



Citation: *SV v Minister of Employment and Social Development*, 2025 SST 251

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** S. V.

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

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**Decision under appeal:** General Division decision dated November 26, 2024  
(GP-24-1741)

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**Tribunal member:** Kate Sellar

**Decision date:** **March 21, 2025**

**File number:** AD-25-149

## Decision

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

## Overview

[2] After his common-law partner died, the Claimant applied for a Canada Pension Plan (CPP) survivor's pension on March 7, 2011. The Minister of Employment and Social Development (Minister) refused the application that same month (the first application). He was under 35, he was not disabled, and he had no dependent children. He didn't qualify for a survivor's pension under the CPP at that time.<sup>1</sup>

[3] The CPP law about survivor's pensions changed in 2019. The Minister sent letters to those who might be eligible under the new law on January 4, 2019.<sup>2</sup> The Claimant says he didn't get a letter.

[4] On October 7, 2023, the Minister wrote to the Claimant stating that his application for the CPP survivor's pension was approved, effective March 2011.<sup>3</sup>

[5] But then another letter dated December 13, 2023 informed him that he had to reapply before he could be eligible (the December letter).<sup>4</sup> The December letter also acknowledged that the Claimant received payment of the monthly survivor's pension for October 2023 and November 2023 as a result of a system error. The letter said he wasn't entitled to the survivor's pension unless he reapplied.<sup>5</sup>

[6] The Claimant applied again on December 19, 2023 (the second application).<sup>6</sup> The Minister approved the application with payments going back to January 2023,

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<sup>1</sup> See section 44(1)(d) of the *Canada Pension Plan* (CPP).

<sup>2</sup> See GD2-27 for a Minister's log regarding actions it took on the Claimant's file. An action is logged for sending the Claimant a letter inviting him to reapply. This log doesn't necessarily mean the Claimant received the letter.

<sup>3</sup> See GD1-9.

<sup>4</sup> See GD1-10.

<sup>5</sup> In theory, since payments can go back 11 months from an application, paying the Claimant for October and November because of system error wouldn't result in a debt for the Claimant to repay unless he failed to reapply or he took too long to reapply, which was not the case.

<sup>6</sup> See GD2-27.

11 months before the second application.<sup>7</sup> The Claimant asked the Minister to reconsider: he argued that payments should have started in January 2019 when the law changed.<sup>8</sup>

[7] In the reconsideration letter, the Minister maintained its position that the correct start date for the survivor's pension was 11 months before the Claimant's second application.<sup>9</sup> The Claimant appealed to this Tribunal.

[8] The General Division dismissed the Claimant's appeal. The General Division explained that it couldn't make an exception to the rule that says payments can't start any earlier than 11 months from when a person applies.

## Issues

[9] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact by ignoring important evidence the Claimant provided?
- b) Does the application set out evidence that wasn't presented to the General Division?

## I'm not giving the Claimant permission to appeal

[10] 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;

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<sup>7</sup> See GD2-8.

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

<sup>9</sup> See GD2-13.

- made an error of fact; or
- made an error applying the law to the facts.<sup>10</sup>

[11] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>11</sup>

[12] 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 fact by ignoring some important evidence.**

[13] The Claimant argues that the General Division ignored the fact that he actually received monthly payments without reapplying for October and November of 2023. It was only in December 2023 that the Minister advised him that he needed to reapply for the CPP survivor's pension to be eligible. The Claimant argues that this is an important fact that the General Division ignored.

**– Ignoring important evidence can raise an arguable case for an error of fact.**

[14] The General Division is presumed to have considered all the evidence. The Claimant can overcome that presumption by showing that the evidence the General Division was silent about was important enough that the General Division should have discussed it.<sup>12</sup>

**– The facts the General Division recognized**

[15] The General Division found the following facts:

- On October 7, 2023, the Claimant received a letter saying that his application for a survivor's pension was approved effective March 2011.<sup>13</sup>

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<sup>10</sup> See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

<sup>11</sup> See section 58.1(c) in the Act.

<sup>12</sup> See paragraph 51 in *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

<sup>13</sup> See paragraph 5 in the General Division decision.

- A letter dated December 13, 2023 informed him that he had to reapply before he could be eligible.<sup>14</sup>
- He reapplied in December 2023, the Minister approved the application, and payments went back to January 2023, 11 months before his application.<sup>15</sup>

– **No arguable case for an error of fact by ignoring important evidence.**

[16] It seems the Claimant is correct that the General Division didn't specifically discuss the fact that the Claimant received payment of the survivor's pension in both October and November of 2023, before the Minister told him in the December letter that he needed to reapply to be eligible.

[17] I can see why the Claimant sees these payments as important evidence. I assume he means that receiving payment before reapplying suggests it's not really necessary to reapply in order to be paid. If reapplying isn't really necessary, then maybe payments really could start back to January 2019 when the law changed.

[18] However, the Claimant doesn't have an arguable case for an error of fact by the General Division. There are three reasons why.

[19] First, the Claimant's first application is not the subject of the appeal. The Claimant appealed the reconsideration letter from his second application. Accordingly, the Tribunal can only make decisions relating to that second application.<sup>16</sup>

[20] Second, the General Division explained that it must follow what the CPP says. The CPP says that no benefit is payable under the CPP unless there is an application.<sup>17</sup> The CPP also says that payments cannot start more than 11 months before the application.<sup>18</sup> The Claimant hasn't raised any legal argument about how or why those parts of the law don't apply to him.

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<sup>14</sup> See paragraph 5 in the General Division decision.

<sup>15</sup> See paragraphs 5 and 6 in the General Division decision.

<sup>16</sup> See sections 81 and 82 in the CPP.

<sup>17</sup> See section 60(1) of the CPP.

<sup>18</sup> See section 72 of the CPP. The General Division explained this at paragraph 9 in its decision.

[21] Third, the Minister specifically acknowledged in its letter to the Claimant that the payments in October and November were the result of a system error and that he did need to reapply. Accordingly, it's difficult to argue that being paid those months means that the Minister can choose dates to start paying regardless of whether there is an application. The Minister simply stated those payments were made as a result of an error.

[22] Although the Claimant raised a part of the history of the file that the General Division didn't fully explain in its decision, there's no arguable case for an error of fact. The evidence the Claimant points to isn't important enough that the General Division needed to discuss it, given what the law says about the need to apply for a survivor's pension and earliest payments can start based on when the Minister receives the application.

### **The Claimant hasn't provided new evidence.**

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

[24] I've reviewed the record.<sup>19</sup> I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any important evidence.

### **Conclusion**

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

Kate Sellar  
Member, Appeal Division

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<sup>19</sup> For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.