

**Social Security Tribunal of Canada  
General Division – Income Security Section**

**Decision**

**Appellant:** L. S.  
**Representative:** C. O.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Anita Hoffman

---

**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated February 10, 2021 (issued  
by Service Canada)

---

**Tribunal member:** Raymond Raphael

**Type of hearing:** Videoconference

**Hearing date:** July 22, 2021

**Hearing participants:** Appellant  
Appellant's representative  
Minister's representative

**Decision date:** August 10, 2021

**File number:** GP-21-612

## **DECISION**

[1] The Claimant and her former husband W. S. were common-law partners at the time of his death. She is entitled to the *Canada Pension Plan* (CPP) survivor's benefit.

## **OVERVIEW**

[2] The Claimant and W. S. were married in November 1957.<sup>1</sup> They started to live apart in 1969.<sup>2</sup> The Claimant states that this was for reasons beyond their control. Even though they lived apart she continued to be his caregiver and spouse. W. S. was diagnosed with paranoid schizophrenia in 1980.<sup>3</sup> They divorced in November 1996.<sup>4</sup> W. S. died in March 2000.<sup>5</sup> In March 2020, the Claimant applied for the CPP survivor's benefit.<sup>6</sup> 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 W. S. were common-law partners at the time of his death.

### **Claimant's position**

[4] Although the Claimant and W. S. were living at different residences, this was because of circumstances beyond their control. W. S. suffered from paranoid schizophrenia. As a result, the Claimant was unable to live in the same house as him. They divorced because she was advised that this was necessary so that W. S. would qualify as single for social assistance and medical care. She continued to care for him

---

<sup>1</sup> GD2-31

<sup>2</sup> Statutory declaration, GD2-22

<sup>3</sup> GD4-4

<sup>4</sup> GD2-33

<sup>5</sup> GD2-24

<sup>6</sup> GD2-4 to 7. Unfortunately, the Claimant did not apply for the survivor's pension until 20 years after W. S.'s death. This was because she did not realize she was not receiving the benefit until her daughter went through her papers in 2020.

and they continued to cohabit in a common-law relationship until W. S. died in March 2020.<sup>7</sup>

### **Minister's position**

[5] Although the Claimant continued to care for W. S. after they divorced, they were not common-law partners. Their relationship was more like that of patient and caregiver.<sup>8</sup>

### **ANALYSIS**

[6] To qualify for the CPP survivor's pension, the Claimant must establish that it is more likely than not that she and W. S. 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.<sup>9</sup>

[7] The Federal Court has stated that the factors that are indicative of a common-law relationship include the following:<sup>10</sup>

- 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;
- 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;

---

<sup>7</sup> Reasons for appeal, GD1-4; Request for reconsideration, GD2-20.

<sup>8</sup> GD10, Minister's submissions

<sup>9</sup> Paragraph 44(1)(d) and definitions of survivor in section 42(1) and of common-law partners in section 2(1) of the CPP.

<sup>10</sup> *McLaughlin v. Canada (Attorney General)*, 2012 FC 556, paras 15,16

- 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.

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

### ***Shelter***

[9] W. S. had unpredictable violent outbursts. By 1969, they were getting worse. He would be all right for a while, and then become violent. It was impossible to live with him because of his condition. He started to stay in a trailer about a mile away from the family home. The family home had always been in the Claimant's name. Her father built it for her. The trailer was on a lot at the "edge of town." It had no power, no water, and no bathroom.

[10] Even though W. S. was living in the trailer, he would "come and go." He came to the house to use the washrooms and eat. He slept over about two to three times a week. He slept in a separate bedroom.

### ***Sexual and personal behaviour***

[11] They were not sexually intimate. Neither had a relationship with anyone else.

### ***Services***

[12] The Claimant made meals for W. S.. She did his laundry when he came to the house. He would take extra food away. She went to the trailer to see how he was doing. She gave him clothes as gifts on his birthday and Christmas. They divorced only because she was trying to help him get medical services and financial assistance. Everything stayed the same after the divorce. They continued living the same way as before. The only difference was that his condition continued to worsen.

### **Social**

[13] She made parties for him on his birthday. He came for Christmas, when he could.

### **Support and financial arrangements**

[14] W. S. worked on and off – but this never lasted. The Claimant worked as a chambermaid. He was not on welfare. He did not get the medical and social assistance they hoped for after the divorce. This was because he refused to go for an evaluation or to government offices to sign the forms– he was afraid of the government. They always had separate bank accounts. She flew to Coquitlam (over 1000 miles away) to check on and visit him when he was committed to a mental hospital by the R.C.M.P in 1980.<sup>11</sup> He had been arrested for shooting a gun at the trailer.

[15] She paid for his funeral expenses and headstone.<sup>12</sup> The letters of administration of his estate referred to her as his lawful wife.<sup>13</sup> The letter sending the coroner's report is addressed to her as his wife.<sup>14</sup>

### **Attitude and conduct concerning children**

[16] Their children always considered them to be husband and wife. They knew the reasons for the divorce. They knew the Claimant would not have divorced him unless she was trying to help him. Their neighbours did not know that they had divorced. W. S.'s sister was the only relative (other than their children) who knew this.

### **My findings**

[17] The extent to which the different factors of a common-law relationship should be taken into account varies with the circumstances of each case.<sup>15</sup> I must keep in mind the endlessly variable nature of marriage in our society and assess the specific

---

<sup>11</sup> GD4-5

<sup>12</sup> GD4-10, GD11-4

<sup>13</sup> GD1-8

<sup>14</sup> GD4-6

<sup>15</sup> *Molodowich v Penttinen*, 1980 CanLII 1537 (Ontario District Court), paragraph 16

circumstances, to determine whether the Claimant and W. S. had a marriage like relationship.<sup>16</sup>

[18] 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 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.<sup>17</sup>

[19] Although a common-law relationship usually involves a common residence, each case must be determined on its own facts.<sup>18</sup> 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.<sup>19</sup>

[20] W. S.'s move to a trailer about a mile from the family home in 1969 was solely because of his abusive behaviour due to his paranoid schizophrenia. Their divorce in 1996, was an attempt to get W. S. medical care and social financial assistance that he needed. They continued to have a marriage like relationship. There is no evidence that either the Claimant or W. S. had any intention to terminate that relationship.

[21] I find that the Claimant and W. S. continued to be common-law partners until W. S. died in March 2000.

[22] The Claimant has established that it more likely than not that she and W. S. were common-law partners at the time of his death.

---

<sup>16</sup> *A.L v D.P and MHRSD* (November 16, 2011), CP 27238 (PAB), para 234. Although I am not bound by Pension Appeal Board (PAB) decisions, I found the PAB decisions that I have relied on to be persuasive.

<sup>17</sup> *Hodge v. MHRD*, 2004 SCC 65, para 43

<sup>18</sup> *MHRD v Haynes* (June 28, 2001), CP 15179 (PAB), para 9.

<sup>19</sup> *MHRSD v. S.S.* (October 6, 2011), CP 27386 (PAB)

## CONCLUSION

[23] The Claimant is entitled to the CPP survivor's pension. Her payments start as of April 2019, which is the maximum period of retroactivity permitted by the CPP.<sup>20</sup>

[24] The appeal is allowed.

Raymond Raphael  
Member, General Division - Income Security

---

<sup>20</sup> Subsection 72(1) of the CPP provides that in no case shall a survivor's pension be payable earlier 11 months prior to the month the application was received. The application was received in March 2020.