



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. C. v. Minister of Employment and Social Development*, 2017 SSTGDIS 170

Tribunal File Number: GP-16-2611

BETWEEN:

**D. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**L. M.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Connie Dyck

HEARD ON: November 8, 2017

DATE OF DECISION: November 10, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a *Canada Pension Plan* (CPP) survivor's pension on January 29, 2016. The Appellant claimed that she was the party entitled to the benefit as the legal spouse of the contributor. The Respondent denied the application initially and upon reconsideration. The Respondent had determined that the added party was the person entitled to the CPP survivor's pension as the common-law spouse of the contributor. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] To be eligible for a CPP survivor's pension, the Appellant must meet the requirements that are set out in the CPP. Since the parties agree, and the Tribunal finds, that the contributor made payments for not less than the MQP, the Tribunal must decide whether the Appellant is entitled to the survivor's benefit.

[3] This appeal was heard by Teleconference for the following reasons:

- a) More than one party will attend the hearing.
- b) The method of proceeding is most appropriate to allow for multiple participants.
- c) Videoconferencing is not available within a reasonable distance of the area where the Appellant lives
- d) The issues under appeal are not complex.
- e) There are gaps in the information in the file and/or a need for clarification.
- f) Credibility is not a prevailing issue.
- g) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

h) A telephone hearing is most appropriate for this appeal. In addition it will allow for the faster scheduling of a hearing date.

[4] The following people attended the hearing: The Appellant, D. C.; the Appellant's friend, P. T.; and the Appellant's pastor and family friend, A. C..

[5] The Tribunal has decided that the Appellant is eligible for a CPP disability pension for the reasons set out below.

### **PRELIMINARY ISSUES**

[6] The added party was advised by a letter from the Tribunal dated September 12, 2017 to contact the Tribunal to provide her updated telephone number. The added party contacted the Tribunal on September 18, 2017 and stated that she did not wish to participate in the hearing. The Notice of Hearing was delivered to the added party on September 21, 2017 as noted on the delivery confirmation form of Canada Post.

[7] In accordance with subsection 12 of the *Social Security Tribunal Regulations* (Regulations), if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing. The Tribunal was satisfied that the added party received notice of the hearing and proceeded with the hearing in her absence.

### **EVIDENCE**

[8] In a handwritten note on a letter to the Respondent dated August 16, 1999, the Appellant indicated that the contributor removed his income from their joint bank account at the Royal Bank as of January 1, 1999. (GD 2-54)

[9] In a Processing Observation dated December 13, 1999, Bryon Burvill, ESDC Investigation Officer, stated that he met with both the Appellant and the contributor. The contributor stated that he and the Appellant had been separated for 2 years and that he had been boarding with the added party. Mr. Burvill spoke with the added party by telephone and she confirmed that the contributor was a boarder at her cottage. She explained that she used to reside

with the Appellant's brother. The ESDC investigator determined that the Appellant and the contributor were considered separated.

[10] In a statement dated September 22, 1999, Dr. R.J. Davey stated that the contributor because of his medical condition, was unable to look after himself. (GD 2-56)

[11] In a signed Statutory Declaration dated November 17, 1999, the contributor stated that he and the Appellant had been living separate and apart since May 1997 because they did not get along. He stated that he had been working at their farm with their sons but he has lived and boarded at X X, X X. He wrote "I am just boarding at X X X". The Appellant stated since separating from the Appellant, he had resided with X X at X X, X X. (GD 2-62) The contributor also signed a statement that he was presently boarding with L. M. (the added party) but was not living in a common law union with her as they did not have a jointly signed lease, mortgage or purchase agreement relating to a residence in which they both lived; they did not jointly own property; and they did not have joint bank or credit card accounts. (GD 2-61)

[12] In an application for a Division of Unadjusted Pensionable Earnings ("Pension Credits") (DUPE), dated January 18, 2000, the Appellant stated that she and the contributor were married on March 7, 1954 and last resided together on January 1, 1999. They had previously been separated from September 1985 to September 1986 due to incompatibility. (GD 2-66 – GD 2-67)

[13] A letter dated February 25, 2000 from Human Resources Development Canada to the contributor states that a credit splitting application was received from the Appellant who indicated on her application that the period she and the contributor resided together was July 1954 to January 1999. The periods subject to division was determined to be January 1966 to December 1998. (GD 2-70)

[14] In a signed Statutory Declaration for Health and Welfare Canada – Income Security Programs dated February 22, 2000, the Appellant stated that she and the contributor lived separate and apart from January 1998 to January 1999 due to her being abandoned. She stated that she and the contributor last resided together on December 15, 1997 and that during the period of separation, the contributor resided with the added party. (GD 2-69)

[15] A Homestead Notice dated September 25, 2001, indicates that the contributor has a claim of interest under the Homesteads Act. (GD 3-3)

[16] A Blue Cross prescription drug plan, dental service plan and vision plan effective November 3, 2003 in the name of the added party, lists the contributor as a spouse qualified to use the benefits. (GD 2-22) A Blue Cross card shows that the contributor is listed as a beneficiary on the Blue Cross health plan of the added party. This policy was effective in October 2009. (GD 2-24) In a letter dated February 16, 2016, Dr. Ron Isfeld of X X Dental Group stated that it was of record at his office that the contributor had been listed as a spousal dependant of the added party. He was covered under her Manulife insurance from October 2011 until present and prior to that under the added party's Blue Cross dental insurance plan. (GD 2-20)

[17] A statement from the TD Bank for the period of May 31, 2012 to June 29, 2012 is addressed solely to the contributor. (GD 2-26)

[18] A Statement of Account from X X X X dated May 20, 2015 is addressed to the added party for the accommodation costs of the contributor. (GD 2-25)

[19] In a signed and witnessed statement dated March 16, 2016, the contributor's granddaughter stated the contributor resided with the added party from 1996 to 2013 until February 2013 when he moved to a nursing home until his passing in January 2016. (GD 2-32) In a subsequent handwritten note dated September 26, 2016, the granddaughter clarified that while the contributor did live with the added party, he was still legally married to the Appellant until the time of his passing. (GD 3-4)

[20] In a signed and witnessed Statutory Declaration dated February 19, 2016, the other party stated that she and the contributor resided together from October 1, 1996 to February 22, 2013 when he moved into a nursing home. She stated that they had no jointly signed lease or mortgage, no jointly owned property and no joint bank accounts or credit cards.

[21] In a signed and witnessed Statutory Declaration dated March 7, 2016, the Appellant stated that she and the contributor lived separate and apart from May 2, 1997 to February 1, 2013 because the Appellant had Parkinson's Disease. She stated that they last resided together in May

1997 and that during their separation the contributor did not live in a common-law relationship with anyone else. (GD 2-28)

[22] In a letter dated March 16, 2016, J. M., office co-ordinator at X X X X and J. K., unit manager at X X X X, stated that the contributor was admitted to the X X X Nursing Home on February 20, 2013 and that the added party was the first contact. They noted that the added party visited the contributor daily and called for updates regularly at 11:30 am, 2:30 pm and 8:30 pm when she spoke to the unit manager and nurses regularly regarding the contributor's well-being. They also noted that the added party purchased the contributor's wheelchair and looked after his medical requirements including taking him to all medical appointments. The Appellant had 100% medical coverage for the contributor. (GD 2-30)

### **Oral evidence at the hearing**

[23] At the hearing, the Appellant testified that both of her sons were the Power of Attorney of the contributor and had been since 2000.

[24] She further explained that it was her son, who made the decision to move the Appellant out of the added party's residence and into an extended care facility.

[25] The witness, A. C., stated that in 2001 he went over to the residence of the C.'s to purchase straw and D. C. was working on the yard and helped him load the straw. He explained that this was not an awkward situation as the Appellant spent most days working on the farm with his sons and then returned to his residence for the night.

[26] The Appellant testified that she also took the contributor to doctor's appointments.

[27] She advised the Tribunal that it was her sons, in their roles as power of attorneys that made all of the funeral arrangements and were responsible for paying for same.

### **SUBMISSIONS**

[28] The Appellant submitted that she qualifies for a Survivor's pension because the contributor was not in a common-law relationship and she is the legal spouse of the contributor;

[29] The Respondent submitted that the Appellant was not entitled to the Survivor's pension because:

- a) Letters from the Insurance companies stated that the contributor was listed as a spousal dependant of the added party as of September and October 2011;
- b) Third party statements noted that the added party and the contributor were living in the same residence from October 1996 to 2013 when the contributor moved to an extended care home;
- c) Copies of correspondence with the same address;
- d) A letter from the extended care home stating that the added party was listed as 'first contact person' and that the added party visited the contributor daily and inquired about his well-being daily; and
- e) The added party completed a statutory declaration of common-law union declaring that she and the contributor lived together from October 1996 to February 2013 when he entered an extended care home,

## **ANALYSIS**

### **Test for a Survivor's Pension**

[30] A benefit may be paid to "the" qualifying survivor of a deceased contributor pursuant to Section 44(1) (d) of the CPP, provided the contributor has made payments for not less than the minimum qualifying period ("MQP"). Section 44(1)(d) of the CPP requires that the survivor be at least 35 years of age at the time of death.

[31] "Survivor" is defined in subsection 42(1) of the CPP as one who was married to the deceased contributor at the time of death, unless there was a common-law partner at the time of death, in which case the common-law partner's entitlement shall prevail.

[32] Subsection 2(1) of the CPP defines a "common-law partner" as one who, at the time of death, was cohabitating with the deceased in a conjugal relationship, having so cohabitated for a continuous period of at least one year.

[33] Since the parties agree, and the Tribunal finds, that the Appellant was legally married to the deceased at the time of death, the Appellant shall be entitled to the CPP survivor's benefits pursuant to section 44(1)(d), unless the Added Party can establish, on a balance of probabilities, that she was "the survivor" of the estate of the deceased contributor.

[34] According to section 42(1) of the CPP, the Added Party would be the "survivor" if she was the "common-law partner" of the deceased at the time of his death.

[35] To be the "common-law partner", as defined in section 2, the Added Party must produce evidence of a conjugal relationship with the deceased at the time of death, for a continuous period of at least one year.

[36] To establish a conjugal relationship, the added party must show that the couple continued, while apart, by their acts and conduct, to have shown a mutual intention to be in a marriage-like relationship of some permanence. The question is not whether an added party is a good person or whether she behaved in an appropriate way. Nor is the question whether the legally married spouse is more deserving of the survivor's benefit than the common-law partner. The question is whether there was a common-law partnership during the separation up to the time of death (*Farrell v. Canada (A.G.)*, 2010 FC 34).

[37] Where there are competing interests between the legally married widow of a deceased contributor and an alleged common-law partner, there is a *prima facie* presumption that the benefit goes to the legal widow. As a result, the burden will be on the alleged common-law partner to prove that she was living with the deceased contributor in a conjugal relationship at the time of the contributor's death and had lived with the deceased contributor in a conjugal relationship for a continuous period of at least one year. (*Betts v. Shannon* (October 22, 2001), CP 11654 (PAB))

[38] The Respondent has argued that the added party has satisfied her obligation to show that she and the contributor were in a common-law relationship. The Tribunal was not persuaded for the following reasons.

[39] The added party provided letters from insurance companies stating that the contributor was a spousal dependent of the added party. However, this determination was based only on the



statement of the added party provided to the insurance companies, that the contributor was her common-law spouse. The Tribunal did not put much weight on the added party's statement to the insurance companies as she provided conflicting evidence with regard to the common-law status of her and the contributor, at various times. In a Statutory Declaration dated February 2016, the added party stated that she resided with the contributor from October 1996. However, the evidence of the contributor was that he only separated from his wife in May 1997 and that in November 1999 he was not living with the added party in a relationship but was a boarder. The added party then verbally advised the ESDC Investigation Officer in November 1999 that the contributor was a boarder at her cottage. Further, when weighing the added party's statement to the insurance company against the statements of the contributor and all of the evidence as a whole, the Tribunal is not persuaded that this statement determines a common-law relationship.

[40] Further, there is no evidence that the added party and the contributor shared any bank accounts and in fact, the evidence of the added party was that they were not on any real property or lease or rental agreement together. The contributor noted in his statutory declaration of November 1999 that he and the added party had no jointly signed lease or mortgage, no jointly owned property and no joint bank accounts or credit cards. The evidence of the added party in February 2016 was that this remained unchanged.

[41] The Tribunal put great weight on the statements of the contributor. In November 1999, in a Statutory Declaration, the contributor stated that he was "boarding" with the added party. The contributor intentionally crossed out the words "living" on the declaration and wrote in the word "boarding" in its place. In a second page of the statutory declaration (GD 2-62) the contributor wrote "I am just boarding at X X X". It is clear that the intention of the contributor was that he was simply a boarder at the added party's residence. While the added party submitted letters of support indicating that she and the contributor resided in the same house, this is not in dispute. However residing in the same house as a party does not constitute a common-law relationship. The Tribunal finds that this intentional act supports that the contributor was a boarder with the added party and not living with her, as of November 1999, despite the added party stating that they had been in a common law relationship since 1996.

[42] Although the Tribunal finds that the evidence supports that the added party and the contributor were not in a common law relationship as of November 1999, the Tribunal must determine if they were in a common-law relationship at the time of his death. Based on the evidence, the Tribunal finds that they were not. The evidence does not support that the relationship between the added party and the contributor changed from a boarder relationship to a common law relationship at any time from November 1999 until the time of the contributor's death. The contributor made a Power of Attorney in 2000 and named his two sons as his powers of attorney and at no time did he remove or replace his sons as his powers of attorney. The evidence of the A. C., who was the pastor officiating the contributor's funeral and had personal firsthand knowledge of the funeral arrangements, was that the sons of the contributor made all of the funeral arrangements and were responsible for the payments as they remained the powers of attorney at the time of the contributor's death. The Tribunal considered this evidence that the contributor did not change his power of attorney and kept his sons as his powers of attorney since 2000; did not change his bank accounts to include the name of the added party since he had a sole account in 1999 and continued to have an account in only his name as noted on a TD bank stated of June 2012; and did not purchase any joint property, credit cards or lease together with the added party at any time since 1999. The Tribunal finds that the evidence supports that the added party and the contributor's relationship was that of a boarder/landlord in 1999 and remained such until the time of the contributor's death.

[43] The evidence further supports that although separated, the contributor and the Appellant remained legally married.

[44] The Tribunal considered the evidence surrounding the contributor's admission to a long term care facility and the time of his death. From February 2013 until January 2016, the Appellant resided in the long term care facility. He was admitted to the facility by his sons, who were acting as powers of attorney. While the unit manager noted that the added party was first contact and that she had regular contact with the contributor while he was in care, this fact when considered with the other evidence, does not persuade the Tribunal that this is evidence of a common-law relationship. The contributor had resided in the cottage of the added party for numerous years and it is reasonable to expect that a caring relationship would have developed.

## **CONCLUSION**

[45] The Tribunal finds that the Appellant is the entitled to the Survivor's Pension. The Tribunal finds that the added party has not established, on a balance of probabilities, that she was the common-law partner of the deceased, and therefore is not the survivor of the estate of the deceased contributor and is not entitled to the CPP Survivor's benefit. The appeal is allowed.

Connie Dyck  
Member, General Division - Income Security