



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. W. v Minister of Employment and Social Development*, 2020 SST 599

Tribunal File Number: GP-19-539

BETWEEN:

M. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: George Tsakalis

Teleconference hearing on: November 26, 2019

Date of decision: January 3, 2020

DECISION

[1] M. W. is the Claimant in this case. She applied for a Canada Pension Plan (CPP) survivor's benefit in April 2018. The Minister of Employment and Social Development (the Minister) denied her application. The Claimant appealed the Minister's decision to the Social Security Tribunal (the Tribunal). I am dismissing her appeal. These reasons explain why.

OVERVIEW

[2] R. R. (the deceased contributor) he died on January 21, 2018. The Claimant says that she was his common-law partner when he died. She argued that she should receive a survivor's benefit.

[3] The Minister argued that the Claimant did not live with the deceased contributor at the time of his death. She therefore could not receive a survivor's benefit.

ISSUES

[4] Did the Claimant cohabit with the deceased contributor in a conjugal relationship at the time of his death?

ANALYSIS

[5] To qualify for a CPP survivor's benefit, the Claimant must show that she was a survivor under the CPP.

[6] The CPP defines a survivor in relation to a deceased contributor as either a person who was either a common law partner at the time of the deceased contributor's death, or, if there was no such common-law partner, a person who was married at the time of the deceased contributor's death.¹

¹ Subsection 42(1), *Canada Pension Plan*

[7] The Claimant has to prove that it was more likely than not that she was the deceased contributor's common-law partner at the time of his death.²

[8] The CPP defines a common-law partner in relation to a deceased contributor as a person who is cohabiting with the deceased contributor in a conjugal relationship at the relevant time, having so cohabited for a continuous period of one year. In the case of a contributor's death, the relevant time means the time of the contributor's death.³

[9] I have to follow Supreme Court of Canada (SCC) decisions. The SCC has ruled that parties in a common-law relationship do not have to live in the same residence. A common law relationship ends when either party regards it as being at an end. The parties have to show by their actions that they intended the relationship to end.⁴

[10] Parties can still be considered common-law partners if their separation is involuntary. Examples of involuntary separations include a hospital stay.⁵

[11] When courts decide whether parties are living in a conjugal relationship, they look at factors such as:

- a) Shelter, including consideration of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- b) Sexual and personal behaviour, including whether the parties have sexual relations, maintain an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness and buy each other gifts;
- c) Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- d) Social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members;

² *Betts v. Shannon and Minister of Employment and Social Development*, (October 22, 2001), CP11564 (PAB)

³ Subsection 2(1) *Canada Pension Plan*

⁴ *Hodge v. Canada (Minister of Human Resources and Development)*, 2004 SCC 65

⁵ *A.L. v. D.P. and Ministry of Human Resources and Skills Development* (November 16, 2011), CP 27238 (PAB)

- e) Societal, including the attitude and conduct of the community towards each of them as a couple;
- f) Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property; and
- g) Attitude and conduct concerning any children.⁶

The Claimant did not cohabit with the deceased contributor in a conjugal relationship at the time of his death

[12] The Claimant testified that she began a common-law relationship with the deceased contributor in August 1994. She delivered a document after the hearing. She stated in that document that they did not begin living together until 2009.⁷

[13] The Claimant and the deceased contributor decided to separate on December 31, 2016. But the deceased contributor had a heart attack. He also suffered from diabetes. He returned to live with the Claimant after his release from the hospital in February 2017. He continued to live with the Claimant until August 2017. The Claimant had a difficult relationship with the deceased contributor. They received marriage counselling. The deceased contributor returned to live with the Claimant for two weeks in September 2017. They decided to go their separate ways. The deceased contributor returned to the Claimant's residence in October 2017. He assaulted the Claimant. This led to a restraining order. The deceased contributor had a pending court date in February 2018. However, he died on January 21, 2018. The Claimant had no contact with the deceased contributor after the October 2017 assault. She did not learn about the deceased contributor's death until her friends told her about it.

[14] The Claimant testified that she had no children with the deceased contributor. She has four children from other relationships. All her children considered the deceased contributor to be a father figure. She confirmed that the deceased contributor lived in a different community at the time of his death.

⁶ McClaughlin v. Canada (A.G.) 2012 FC 556

⁷ See GD5

[15] The Claimant argued that she still considered the deceased contributor her common-law partner at the time of his death. She said the only reason for their separation was the restraining order. She testified that the deceased contributor would have moved back to her community without the restraining order. He would have gotten the counselling for his anger management issues and they would have gone on to live together.

[16] The Claimant testified that she and the deceased contributor were sexually intimate in the year before his death. They shared meals. She provided care for him from February to August 2017. She cleaned the deceased contributor's incisions. She fed him. She injected him with insulin. They bought each other gifts. She did all the cleaning and the laundry because of the deceased contributor's health. Her family considered her and the deceased contributor to be common-law partners. They equally split expenses the year before he died. They did not have life insurance policies.

[17] The Claimant did not go to the deceased contributor's funeral because of bad weather. She testified that his family took care of the funeral arrangements. The deceased contributor died without a will. The Claimant was supposed to be the deceased contributor's Power of Attorney. But she was advised that her power of attorney was invalid.

[18] The Claimant argued that she and the deceased contributor had an involuntary separation at the time of his death. Were it not for the restraining order, they would have stayed together.

[19] I do not accept this argument.

[20] What particularly damages the Claimant's case is that the parties were already separated when she was assaulted in October 2017. The deceased contributor was charged with unlawfully being in the Claimant's house.⁸ This shows that the Claimant and deceased contributor lived separately at the time of the restraining order.

[21] The documents the Claimant provided do not support a finding that she and the deceased contributor were living in a common-law relationship when he died.

⁸ See GD1-7

[22] The Claimant completed an application for the survivor's benefit. She completed her application in a confusing manner. She advised that she was both married to and the common-law partner of the deceased contributor. She said in one part of the application that she lived with the deceased contributor at the time of his death. She said in another part of the application that she did not live with the deceased contributor at the time of his death. She also advised that she did not know where the deceased contributor lived at the time of his death.⁹

[23] The Claimant completed a Statutory Declaration of Common-Law Union for the Minister. She declared that the common-law union lasted from August 1994 to December 2016. She did not declare that the common-law union was in place at the time of the deceased contributor's death on January 21, 2018.¹⁰

[24] The Claimant completed a Statutory Declaration – Separation of Legal Spouses form for the Minister. The Claimant provided contradictory information in this form. She stated in one part of the form that she lived separate and apart from the deceased contributor from January 2008 to December 31, 2016. She then said on this same form that they last lived together on December 31, 2016, before the death of the deceased contributor.¹¹

[25] The Claimant completed another Statutory Declaration for the Minister in September 2018. She declared in this form that they last lived together in November 2017.¹² This form does not help the Claimant because it states that the parties were not living together at the time of the deceased contributor's death in January 2018.

[26] The deceased contributor's parents completed a Statutory Declaration for the Minister. They declared that the common-law partnership ended in 2014.¹³ This evidence hurts the Claimant. It shows that the deceased contributor's family did not consider her a common-law partner at the time of his death.

⁹ See GD2-4-10

¹⁰ See GD2-12

¹¹ See GD2-15

¹² See GD2-25-26

¹³ See GD2-20

[27] The Tribunal is created by statute. I have to follow the CPP and the cases that have interpreted it. I agree with the Minister that the parties were separated at the time of the deceased contributor's death.

[28] I sympathize with the Claimant. She is a domestic violence victim. She said that she had to leave the deceased contributor because of the abuse that she endured. However, the CPP legislation says that I cannot award a survivor's benefit if the common-law partners are not in a conjugal relationship at the time of death. The evidence showed that the common-law relationship ended before January 21, 2018. In cases of involuntary separation, such as an extended hospital stay, the parties can still argue that they were in a common-law relationship. An argument could be advanced that they still shared a life together even though they lived separately. But the Claimant and deceased contributor had no contact with each other after October 2017. They did not live together. You do not have to live together to be considered a common-law partner, but the parties in this case did not share a life at the time of death. They did not have any financial arrangements at the time of death. The deceased's parties did not consider the parties to be a common-law couple and the Claimant did not have any role in the funeral arrangements of in the deceased contributor's estate.

I do not have jurisdiction to make a declaration as to when the parties separated

[29] The Minister asked me to confirm when the parties separated. This is because the Claimant might be eligible for a Division of Unadjusted Pensionable Earnings (DUPE). The CPP allows common law partners to apply for a DUPE or a pension credit split for the years in which they were together. But there is a limitation period for common law partners. They must apply for a DUPE within four years of the end of the relationship.¹⁴

[30] I do not have the jurisdiction to make a declaration as to when the parties separated. My jurisdiction in this appeal is limited to the question of whether the Claimant and the deceased contributor cohabited in a conjugal relationship at the time of his death. And if they cohabited in such a relationship at the time of death, whether they did so for at least one year. I have found

¹⁴ See paragraph 55.1(1)(c) *Canada Pension Plan*

that the parties were not cohabiting in a conjugal relationship at the time of the deceased contributor's death.

[31] The Claimant argued that the Minister effectively asked her to stay with an abusive man in order for her to collect a survivor's pension. I disagree with the Claimant. The Claimant did not know with any certainty that the deceased contributor would die when he did. I agree with the Minister that the CPP requires that the Claimant and deceased were in a common-law relationship at the time of his death. The evidence showed they were not in a common-law relationship at the time of the death.

[32] The Claimant gave contradictory evidence as to when the relationship ended. She has given dates as varied as December 31, 2016, September 2017 and November 2017. I am prepared to accept that the Claimant lived with the deceased contributor until at least December 31, 2016. But I am not sure if they lived together in 2017, and I am not prepared to make a declaration that they did so because it is not in my jurisdiction to do so. They certainly were not living together as of the deceased contributor's death in January 2018.

[33] The Claimant should immediately contact the Minister to apply for a DUPE any limitation period expires. A DUPE or pension credit split might increase the amount of CPP retirement benefits that she is eligible to receive. This might help ease any financial pressure she might be under.

CONCLUSION

[34] The Claimant did not cohabit with the deceased contributor in a conjugal relationship at the time of his death. She did not meet the definition of a common-law spouse under the CPP. She therefore cannot receive a survivor's benefit.

[35] The appeal is dismissed.

George Tsakalis
Member, General Division - Income Security