



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. C. v. Minister of Employment and Social Development*, 2017 SSTGDIS 196

Tribunal File Number: GP-17-1209

BETWEEN:

**L. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Jaime Mellott

HEARD ON: November 2, 2017

DATE OF DECISION: December 13, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Respondent received the Appellant's application for a Canada Pension Plan (CPP) survivor's pension on August 23, 2016 (GD2-4).

[2] The Respondent denied the Appellant's application because the Appellant was not living with A. C. (the Contributor) at the time of his death. The Appellant requested that the Respondent reconsider its decision. The Respondent denied the Appellant's request. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[3] The Tribunal decided to hear this appeal by videoconference because:

- a) Videoconferencing is available within a reasonable distance of the area where the Appellant lives.
- b) There are gaps in the information in the file and/or a need for clarification.
- c) 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.

[4] The Appellant, L. C., attended the hearing.

[5] To be eligible for a CPP survivor's pension, the Appellant must meet the requirements that are set out in the CPP. Specifically, the Appellant must have been the common-law partner of the Contributor at the time of his death and been either over the age of 65, over the age of 35 with dependent children, or be disabled.

[6] The Tribunal has decided that the Appellant is eligible for a CPP survivor's pension for the reasons set out below.

## **EVIDENCE**

### *The Appellant's Testimony*

[7] The Appellant testified that at the time of the Contributor's death, she considered him to be her common-law husband. The Appellant testified that she and the Contributor had three children together and shared family responsibilities.

[8] The Appellant stated that the Contributor suffered from drug addiction and that, as a result, they made the decision that he should live out of the house until he could get sober.

[9] The Appellant testified that the Contributor moved to his brother's house in October of 2014. The Contributor spent approximately three nights a week at her apartment and he would regularly let himself in to the apartment in the morning to help get their children ready for school. The Contributor had his own key to the apartment.

[10] The Appellant testified that she learned of the Contributor's death after she attended a holiday dinner at the Contributor's brother's home.

[11] The Appellant stated that she was responsible for organizing the Contributor's funeral.

[12] The Appellant told the Tribunal that she continued to think of herself as in a relationship with the Contributor after he moved out. The Appellant testified that they intended to live together again once the Contributor got sober.

### *Documentary Evidence*

[13] The Appellant died on December 25, 2014 (GD2-11).

[14] The Appellant and the Contributor's youngest child was born on November 14, 2014 (GD2-6)

[15] In the Application for a CPP survivor's pension, the Appellant indicated that the Contributor was single at the time of his death.

## **SUBMISSIONS**

[16] The Appellant submitted that she qualifies for a CPP survivor's pension because she was in a common-law relationship with the Contributor at the time of his death.

[17] The Respondent submitted that the Appellant does not qualify for a disability pension because she was not in a common-law relationship with the Contributor.

## **ANALYSIS**

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

[18] Section 2 of the CPP defines "common-law partner" as a person cohabitating with the contributor in a conjugal relationship at the time of the contributor's death for at least one year.

[19] Paragraph 44(1)(d) of the CPP states that a survivor's pension will be paid to the survivor of a deceased contributor who has met the minimum qualifying period and if the survivor has reached 65 years of age, or, if not 65 years of age, reached 35 years of age at the time of the contributor's death or had dependent children at the time of the contributor's death, or is disabled.

[20] Paragraph 44(3)(b) of the CPP states that a person will have met the minimum qualifying period for a survivor's pension if he or she has made valid contributions to the CPP for at least 10 years.

[21] Subsection 42(1) of the CPP defines "survivor" as a person who was the common-law partner of the contributor at the time of his or her death or, if there is no common-law partner, married to the contributor at the time of his or death.

### **Minimum Qualifying Period**

[22] The Tribunal requested that the Respondent provide its calculation of the Contributor's minimum qualifying period. In a letter dated November 24, 2017 (GD7), the Respondent provided both the Contributor's Record of Earnings and, although it had not been requested, an estimate of the Appellant's survivor's pension.

[23] The Contributor's Record of Earnings shows that he made valid contributions to the CPP from 1982 to 1988, 1990, 1991, and 2002. In total, the Contributor made valid contributions for 10 years. The Tribunal finds that the Contributor met the minimum qualifying period.

**Were the Appellant and the Contributor in a Common-Law Relationship?**

[24] The Respondent argues that the Appellant and the Contributor were not in a common-law relationship because they were not living together at the time of his death. However, cohabitation is only one factor to be considered in determining whether two people are in a common-law relationship. The Tribunal is guided by the Supreme Court of Canada's decision in *Hodge v. Canada (Minister of Human Resources Development)*, [2004] 3 S.C.R. 357, 2004 SCC 65, at paragraph 41, that cohabitation is not synonymous with co-residence. Periods of physical separation do not end the common-law relationship if there was a mutual intention to preserve it. The Court quoted with approval the finding of Morden J.A. in *Re Sanderson and Russell* (1979), 1979 CanLII 2048 (ON CA), 24 O.R. (2d) 429 (C.A.), at p. 432, that a common-law relationship ends "when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one".

[25] In this case, the Tribunal accepts the Appellant's testimony that she and the Contributor were physically separated only because of his addiction issues. The Tribunal further accepts that the Appellant and the Contributor viewed this separation as temporary. Indeed, according to the Appellant, the Contributor had a key to the apartment, regularly spent the night with her, and often arrived in the morning to help her with their three children. Thus, although the Appellant and the Contributor could not live in the same house, they remained in a committed relationship. Therefore, the Tribunal finds that the Appellant and Contributor's conduct did not "demonstrate in a convincing manner" that there was a mutual intention to end their relationship.

[26] The Tribunal acknowledges that the Appellant indicated on her application for survivor's benefits that the Contributor was "single" at the time of his death. However, the Tribunal gives greater weight to the Appellant's testimony than to what was likely a mistake.

[27] Since the requirements of the Tribunal finds requirements of paragraph 44(1)(d) of the CPP are met and the Appellant is entitled to a survivor's pension.

## **CONCLUSION**

[28] The appeal is allowed.

Jaime Mellott  
Member, General Division - Income Security