



Citation: *MM v Minister of Employment and Social Development and JA*, 2020 SST 931

Tribunal File Number: GP-19-773

BETWEEN:

**M. M.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

and

**J. A.**

Added Party

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

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Decision by: Pierre Vanderhout

Teleconference hearing on: August 31, 2020, and September 21, 2020

Date of decision: September 23, 2020

## **DECISION**

[1] The Claimant lived in a common-law relationship with the Added Party from April 22, 1995, to December 27, 1998. This permits additional Canada Pension Plan (“CPP”) credit splitting for her earnings and those of the Added Party.<sup>1</sup> The CPP credit split applies from January 1995 to December 1997. As the common-law relationship ended before the end of 1998, no credit split applies to that year.

## **OVERVIEW**

[2] The Claimant and the Added Party began living together in August 1978. They married in October 1979 and divorced on April 22, 1995. Despite the divorce, the Claimant said she continued living in a common-law relationship with the Added Party until December 27, 1998.<sup>2</sup> The Minister received the Claimant’s application for the CPP credit split on September 22, 2017. The Minister only granted her a CPP credit split from January 1978 to December 1994. The Minister found that the Claimant and the Added Party divorced in April 1995 and were not common-law partners after that. The Minister upheld that decision on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for a CPP credit split with another person during a specific period, an applicant must show that she was married to that person (and not separated) or in a common-law relationship with that person during that specific period. CPP credit splits only apply to full calendar years. When a marriage or common-law relationship begins in a particular year, that entire calendar year is subject to the CPP credit split provisions. However, when the relationship ends in a particular year, that calendar year is not subject to the CPP credit split provisions.<sup>3</sup>

## **ISSUES**

[4] Were the Claimant and the Added Party common-law partners between April 22, 1995, and December 27, 1998?

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<sup>1</sup> See, generally, s. 55.1 of the *Canada Pension Plan*.

<sup>2</sup> GD2-34

<sup>3</sup> Subsection 78.1(1) of the *Canada Pension Plan Regulations*.

[5] If so, what additional CPP credit split applies?

## **ANALYSIS**

[6] This appeal contained a highly unusual set of circumstances, including the claim that a common-law relationship between the Claimant and the Added Party started on the day they divorced. The Added Party apparently wanted a divorce so that he could inherit property in Pakistan. Both the Added Party and the Claimant said the Added Party also had a wife in Pakistan, starting in 1982.<sup>4</sup>

[7] The first hearing featured considerable animosity between the parties. I had to impose strict limits on the time allotted to the second hearing. However, the second hearing turned out to be much more conciliatory. The second hearing also contained an unexpected admission by the Added Party.

### **Were the Claimant and the Added Party common-law partners between April 22, 1995, and December 27, 1998?**

[8] For the reasons set out below, I find that the Claimant and the Added Party were common-law partners from April 22, 1995, to December 27, 1998 (the “Post-Divorce Period”).

[9] To be the Added Party’s common-law partner, the Claimant must show that she cohabited with him in a conjugal relationship for a continuous period of at least one year.<sup>5</sup>

[10] A 2001 Pension Appeals Board (the “Board”) decision called *Betts* is an authority on this issue.<sup>6</sup> While the *Betts* decision only has persuasive value, it properly sets out which factors are usually relevant to “cohabitation in a conjugal relationship”. Not every *Betts* factor is necessary for a common-law partnership to exist. The *Betts* factors are:

- (a) Financial interdependence
- (b) Sexual relationship
- (c) Common residence
- (d) Purchasing gifts on special occasions

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<sup>4</sup> The Claimant said this at GD2-57 and at the hearing. The Added Party also admitted this at the hearing, but said his other wife died in 1990.

<sup>5</sup> Subsection 2(1) of the *Canada Pension Plan*.

<sup>6</sup> The full name is *Betts v. Shannon*, (2001) CP 11654. It is often cited in other Tribunal decisions, such as the Appeal Division’s decision in *B. G. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 229.

- (e) Sharing of household responsibilities
- (f) Shared use of assets
- (g) Shared responsibility for children
- (h) Shared vacations
- (i) Expectation of mutual dependency
- (j) Beneficiary of will
- (k) Beneficiary of insurance policy
- (l) Where clothing was kept
- (m) Care for one another when ill, and knowledge of medical needs
- (n) Communications between the parties
- (o) Public recognition
- (p) Attitude and conduct of the community
- (q) Marital status on various documents
- (r) Funeral arrangements

[11] Before the second hearing, the Claimant and the Added Party gave very different versions of events during the Post-Divorce Period. The Added Party gave multiple accounts of where he lived. In May 2018, he said he lived with the Claimant from June 1979 to March 1993.<sup>7</sup> In January 2019, he said they separated in April 1994.<sup>8</sup> In April 2019, he said that he had not lived with her since October 1979.<sup>9</sup> At the first hearing, he said he lived with the Claimant for one year after their divorce in 1995. He denied staying at her place after that: he would just go on the weekends to see his children. He lived downtown with his brother at that time.

[12] The Claimant consistently said the Added Party continued to live with her until December 27, 1998, when he went to Pakistan for an extended visit.<sup>10</sup> She said that they agreed to continue to live together after the divorce because it would be best for the children. Her family encouraged them to try to work out their differences.<sup>11</sup>

[13] At the hearing, the Claimant described her relationship with the Added Party as an abusive one.<sup>12</sup> During the Post-Divorce Period, she said he would beat her up and then leave when the police came. However, she prepared meals for him. They shared a bed in the same bedroom. She bought clothes for him. They both kept their clothes in the apartment. She did all their laundry. She did all their shopping. She did all the apartment maintenance, if the landlord

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<sup>7</sup> GD2-65

<sup>8</sup> GD2-24

<sup>9</sup> GD2-7 and GD2-8

<sup>10</sup> See GD1-3, GD2-12, GD2-13, GD2-14, GD2-22, GD2-28, GD2-29, GD2-34, GD2-36, GD2-57, and GD2-58.

<sup>11</sup> GD2-29

<sup>12</sup> She also said this before the hearing: see GD2-14, GD2-22, and GD2-57.

would not take care of it. She bought a car, although he was the only one who used it. They shared responsibility for raising the children: she said, “He loved the children more than me.” She would have cared for him when he was sick, and would have visited him if he had been in the hospital. She said, “Everybody knew it was a sham divorce.” While she completed tax forms with a marital status of “divorced”, she said she was feeding and sheltering the Added Party and it was like a marriage. They were living the same life that they had lived before 1995.

[14] The Claimant’s version was consistent with the evidence of S. A. (“S. A.”). S. A. is the son of the Claimant and the Added Party. S, A. was a teenager during the Post-Divorce Period and lived in the Claimant’s apartment.

[15] At the hearing, S. A. said the Added Party lived at the Claimant’s apartment during the week. However, when the Added Party was paid on Thursday or Friday, the Added Party would drink and get agitated. He was supposed to give some of his paycheque to the Claimant for food and lodging, but generally did not pay the proper amount. They would argue and the Added Party would often leave until Sunday night. The Added Party would stay downtown with his brother at those times. The cycle would repeat, and sometimes police were called to the Claimant’s apartment. The relationship finally dissolved in December 1998, when the Added Party went to Pakistan. S, A. viewed it as a common-law relationship rather than just a living arrangement. He believed that the Claimant and the Added Party shared a room.

[16] Despite all his previous evidence, the Added Party changed his story at the second hearing. He admitted that he had lived with the Claimant from 1995 to 1998. He said he lived there because his children were there and he wanted to see them. He wanted them to remain in his sight, so they would not “go the wrong way.” He would see them every night. He said the Claimant was nice and kind. This was at odds with his previous evidence, which was often difficult to accept. For example, at the first hearing, he said he kept all his clothes at work. He said he did his laundry there, because co-workers brought in appliances from the junkyard.

[17] In the circumstances, I accept that the Claimant and the Added Party lived together in the Claimant’s apartment during the Post-Divorce Period. While this is obviously very important, it does not solely determine whether they also cohabited in a conjugal relationship during the Post-Divorce Period. I must consider the other *Betts* factors too.

[18] Although the relationship was unstable, many other *Betts* factors existed during the Post-Divorce Period. The Claimant and the Added Party shared the same bed. They mutually accepted the unusual arrangement for more than 3½ years, and there was a form of interdependence between them. The Claimant fed and clothed the Added Party, while he made financial contributions and helped with parenting. They shared assets such as the car. They both kept their clothing at the apartment. The Claimant said she would have cared for the Added Party if he had been sick. Other *Betts* factors were of little relevance: funds seem to have been too scarce for life insurance or regular gifts, and it does not appear that they turned their minds to funeral arrangements or wills. I find that the number and nature of the present *Betts* factors are sufficient to establish cohabitation in a conjugal relationship throughout the Post-Divorce Period.

[19] I considered that the relationship appears to have been physically and emotionally abusive. The Claimant had little control of their relationship or their finances: the bank account was in the Added Party's name only. She said he went to Pakistan every year, but would not let her go with him. He had another wife in Pakistan, although it is unclear if this lasted through the Post-Divorce Period. There appears to have been violence and police attendance. The Added Party allegedly wanted to shoot the Claimant, but his brother stepped in. In these circumstances, some of the missing *Betts* factors (such as "shared vacations") must carry lesser weight.

[20] The Federal Court of Canada said that the Tribunal should not evaluate the quality of the relationship. If one common-law spouse engages in wrongful conduct to the detriment of the other, it is irrelevant to the person's status as a common-law spouse.<sup>13</sup> In a non-binding decision, the Pension Appeals Board described the "core" of the common-law relationship: the parties must have shown a mutual intention to live together in a marriage-like relationship of some permanence.<sup>14</sup> Despite the obvious flaws in the relationship, and the lasting damage that was still apparent at the first hearing, that is precisely what occurred here.

### **What is the impact of the additional common-law relationship on the CPP credit split?**

[21] The Claimant and the Added Party were common-law partners from April 22, 1995, to December 27, 1998. However, for CPP credit splits, only the initial year and subsequent full

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<sup>13</sup> *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.

<sup>14</sup> *MSD v. Pratt*, (2006) CP 22323: while non-binding, it can still be persuasive.

calendar years are counted.<sup>15</sup> This means that only the period from January 1, 1995, to December 31, 1997, is subject to a credit split.

[22] I note that the common-law partnership ended only five days before the first day of 1999. If it had lasted until January 1, 1999, a credit split could also have applied to 1998. However, the Claimant repeatedly made it very clear that December 27, 1998, was the end of the partnership. I must apply the legislation as written, even if it seems unfair. I cannot waive or vary what Parliament has decreed.

### **CONCLUSION**

[23] The Claimant's appeal is allowed. There shall be additional CPP credit splits for the years 1995, 1996, and 1997.

Pierre Vanderhout  
Member, General Division - Income Security

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<sup>15</sup> Subsection 78.1(1) of the *Canada Pension Plan Regulations*.