



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CL v Minister of Employment and Social Development*, 2020 SST 985

Tribunal File Number: GP-20-406

BETWEEN:

C. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Teleconference hearing on: October 20, 2020

Date of decision: October 26, 2020

DECISION

[1] The Claimant is entitled to the *Canada Pension Plan* (CPP) survivor's pension.

OVERVIEW

[2] The Claimant and the deceased contributor S. M. married in April 1987. They had two sons who were born in March 1988 and December 1991. They separated in March 1994. They divorced in September 1996. They reconciled after the divorce. The Claimant states that she and S. M. were common-law partners from August 1997 to September 2013 and from February 2015 until S. M. died in April 2018. In January 2019, the Claimant applied for the CPP survivor's benefit. The Minister denied her application both initially and on reconsideration. The Claimant appealed to the Social Security Tribunal.

ISSUE

[3] I must decide whether the Claimant and S. M. were common-law partners at the time of his death.

ANALYSIS

[4] To qualify for the CPP survivor's pension, the Claimant must establish that it is more likely than not that she and S. M. were common-law partners at the time of his death. She must also establish that they had been common-law partners for a continuous period of at least one year.¹

[5] S. M. suffered from multiple dystrophy. When they married in 1987, he was still working and self-sufficient. Over the years, his condition declined. He was no longer able to work. Despite this, they lived like other married couples. He provided financially from his work pension and CPP disability. She took care of the children, home, meals, and laundry. She also took care of S. M.'s personal care.

¹ Paragraph 44(1)(d) and definitions of survivor in section 42(1) and of common-law partners in section 2(1) of the CPP.

[6] As his disability progressed, S. M. became more and more dependent on her. He was in a lot of pain and very angry. The Claimant stated that she “became overwhelmed with the responsibilities and demands.”²

[7] They initially separated in 1994. However, she stayed nearby and went “back and forth” to take care of him. She signed the house over to him when they divorced in 1996. They reconciled in 1997. She moved back into the house. She stayed in the house until 2013. She move to New Brunswick from 2013 to 2015 to help their son and his wife. She moved back into the house from February 2015 to March 2017.

[8] In March 2017, she moved out again. She rented a house about 10 minutes away. One of their sons continued to live in the house with S. M.. When I asked the Claimant why she moved out she stated, “He had horrible outbursts ... he was aggressive and emotionally abusive ... he called me names ... he would run at me with a chair ... he was angry because he had to depend on me ... I had to move out for my mental health.”

[9] The Minister does not dispute that the Claimant and S. M. lived together as common-law partners from March 2015 to March 2017. However, its position is that they ceased to be common-law partners when she moved out in March 2017.

[10] I must decide whether the Claimant and S. M. continued to be common-law partners after March 2017. For the reasons that follow, I have determined that they did.

[11] The Federal Court has stated that the factors that are indicative of a common-law relationship include the following ³:

- 1) Shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- 2) Sexual and personal behaviour, including whether the parties had sexual relations, maintained an attitude of fidelity to each other, communicated on a personal level, ate together, assisted each other with problems or during illness, or bought each other gifts;

² GD104

³ *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

- 3) Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- 4) Social, including whether they participated together or separately in neighbourhood and community activities, and their relationship with respect to each other's family members;
- 5) Societal, including the attitude and conduct of the community towards each of them as a couple;
- 6) Support, including the financial arrangements between them for provision of necessities and acquisition and ownership of property; and
- 7) Attitude and conduct concerning any children.

[12] I now turn to each of the factors set out above.

Shelter

[13] Although they did not live under the same roof after March 2017, the Claimant visited her house almost every day. She helped S. M. go to bed at night.⁴

Sexual and personal behaviour

[14] By March 2017, sexual intimacy had ceased due to the progression of S. M.'s illness. After March 2017, they continued to communicate and were affectionate towards each other. They told each other that they loved each other. They ate together. The Claimant continued to assist the S. M. with his illness.

Services

[15] After March 2017, the Claimant continued to prepare meals for S. M., do his laundry, and help with the housework. She fed and bathed him. She also prepared family celebrations.

Social

[16] They continued to celebrate birthdays, Thanksgiving, and Christmas together. Due to S. M.'s illness, they did not go out. Social visits involved relatives or friends coming to the

⁴ Their son was separated and lived in the house. In addition, a government paid support worker came to the house to assist with S. M.'s care.

house. These decreased because of S. M.'s worsening illness. They continued to be known as husband and wife in their community.

Support and financial arrangements

[17] After March 2017, the Claimant worked part-time to pay for her rent and personal expenses. S. M. paid for a credit card in her name. She used this card to pay for the household expenses. She had another credit card that she used for her personal expenses. They did not have a joint bank account since they divorced in 1996. The house was in his name after they divorced. After March 2017, she arranged for him to sign a will. He had refused to make a will before. Their children were the beneficiaries. She did not have a will. He did not have a life insurance policy. She continued him as the beneficiary of her life insurance policy. She was at the hospital caring for him when he died. Their children made the funeral arrangements. S. M. was cremated and she keeps his ashes in her bedroom.

Attitude and conduct concerning children

[18] One of their sons lived in the house. Their grandson came over every weekend. The Claimant took care of their grandson when he came over.

My findings

[19] I must focus on the period from March 2017 to April 2018.

[20] The extent to which the different factors of a common-law relationship should be taken into account varies with the circumstances of each case.⁵ I must keep in mind the endlessly variable nature of marriage in our society and assess the specific circumstances, to determine if the Claimant and S. M. had a marriage like relationship.⁶

[21] The Supreme Court of Canada has stated that cohabitation in the context of a common-law relationship is not synonymous with co-residence, and that two people can cohabit even

⁵ *Molodowich v Penttinen*, 1980 CanLII 1537 (Ontario District Court, paragraph 16)

⁶ *A.L v D.P and MHRSD* (November 16, 2011), CP 27238 (PAB). Although I am not bound by Pension Appeal Board (PAB) decisions, I found those cases that I have relied on to be persuasive.

though they do not live under the same roof. There may be periods of physical separation if there was a mutual intention to continue in a common law relationship.⁷

[22] Although a common-law relationship usually involves a common residence, each case must be determined on its own facts.⁸ There can be periods of separation that do not disturb the legal status of a common-law relationship. Separation due to an abusive relationship does not interrupt the common-law relationship, if there was a mutual intention to continue the relationship.⁹

[23] The Claimant was in a committed marriage-like relationship with S. M. for over 30 years. Her commitment to him and the true nature of that relationship did not change after March 2017, merely because she moved 10 minutes away. She moved solely due to her need to protect her mental health because of his abuse. The most significant aspects of their relationship continued. There is no evidence that either she or S. M. had any intention to terminate the relationship.

[24] The Minister relies on the Claimant's statement on her CPP survivor application that S. M.'s marital status at the time of his death was "separated."¹⁰ However, in her statutory declaration, she stated that their living separate apart after March 2017 had become necessary for her own mental health. S. M.'s disease had progressed and he became angrier.¹¹ At the hearing, the Claimant stated that she wrote this because they were living in separate residences. She moved to a separate residence because he had become so cruel and abusive - she couldn't live in the house anymore. The Claimant's move to a separate residence was an involuntary separation because of S. M.'s abuse - she did not intend to terminate their relationship. The ticking of a box on a standard application form is not persuasive evidence of the true nature of a complex long-term relationship, like that between the Claimant and S. M.

⁷ *Hodge v. Canada (Minister of Human Resource Development)*, [2004] 3 SCR 357

⁸ *MHRD v Haynes* (June 28, 2001), CP 15179 (PAB)

⁹ *MHRSD v. S.S.* (October 6, 2011), CP 27386 (PAB)

¹⁰ GD2-4

¹¹ GD11-10

[25] I find that the Claimant and S. M. continued to be common-law partners until S. M. died in April 2018. The Claimant has established that it more likely than not that, she and S. M. were common-law partners at the time of his death.

CONCLUSION

[26] The Claimant is entitled to the CPP survivor's pension.

[27] The appeal is allowed.

Raymond Raphael
Member, General Division - Income Security