were given authority to make all financial, medical, and educational decisions on behalf of the child.

[26] At the hearing, the Appellant agreed that the terms of the custody agreement were accurate.

[27] The Appellant says she gave the child's grandparents temporary custody for the period in dispute, because she was receiving treatment for her mental health and addiction. For several months of the period in dispute, the Appellant was living at a residential recovery program, and didn't see the child during that time.

[28] The Appellant says she began to have visitation with her daughter again in April 2022, after she came home from treatment. The visits were every second weekend.

[29] The Appellant confirmed that while the child resided with her grandparents, they made all the decisions about her education. The school did not contact her directly for any reason.

[30] The Appellant says she wasn't making any decisions about the child while the grandparents had custody.

[31] By February 2024, the Appellant regained full permanent custody of the child.<sup>9</sup> The child has resided with her since that time, and the Appellant has resumed receiving the orphan's benefit for her child.

[32] Based on the evidence in the Tribunal's file and the testimony at the hearing, I find that the Appellant didn't have custody and control of the child for the period in dispute.

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<sup>9</sup> See GD2-33.

[33] The child didn't live with the Appellant during that time. The Appellant didn't have custody during that time. The Appellant wasn't making decisions on behalf of the child during that time.

[34] The law required that the person receiving the orphan's benefit had to have custody and control of the child while they were receiving the benefit. The Appellant didn't have custody and control for the period in dispute.

## **Conclusion**

[35] For these reasons, the Appellant wasn't eligible to receive the orphan's benefit on behalf of the child, from January 2022 to December 2022.

[36] This means the appeal is dismissed.

[37] Nothing in this decision should prevent the person(s) having custody and control of the child for the period in dispute from making an application to the Minister to receive those benefits.

Sarah Sheaves

Member, General Division – Income Security Section