



[2022] 1 F.C.R. D-14

PENSIONS

Judicial review of decision of Social Security Tribunal, Appeal Division (2021 SST 75) reversing decision of General Division (2020 SST 821), assigning disabled contributor's child's benefit (benefit payable under *Canada Pension Plan*, R.S.C., 1985, c. C-8 (CPP), s. 44(1)(e) to applicant's former spouse — Benefit at issue herein flat-rate monthly benefit paid to child of person receiving CPP disability benefits — Child in question under 18 years of age at relevant time — Parents physically separated in 2017 — Prior to separation, applicant's spouse disabled contributor, received benefit on child's behalf — CPP, s. 75 providing that in cases where child living apart from disabled contributor, payment shall be made to person having custody, control of child — Question to be determined in this case was which parent should receive benefit on behalf of child, that is, which parent having custody, control of child — Applicant having custody, control of child — Applying for benefit on behalf of child — Granted payment starting in December 2018 — Applicant asked Minister to reconsider decision so that payment of benefit would start retroactively from January 2018, actual period at which time child resided solely with applicant — In reconsidering decision, Minister reversing position, applying August 2018 "Policy Direction for Payment of the *Canada Pension Plan's* Disabled Contributor's Child Benefit" (Policy) — Determining that benefit should be payable to applicant's spouse because she is disabled contributor — Minister's position that, in accordance with Policy, in case of child under 18 years of age, living apart from disabled contributor, benefit should be payable to disabled contributor as long as they had "any relationship with the child, no matter how minimal" — General Division determined it was not bound by Policy, but rather bound by CPP, s. 75 — Awarded payment of benefit to applicant — Appeal Division considered new document, i.e. order from Ontario Superior Court of Justice, Family Court branch, setting out child support, parenting arrangements for child — Finding it could consider order as fresh evidence because it confirmed oral evidence of parties, not in dispute — Also finding that General Division's finding of fact that father had custody, control of child was wrong — Whether Appeal Division came to reasonable decision — Unreasonable for Appeal Division to interfere with General Division's factual findings in this case — When determining whether fresh evidence should be admitted before it, Appeal Division should be guided by principles enumerated in *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 — Appeal Division not the fact-finder — Order provided to Appeal Division not falling under general background information exception, should not have been admitted as evidence — More than sufficient evidence to rationally support finding before General Division that applicant had custody, control of child effective January 2018 — General Division did not omit or ignore any important evidence — Appeal Division essentially reweighed evidence before General Division, considered new evidence, substituted its view of probative value of evidence for that of General Division — Policy inconsistent with CPP, s. 75 — Decision of General Division left in place — Application allowed.

SIBBALD V. CANADA (ATTORNEY GENERAL) (A-88-21, 2022 FCA 157, Rivoalen J.A., reasons for judgment dated September 16, 2022, 18 pp.)