



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *VS v Minister of Employment and Social Development*, 2021 SST 242

Tribunal File Number: GP-20-414

BETWEEN:

V. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Tyler Moore

Minister's representative: Anita Hoffman

Teleconference hearing on: March 25, 2021

Date of decision: April 8, 2021

DECISION

[1] The Claimant, V. S., is not entitled to a Canada Pension Plan (CPP) survivor's pension. This decision explains why I am dismissing the appeal.

OVERVIEW

[2] The Claimant applied for a CPP survivor's pension on July 25, 2017. She indicated that she was in a common-law relationship with K. M. (the Contributor) from approximately 1992 until 2010. The Contributor passed away on July 10, 2013.

[3] The Minister of Employment and Social Development Canada (the Minister) refused the Claimant's application because she did not meet the definition of a 'survivor'. While the Minister acknowledged that the Claimant continued to support K. M. as a caregiver until he died, their common-law union ended years earlier. The Claimant appealed to the General Division of the Social Security Tribunal.

WHAT THE CLAIMANT MUST PROVE

[4] For the Claimant to succeed, she must prove that it is more likely than not that she met the definition of a 'survivor'.

[5] A 'survivor', in relation to a deceased contributor, means a person who was the common-law partner of the contributor at the time of the contributor's death.¹

[6] A 'common-law partner', in relation to a contributor, means a person who was cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor's death, the 'relevant time' means the time of the contributor's death.²

REASONS FOR MY DECISION

¹ This can be found in subsection 42(1) and 44(1)(d) of the *Canada Pension Plan*.

² This can be found in section 2 of the *Canada Pension Plan*.

[7] I find that the Claimant does not qualify for a CPP survivor's pension. I reached this decision by considering the following issues.

The Claimant and Contributor were not common-law partners at the time of the Contributor's death

[8] The Claimant was subjected to years of well documented physical abuse at the hand of the Contributor. He was an alcoholic, and that is what ultimately led to their separation around 2010. According to the Claimant, the Contributor literally kicked her out of their home with no money. Despite the abuse, the Claimant was prepared to stay in the relationship because she still loved him. The Contributor, however, did not want to. After their separation in 2010, they no longer had any financial interdependence or romantic relationship.

[9] The Witness moved in with the Claimant in February 2011. They first met in 2009 or 2010 while he was doing some repair work in the Contributor and Claimant's home. The Witness left his wife to move in with the Claimant.

[10] In 2012, the Claimant and Witness purchased a unit in the same complex together. The new unit was in both of their names. They had separate bedrooms to sleep in, but they both testified that the relationship was romantic, loving, and conjugal. The Claimant did testify that even though she was in a relationship with the Witness, she still had feelings for the Contributor. A big part of the reason why the Witness first moved in with the Claimant was because she could not afford to live on her own.

[11] The Claimant, Witness, and Contributor continued to live in the same block of housing units. They would see each other almost daily. They took the Contributor to the hospital when he needed medical attention, they did his laundry, they got his medication, and they took him meals. There is no question that the Claimant continued to be a caregiver for the Contributor up to the time of his death. I accept this. However, being a caregiver is not the same thing as cohabiting with someone in a conjugal relationship.

[12] Based on the evidence, the Claimant and Witness have been cohabiting in a common-law relationship since 2011. They have been financially interdependent, their relationship has been conjugal, and they share property.

[13] Eligibility for a CPP survivor's pension is possible for a couple who have been cohabiting in a common-law relationship, even if they do not live under the same roof at all times. I have considered this. But, in this case, the Claimant and Contributor's conduct after they separated in 2010 showed that they both considered the relationship to be over.³ I find the evidence to be clear that the Claimant and Contributor no longer met the definition of 'common-law partners' under the CPP after that time, or at the time of the Contributor's death. This means that the Claimant cannot be considered a 'survivor', and in turn she is not eligible for a CPP survivor's pension.

CONCLUSION

[14] I am dismissing this appeal.

Tyler Moore
Member, General Division - Income Security

³ *Hodge v. Canada*, 2004 SCC 65.