



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DB v Minister of Employment and Social Development*, 2020 SST 991

Tribunal File Number: GP-19-1352

BETWEEN:

D. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Teleconference hearing on: September 14, 2020

Date of decision: October 5, 2020

DECISION

[1] The Claimant, D. B., is eligible for a Canada Pension Plan (CPP) survivor's pension. This decision explains why I am allowing the appeal.

OVERVIEW

[2] B. P. is the deceased CPP contributor in this appeal. He and the Claimant began living together on January 1, 2013 and stopped living together on April 9, 2016. B. P. passed away on May 10, 2018. The Claimant applied for a CPP survivor's pension on May 31, 2018. The Minister of Employment and Social Development Canada (the Minister) refused her application because she was not the common-law partner of the deceased contributor. The Claimant appealed to the General Division of the Social Security Tribunal.

WHAT THE CLAIMANT MUST PROVE

[3] For the Claimant to succeed, she must prove that she is B. P.'s survivor, as defined in the CPP.

[4] The CPP says that a common-law partner is someone who was 'cohabiting with the contributor in a conjugal relationship' for a continuous period of at least one year at the time of the contributor's death.¹ A survivor's pension may be paid to a person who was the common-law partner of a contributor when the contributor died.²

THE REASONS FOR MY DECISION

[5] I find that the Claimant is B. P.'s survivor. I reached this decision by considering the following issues.

Background

¹ Subsection 2(1) of the *Canada Pension Plan*.

² Paragraph 44(1)(d) and subsection 42(1) of the *Canada Pension Plan*.

[6] The Claimant met B. P. in late 2012. In January 2013, they began living together in a conjugal relationship in a house that she owned. In July 2015, they signed a joint lease for another house. They have a daughter together who was born in January 2016.

Eligibility for a CPP survivor's pension

[7] Co-habitation is not synonymous with co-residence. Two people can co-habit even though they do not live under the same roof.³ In this case, the Claimant and B. P. were physically separated between April 9, 2016 and the time of his death in May 2018. I have to assess whether there was the mutual intention of both the Claimant and B. P. to continue the relationship even though they were not residing under the same roof.

[8] The CPP does not explain what 'cohabiting in a conjugal relationship' means. However, decisions from courts and tribunals have given some guidelines. One decision listed elements that are usually found in a conjugal relationship, but not all of them are necessary. They include:

- financial interdependence
- a sexual relationship
- a common residence
- the purchase of gifts for each other on special occasions
- the sharing of household responsibilities
- shared use of assets
- shared vacations
- shared responsibility in raising children
- the expectation of mutual dependency each day
- the naming of each other as beneficiary in wills and on insurance policies
- caring for each other during illness
- knowledge of each other's medical needs
- communication between the parties
- public recognition of the parties as a couple

³ *Hodge v. Canada (A.G.)*, 2004 SCC 65

- marital status declared by the parties on various applications or other forms completed by them, and
- responsibility for funeral arrangements.⁴

[9] I found the Claimant and Witnesses to be credible. Their testimony was candid and they were able to shed additional light on the relationship between B. P. and the Claimant during the relevant time.

[10] B. P. had a long history of substance abuse. That came to a head in April 2016 when the Claimant returned home with her daughter from a visit to her sick mother. B. P. was found to be doing drugs in the family home and he wanted a safe place to use. That made the home an unsafe for their young daughter and so the Claimant and her daughter moved out. She left with the intention to return once B. P. got sober and stopped using drugs. Day to day life stressors had been a big trigger for B. P.'s addiction in the past. Both B. P. and the Claimant thought that by having him live alone without family stressors, that it would be both a wake-up call to get sober and enable him to be able to better focus on treatment.

[11] Between April 2016 and May 2018 B. P. attended multiple residential treatment programs. In 2017, his mother helped him secure his own apartment. The Claimant and B. P.'s family found the treatment facilities he attended. Between April 2016 and May 2018 the Claimant and B. P. remained in close contact. The Claimant and their daughter visited him when he was in treatment. When he was not in treatment, she drove him places and picked him up when he needed it, helped him with his laundry, bought him groceries, and shared supplies like strollers and baby food for their daughter. She even went to his apartment to help him cook and clean.

[12] When B. P. was not in treatment, the Claimant saw him almost daily. They attended their daughter's swimming and gymnastics lessons together. Their intimate relationship also continued. Though their finances may have been separate, it was precautionary and because they both had very little money and were relying on family and friends to help support them. They had a joint bank account in the daughter's name that they both contributed to.

⁴ *Betts v. Shannon*, 2001 CP 11654 *Pension Appeals Board*.

[13] The Claimant and Witnesses testified that B. P. and the Claimant always presented themselves as a couple at family events and social gatherings after April 2016. When they stayed overnight somewhere, they slept in the same room. Neither of them had any romantic relationships with anyone else. The Claimant maintained close ties with B. P.'s family.

[14] According to B. P.'s mother, who spoke with her son daily up to the time of his death, her son always believed that he and the Claimant were a couple. His love did not change for her when they lived apart. He discussed on several occasions that his plan was to get sober so that he could live with the Claimant and their daughter once again. The only reason he wanted to get sober was to be with them.

[15] The Claimant acknowledged that her 2016 income tax return did indicate that she and B. P. were separated. It was only so she could qualify for a child tax benefit. She needed the money and was still on maternity leave from work. She spent two years after April 2016 staying with various friends and family because she could not afford a home of her own.

[16] I accept that it was never a permanent intention for the Claimant and B. P. to live separate and apart. Neither party lost the intention to resume living full-time together. The evidence supports many elements of an ongoing conjugal relationship that was not just one of co-parenting.

[17] Both B. P. and the Claimant by their conduct showed hope of resuming a normal spousal relationship by continuing to support each other. Unfortunately, B. P. had yet to resolve his substance abuse issues at the time of his death. That is why they were still living separately at that time. The fact that a couple was not living in the same residence due to the deceased contributor's addiction problems does not preclude a finding of cohabitation for the purposes of entitlement to a CPP survivor's pension.⁵

CONCLUSION

[18] The appeal is allowed.

⁵ *R.P. v. MHRSD* (May 31, 2010) CP 26623(PAB)

Tyler Moore
Member, General Division - Income Security