



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *PD v Minister of Employment and Social Development*, 2020 SST 737

Tribunal File Number: GP-19-87

BETWEEN:

P. D.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Teleconference hearing on: July 22, 2020

Date of decision: July 24, 2020

DECISION

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

OVERVIEW

[2] The Claimant was in a common-law relationship with W. W. (the “Contributor”) from 1986 to 2009. They reconciled in August 2014, and lived together continuously from October 2014 until the Contributor’s death on April 20, 2015. The Minister received the Claimant’s application for the CPP survivor’s pension on April 25, 2017. The Claimant said the Minister’s employees told her, on several occasions, that she would be entitled to the CPP survivor’s pension. However, the Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP survivor’s pension, the Claimant must meet the CPP definition of “survivor”.¹ Unmarried partners can qualify as survivors, but they must have continuously cohabited with their partner in a conjugal relationship for at least one year. The one-year cohabitation period must immediately precede their partner’s death.²

ISSUES

[4] For how long did the Claimant continuously cohabit with the Contributor in a conjugal relationship, before his death on April 20, 2015?

[5] Does the Claimant qualify for a CPP survivor’s pension, based on her relationship with the Contributor?

[6] If the Claimant does not qualify for a CPP survivor’s pension, what is the impact of the advice she received from the Minister’s employees?

ANALYSIS

¹ See ss. 42(1) and 44(1)(d) of the *Canada Pension Plan*.

² See section 2 of the *Canada Pension Plan*.

[7] I accept that the Claimant lived in a common-law relationship with the Contributor from 1986 to May 16, 2009. During this common-law relationship, they jointly owned property and had joint financial accounts. They were beneficiaries on each other's life insurance policies.³ The Contributor was the beneficiary of RRSP investments owned by the Claimant.⁴ However, after they split up on May 16, 2009, the Claimant said all these hallmarks of a common-law relationship were dissolved. I will now determine when they began living in a common-law relationship again.

For how long did the Claimant continuously cohabit with the Contributor in a conjugal relationship, before his death on April 20, 2015?

[8] The Claimant declared that she and the Contributor reconciled in 2014, just before he was diagnosed with terminal cancer.⁵ The Claimant has said that this common-law relationship lasted either seven months⁶ or nine months⁷ until the Contributor's death. In any case, the Claimant never suggested that the second cohabitation lasted at least 12 months.⁸

[9] At the hearing, the Claimant said she started living together with the Contributor in August 2014. Soon after, the Contributor went to live somewhere else. However, he then became ill. He was diagnosed with terminal cancer, and moved back in with the Claimant in October 2014. They lived together until his death on April 20, 2015. I accept this evidence.

[10] While there was a short break in their second relationship before the Contributor's cancer diagnosis, a brief "cooling off" period does not necessarily bring a relationship to an end.⁹ The Contributor's rapid return to the Claimant's home in October 2014 shows that the reconciliation in August 2014 had some substance. His very brief absence was not enough to end the second relationship. I also accept that they reconciled at the beginning of August 2014. As a result, I find

³ GD2-23

⁴ GD2-17 and GD2-21

⁵ GD2-23

⁶ GD1-3, GD2-31, and GD2-36

⁷ GD2-42

⁸ GD2-28, GD2-31, and GD2-43

⁹ *Rogers v. MSD*, (2004) CP 21436. While the decision is not binding, it cites the Supreme Court of Canada decision in *Hodge v. Canada*, 2004 SCC 65.

that the Claimant continuously cohabited with the Contributor from August 1, 2014, to April 20, 2015. This is a period of 8 months and 20 days.

Does the Claimant qualify for a CPP survivor's pension, based on her relationship with the Claimant?

[11] For the reasons set out below, I find that the Claimant does not qualify for a CPP survivor's pension.

[12] The CPP clearly says that a common-law partner must continuously cohabit with the contributor for at least one year before the contributor's death.¹⁰ However, the Claimant only cohabited continuously with the Contributor for 8 months and 20 days before his death. As a result, she does not meet the definition of a "common-law partner" under the CPP. This means she cannot be a "survivor", and in turn is not eligible for a CPP survivor's pension.¹¹

[13] The Claimant asked the Tribunal to consider her prior 23-year common-law relationship with the Contributor. As noted, before 2009, they had many jointly owned assets and other hallmarks of a stable, ongoing relationship. However, the prior relationship ended with apparent finality in 2009. They no longer jointly owned their various assets. They both changed their life insurance beneficiaries from each other to their own children. The Contributor moved to another city. Their conduct showed that they considered the relationship to be over.¹²

[14] I have considerable sympathy for the Claimant's situation. Her relationship with the Contributor had deeper "roots" than a typical eight-month relationship. However, the CPP legislation ignores prior periods of cohabitation that ended before the latest one. The gap from May 2009 to August 2014 was not just a "brief cooling off period".

[15] This result may appear unfair. However, I cannot ignore the CPP's provisions. The Tribunal was created by legislation. This means that the Tribunal only has the powers granted to it by its governing statute. As a Tribunal Member, I must interpret and apply the provisions as

¹⁰ Section 2 of the *Canada Pension Plan*.

¹¹ Ss. 42(1) and 44(1)(d) of the *Canada Pension Plan*.

¹² *Hodge v. Canada*, 2004 SCC 65.

they appear in the CPP. I cannot waive or change them, even if they seem unfair. I cannot contradict Parliament's intent.¹³ Nor can I make decisions on a compassionate basis.

If the Claimant does not qualify for a CPP survivor's pension, what is the impact of the advice she received from the Minister's employees?

[16] The Claimant says she only applied for the CPP survivor's pension because of the Minister's advice. She received the same advice from three separate employees of the Minister. They apparently told her that she would receive the CPP survivor's pension, as long as the Contributor was not in another common-law relationship when he died. This appears to misstate the law.¹⁴

[17] No documents show the Claimant's discussions with those employees. However, even if she had received that advice, I still cannot assist her.

The Tribunal cannot intervene in cases of erroneous advice

[18] The *Canada Pension Plan* does contemplate situations where a person has been denied a benefit because of erroneous advice.¹⁵ In this case, it is not clear that the Claimant was denied a benefit because of the erroneous advice. However, even if she was, she must raise the issue with the Minister. If the Minister still denies her relief with respect to the erroneous advice, it is considered a "discretionary" decision. The Claimant can only appeal such decisions by applying to the Federal Court of Canada for judicial review. The Tribunal does not have the authority to hear appeals based on the Minister's erroneous advice.¹⁶

CONCLUSION

[19] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

¹³ See *R. v. Conway*, 2010 SCC 22, at paragraph 101.

¹⁴ If the Claimant and Contributor were married, the advice would make more sense. See the definition of "survivor" in s. 42(1) of the *Canada Pension Plan*.

¹⁵ Subsection 66(4) of the *Canada Pension Plan*.

¹⁶ *Canada (Attorney General) v. Dale*, 2006 FC 1364. See also *Edwards v. MHRD*, (2002) CP 18011, which applied *Pincombe v. Canada (Attorney General)*, [1995] F.C.J. No. 1320.