



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: J. R. v Minister of Employment and Social Development, 2019 SST 410

Tribunal File Number: GP-18-2787

BETWEEN:

J. R.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Claimant represented by: Stanley Mayes

Teleconference hearing on: March 18, 2019

Date of decision: March 20, 2019

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (CPP) survivor's pension.

OVERVIEW

[2] The deceased contributor, A. J., passed away on November 3, 2016. The Minister received the Claimant's application for the CPP survivor's pension on April 3, 2018. The application indicated that the marital status of the Claimant and the deceased contributor was common-law at the time of his death. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE

[3] Is the Claimant entitled to a CPP survivor's pension?

ANALYSIS

i. Relevant legislation

[4] A CPP survivor's pension shall be paid to the survivor of a deceased contributor if a deceased contributor has made contributions for not less than the minimum qualifying period¹. A 'survivor' in relation to a deceased contributor means a person who was the common-law partner of the contributor at the time of the contributor's death². To clarify further, 'common-law partner', in relation to a contributor means a person who is cohabiting with the contributor for a continuous period of at least one year. In the case of a contributor's death, the 'relevant time' means the time of the contributor's death³. In other words, in order to be eligible for a CPP survivor's pension, the contributor and common-law partner must have been cohabiting for a continuous period of at least one year leading up to the time of the contributor's death.

¹ Paragraph 44(1)(d) of the CPP

² Subsection 42(1) of the CPP

³ Subsection 2(1) of the CPP

[5] According to the CPP, for a survivor's pension the only allowable exceptions that would not constitute an interruption of cohabitation would be if the couple did not have the intention to live separate and apart but were separated for reasons of occupation, employment, or illness of either person. Those exceptions do not apply in this case.

i. The Claimant and deceased contributor were in a common-law relationship between July 2012 and February 2016.

[6] I noted some inconsistencies between the oral testimony presented and the written evidence contained in the Hearing File. For example, one of the Claimant's witnesses testified that the only period of time the deceased contributor did not cohabit with the Claimant was between June and August 2016. In her affidavit dated December 21, 2017, that Witness submitted that the Claimant and deceased contributor separated in or around February 2016. I found another inconsistency related to the claimed date the deceased contributor resumed cohabitation with the Claimant. The Claimant and her other Witness adamantly submitted that the deceased contributor resumed cohabitation at X on July 2, 2016. Text messages, however, between the Claimant and deceased contributor dated July 14, 2016 clearly suggest otherwise. On that date, the deceased contributor can be found questioning the Claimant as to why she was texting him and whether or not the Claimant's significant other at the time, who was not the deceased contributor, would be jealous by her texts to him⁴. They were also unaware of the daily schedules of one another.

[7] Regardless of those later inconsistencies, I accept that the Claimant and deceased contributor lived together in common-law relationship at X in X between July 2012 and February 2016. That house was owned by the Claimant and her late mother. The evidence is clear that during that time the Claimant and deceased contributor cohabited together, were in a conjugal relationship, and were recognized by others as common-law partners. The deceased contributor also had a close relationship with the Claimant's elderly mother and her daughter during that time. For that reason, I have focused primarily on the relationship status of the Claimant and

⁴ GD2-172 of the Hearing File

deceased contributor during the relevant time period between November 2015 and the date of his death.

[8] In February 2016, there is evidence that the Claimant and deceased contributor's relationship status changed following an argument they had over the deceased contributor's fidelity and his involvement with an ex-girlfriend. According to the Claimant, she presented the deceased contributor with a type of restraining order at that time, and he was required to leave the home at X.

i. The Claimant and deceased contributor did not meet the definition of 'common-law partners' for a continuous period of at least one year leading up to the time of the contributor's death.

[9] In order to meet the criteria to be eligible for CPP survivor's benefit, the Claimant and deceased contributor must be found to have been in a common-law relationship, as defined in the CPP, for a continuous period from at least November 2, 2015 to November 2, 2016, or the date of the contributor's death.

[10] I have considered a number of questions in my assessment as to whether or not the Claimant and deceased contributor met the criteria for a common-law relationship for a continuous period of 1 year leading up to November 2, 2016. First, I have considered whether either party regarded the common-law relationship as being at an end, by their conduct, and demonstrated in a convincing manner that such a state of mind was a settled one⁵. I have also considered factors such as financial interdependence, a sexual relationship, common residence, shared responsibilities and assets, shared vacations, named beneficiaries, public recognition, and responsibilities for things like the contributor's funeral arrangements and costs.

[11] The Claimant has submitted that her common-law relationship continued with the deceased contributor though they lived separately after February 2016, and that their co-habitation resumed on July 2, 2016 and continued right up to the time of the contributor's death. In terms of residence, after being required to leave the X home in February 2016, the deceased contributor signed a rental lease for his own apartment. According to the evidence presented, he

⁵ *Hodge v. MHRD*, 2004 SCC65

moved many of his belongings including his CPAP machine out of the X home. The Claimant submitted that in doing so he also left many personal items at X, but there was also evidence that the deceased contributor was somewhat of a hoarder who kept many personal items at the home of his mother as well. The Claimant also maintained that the deceased contributor was not able to break his apartment lease after July 2016 because of jealousy the landlady had for the deceased contributor after he ended their relationship. According to the Claimant, that is the only reason he continued to have the apartment at the time of his death.

[12] In terms of finances, there were no shared bank accounts or utilities and there was never any jointly owned property. The Claimant was listed on the deceased contributor's private health benefits for a continuous period from July 2012 until at least the time of his death. The Claimant also testified that at least some of the deceased contributor's mail continued to be sent to the X house after February 2016.

[13] The Claimant submitted that even after the deceased contributor moved out in February 2016, they continued to have a sexual relationship on a regular basis. The deceased contributor, however, did not spend the night at the X address between February and July 2016, reportedly because he needed his CPAP machine which was at his apartment. The Claimant submitted that the deceased contributor continued to want to re-establish their relationship after February 2016, but she was not ready to do so. He regularly brought coffee and flowers to her home and left them outside for her.

[14] Despite the Claimant's submissions that their common-law relationship continued after the deceased contributor moved out of the X home, there is evidence the deceased contributor was having also have sexual relationship with his apartment landlady. Text messages between the Claimant and deceased contributor from July 2016 indicate that the Claimant was also in a relationship with someone other than the deceased contributor until a few weeks prior to that time. I find this evidence to support the fact that after February 2016 and up until at least July 2016, there was no longer a committed relationship between the Claimant and deceased contributor. The sexual relationship they did continue to have with each other was reportedly kept secret from others, including their families, and they did not attend any family or public events portraying themselves to be in any kind of relationship during that time.

[15] I accept that the deceased contributor attended a birthday party for the Claimant's mother in August 2016, and that he may have gone on a day trip with the Claimant and her family sometime around July 2016. While there is evidence that they were trying to re-establish a relationship after July 2016, I am not convinced of a continuous common-law relationship between November 2015 and the date of the contributor's death.

[16] When the deceased contributor suffered a heart attack on October 31, 2016, his children, whom the Claimant did not have a good relationship with, reportedly entered the picture after being informed by the Claimant's family. They then removed the Claimant from any decision making processes related to the deceased contributor's end of life. This was reportedly the reason the Claimant was not involved in any funeral arrangements or costs. The deceased contributor's children also took possession of his personal property, including his motor vehicles. The Claimant continues to contend that despite the actions of the deceased contributor's children around the time of his death, she and the deceased contributor maintained a common-law relationship for all intents and purposes.

[17] Based on consideration for both the oral and written evidence presented, I find that the Claimant and deceased contributor did not maintain a common-law relationship for a continuous period of at least one year leading up to the time of the contributor's death. Their actions between February and July 2016 constitute at least an interruption in the common-law relationship and are demonstrative of a settled state of mind. They were having sexual relationships with other people, the deceased contributor took out a lease on his own apartment and kept most of his personal belongings there, they held no jointly owned property or finances, and they did not present themselves to others as still being in a common-law relationship.

CONCLUSION

[18] The appeal is dismissed.

Tyler Moore
Member, General Division - Income Security