



Citation: *MM v Minister of Employment and Social Development and Estate of DM*, 2025 SST 176

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. M.
Representative: Paul Brooks

Respondent: Minister of Employment and Social Development
Representative:

Added Party: Estate of D. M.
Representative:

Decision under appeal: General Division decision dated October 30, 2024
(GP-24-1059)

Tribunal member: Kate Sellar

Decision date: February 28, 2025

File number: AD-25-71

Decision

[1] I'm refusing to give the Claimant, M. M., leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

Overview

[2] The Claimant's spouse died in May 2017. In February 2024, the Minister of Employment and Social Development (Minister) received the Claimant's application for the Canada Pension Plan (CPP) survivor's pension.

[3] With the application, the Claimant provided a letter from the owner of the funeral home that managed the funeral services for her late spouse. The funeral home owner said he completed the applications for the death benefit and the survivor's pension and then he submitted the applications to Service Canada. He said the Claimant's daughter had recently learned that Service Canada didn't receive the applications, and so no benefits were paid. He said the 2024 applications are copies of the original applications he filed.

[4] The Minister approved the application for the survivor's pension and explained that payments would start in March 2023. This was 11 months before the date of application of February 2024.

[5] The Claimant disagreed with the start date of the pension and so she asked the Minister to reconsider its decision. She explained that the original application was sent in June 2017.

[6] On reconsideration, the Minister maintained March 2023 as the start date for the pension. The Claimant appealed to this Tribunal.

[7] The General Division dismissed the appeal. The General Division found that the Claimant isn't eligible for the CPP survivor's pension earlier than March 2023.

Issues

[8] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law by failing to consider and decide whether the Minister made an administrative error?
- b) Is there an arguable case that the General Division failed to follow a fair process by placing an unreasonable burden on the Claimant to ensure that the Minister received the mailed application, despite the Claimant having no control over postal services?
- c) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[9] I can give the Claimant permission to appeal if the application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact;
- made an error applying the law to the facts.¹

[10] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.²

¹ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

² See section 58.1(c) of the Act.

[11] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

There's no arguable case that the General Division made an error of law by failing to consider whether the Minister made an administrative error.

[12] The Claimant argues that the General Division made an error of law by failing to consider whether the Minister made an administrative error. The Claimant provided no legislative authority for the Tribunal to consider administrative error. The Claimant cited a decision from the Federal Court of Appeal from 2003 called *Tucker*. In that case, the Federal Court of Appeal confirmed that the Minister needed to remedy the problem of an administrative error to put a claimant in the position they would have been in if the administrative error hadn't been made.³

[13] The General Division explained that to get the survivor's pension, a person must apply for it in writing. The Minister can't approve an application unless it first receives the application. The General Division explained that if it was the Minister (and not Canada Post) that made a mistake here by misplacing the application, only the Minister can investigate and address allegations of mistakes. The General Division explained that it doesn't have the jurisdiction (authority) to consider whether the Minister made a mistake on the earlier application: "If this is an argument that the [Claimant] wants to pursue then she needs to do so directly with the Minister."⁴

[14] The Claimant hasn't shown an arguable case for an error by the General Division. The General Division explained that in the current legislation, it is the **Minister** that investigates allegations or bad advice or administrative errors and then takes steps to correct them.⁵ The General Division also references a Federal Court of Appeal Decision that explains that the General Division doesn't have the jurisdiction to make findings under the current legislation about administrative error.

³ See AD1-12 to 13.

⁴ See paragraphs 14 to 15 and 21 in the General Division decision.

⁵ See footnote 10 in the General Division decision, citing section 66(4) of the *Canada Pension Plan* as it currently reads, as well as *Pincombe v Canada (Attorney General)*, [1995] F.C.J. No. 1320 (FCA).

[15] Since the Claimant hasn't provided any authority in the legislation or in the case law that suggests that it is the General Division that has the power to address administrative errors in the CPP, there's no arguable case that the General Division made an error of law.

There's no arguable case that the General Division failed to provide a fair process by placing an unreasonable burden on the Claimant to show that the Minister received her application.

[16] The Claimant argues that the General Division failed to provide the Claimant with a fair process by placing an unreasonable burden on the Claimant to show that the Minister received her application.

[17] The Claimant says that the General Division required her to ensure that the Minister received the mailed application, despite the Claimant having no control over the Minister's ability to receive mail. The Claimant says this violates the principles of natural justice, which requires the government to provide fair processes and not hold the Claimant accountable for failures in administrative and processing systems. The Claimant also relies on the postal rule from contract law, which says that a document is deemed received when properly mailed.⁶

– Fairness in the Tribunal context

[18] What fairness requires will vary depending on the circumstances.⁷ At the heart of the question about fairness is whether, considering all the circumstances, the people impacted by the process had a meaningful opportunity to present their case fully and fairly. Part of the duty to act fairly is allowing people the right to be heard. The right to be heard is also about giving people the chance to make arguments on every fact or factor likely to affect the decision.⁸

⁶ See AD1-14.

⁷ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

⁸ The Federal Court explains this in a case called *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

– **The General Division’s approach**

[19] The General Division explained that it cannot make any decision about an application that the Minister has no record of receiving. The General Division had the jurisdiction to decide about the application the Minister received in February 2024 – that was the application that was properly before the General Division. The General Division had to decide the correct start date for that application based on what the law says, and the law says the survivor’s pension cannot start more than 11 months before the Minister receives the application. According to the General Division, “an argument about a lost or misplaced application is really about whether there was some kind of mistake made by Canada Post or the Minister.”⁹

– **The Claimant hasn’t raised an arguable case for a failure to provide a fair process**

[20] In my view, the Claimant hasn’t raised an arguable case that the General Division failed to provide the Claimant with a fair process. It seems that the Claimant is really arguing that the current wording of the CPP (requiring the Minister to have received an application to make a decision, and tying the maximum retroactive payments allowed to the date the Minister receives the application), has an unfair impact on claimants who aren’t aware that the Minister didn’t receive and process their applications.

[21] There’s no evidence that this is a failure by the General Division to provide the Claimant with an opportunity to present her case. Rather, it seems that this is an argument about the natural justice implications of the current legislation. The Claimant hasn’t provided any argument as to how the General Division could or should have addressed those implications in law, given it is a statutory tribunal that is required to apply the law as it is written.

[22] Placing an evidentiary burden that is inconsistent with what the legislation requires could be an error of law. But where the General Division puts an evidentiary burden on the Claimant is consistent with what the law requires, allowing an arguable

⁹ See paragraph 21 in the General Division decision.

case for an error of fair process by the Tribunal would be a form of collateral attack on the legislation itself.

[23] The General Division didn't have any jurisdiction to apply a rule from contracts to the application of the CPP simply because the CPP allows people to mail documents. The Claimant has provided no statutory authority for that approach, and this Tribunal derives its powers from statute.

[24] Accordingly, there's no arguable case that the General Division failed to provide the Claimant with a fair process.

No new evidence

[25] The Claimant hasn't provided any evidence that wasn't already presented at the General Division. So new evidence also cannot form the basis for providing the Claimant with permission to appeal.

Review of the Record

[26] I've reviewed the record.¹⁰ I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any other important evidence that could have affected the outcome for the Claimant.

[27] In any event, I'm satisfied that there was no avenue for the General Division to have given a decision on the start date of the CPP survivor's pension based on a missing first application. The General Division doesn't have the jurisdiction to give a decision on an application other than the one that gave rise to the reconsideration decision.¹¹

¹⁰ For more on the Appeal Division completing this type of review, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

¹¹ In the OAS context, see paragraph 14 in *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99; and in the context of a CPP survivor's pension, see *Minister of Employment and Social Development v NA*, 2021 SST 72.

Conclusion

[28] I've refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division