



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. N. v. Minister of Employment and Social Development*, 2017 SSTGDIS 182

Tribunal File Number: GP-16-3547

BETWEEN:

**T. N.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**G. M.**

Added Party

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

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DECISION BY: Anne S. Clark

DATE OF DECISION: November 27, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for a division of unadjusted pensionable earnings (DUPE) for two periods of time. The first was a period when she was married to the Added Party (1976 to 1995). During the second period she claims she and the Added Party lived together as common-law partners (2000 to 2008).

[2] The Respondent allowed the application for the period of time when the Appellant was married to the Added Party. The Respondent denied, initially and upon reconsideration, the application related to the period of cohabitation. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on October 31, 2016.

[3] This appeal involves the question of whether the Appellant may apply for a DUPE for a period when she and the Added Party were common-law partners. Specifically, whether an application made more than four years after the common-law partners began to live separate and apart has a reasonable chance of success.

[4] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[5] For the reasons set out below I have decided that this appeal must be summarily dismissed.

### EVIDENCE

[6] The Appellant and Added Party were married in 1976. They separated in 1991 and were divorced in 1995 (GD2-43). The Appellant submitted that she also lived with the Added Party as common-law partners from March 2000 to February 2008. The Added Party submitted that he did not live with the Appellant during the period of 2000 to 2008 (GD2-40).

[7] In September 2015 the Appellant applied for a DUPE for both periods. The application for the period of marriage was allowed and the application related to the period of cohabitation was denied.

[8] The Appellant applied for a DUPE for the period of March 2000 to February 2008 more than four years after the date she reported as the date of separation (February 2008). The file contains no agreement from the Added Party to allow the Appellant to file after the end of the four-year period. Therefore, given the information on file, the appeal does not have a reasonable chance of success.

### **SUBMISSIONS**

[9] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations). She was also asked to describe any facts that would have prevented her from filing before September 2015.

[10] The Appellant submitted that:

- a) she was not informed of the requirement to apply for a DUPE within four years of her separation; and
- b) she experienced considerable hardship during her marriage and period of cohabitation and should be entitled to a DUPE for all of the time she lived with the Added Party.

[11] The Respondent submitted that:

- a) The Appellant's application for a DUPE for the period of 2000 to 2008 has no reasonable chance of success because it was made more than four years after the Appellant and the Added Party separated.

## ANALYSIS

[12] Section 55.1 of the Canada Pension Plan (CPP) provides for a division of unadjusted pensionable earnings (DUPE) after separation or divorce. The rules that apply to divorces and separations on or after January 1, 1987 apply to this appeal. For the reasons below it is not necessary to make findings of fact to resolve the dispute between the Appellant and the Added Party over the period of cohabitation. The Appellant's application has no reasonable chance of success even if her evidence is proven as fact.

[13] A former common-law partner may apply for a DUPE provided certain conditions are met. Under subsection 55.1(c) the former common-law partners must have been living separate and apart for one year or more **and** the application must be made within four years of the date when they began to live separate and apart. The partners can agree in writing that an application may be made after the four-year period.

[14] The Tribunal is created by legislation and, as such, it only has the powers granted to it by its governing statute. Therefore, I am required to interpret and apply the provisions as they are set out in the CPP. I cannot consider extenuating circumstances such as the Appellant's hardships during her relationships with the Added Party to disregard or waive mandatory requirements under the CPP.

[15] The Appellant took issue with the fact that no one informed her of a statutory deadline at the time of her divorce and separation. The onus is on the Appellant to make her application within the legislated time limits and submit the necessary evidence to prove her eligibility on a balance of probabilities. The fact that she was not aware of the legislated deadlines does not absolve her of the requirement to meet them.

[16] The issue under appeal is whether the Appellant may apply for a DUPE for a period when she lived with the Added Party as common-law partners. The Appellant's claim was for the period of March 2000 to February 2008. The Appellant made her application for a DUPE in September 2015, beyond the legislated limit that applies to applications for a DUPE made by former common-law partners. There is no written agreement to allow the Appellant to make her application after the four year period.

[17] Accordingly, I find that the appeal has no reasonable chance of success.

**CONCLUSION**

[18] The appeal is summarily dismissed.

Anne S. Clark  
Member, General Division - Income Security