



Citation: *CT v Minister of Employment and Social Development*, 2021 SST 541

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

# **Decision**

**Appellant: (Claimant)**

C. T.

**Respondent: (Minister)**

Minister of Employment and Social Development

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**Decision under appeal:**

Minister of Employment and Social Development  
reconsideration decision dated November 26, 2020 (issued  
by Service Canada)

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**Tribunal member:**

Raymond Raphael

**Type of hearing:**

On the Record

**Decision date:**

August 27, 2021

**File number:**

GP-21-365

## DECISION

[1] The Claimant was in a common-law relationship with M. S. from April 2011 to July 2018. She was overpaid \$27,812.33 for the Guaranteed Income Supplement (GIS).

## OVERVIEW

[2] The Claimant was born in May 1938. In November 2002, she applied for the *Old Age Security* (OAS) pension and GIS.<sup>1</sup> The applications were approved effective June 2003, the month after she turned 65. Since the Claimant was a widow, her GIS was calculated at the single rate based on only her income. In April 2011, the Claimant started to live in a common-law relationship with M. S.. She did not notify the Minister about the common-law relationship. M. S. died in July 2018.

[3] In November 2018, the Claimant applied for the *Canada Pension Plan* (CPP) survivor benefit as M. S.'s survivor. In the application, she stated that she had lived in a common-law relationship with M. S. from April 2011 until he died in July 2018.<sup>2</sup> The application was approved effective August 2018, the month after M. S. died.

[4] In May 2019, the Minister notified the Claimant that she had been overpaid \$27,812.33 for GIS from May 2012 to July 2018. This was because she had been in a common-law relationship with M. S. from April 2011 to July 2018. In view of this, her marital status was common-law and her GIS payments should have been calculated at the married rate based on her and M. S.'s combined income.<sup>3</sup> The Minister denied the Claimant's request for reconsideration.<sup>4</sup> The Claimant appealed the reconsideration decision to the Social Security Tribunal.

## Form of Hearing

[5] I decided this appeal based on the documents and submissions filed because the Claimant requested this form of hearing. Although the Claimant initially requested that the hearing be in person, in July 2021 she requested that the form of hearing be

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<sup>1</sup> GD2R-38

<sup>2</sup> GD2R-79

<sup>3</sup> GD2R-10

<sup>4</sup> GD2R-6

changed to on the record. She stated that she was not able to attend a hearing because of her medical situation.<sup>5</sup>

## ISSUES

1. Was the Claimant in a common-law relationship with M. S. from April 2011 to July 2018?
2. Did she receive an overpayment for GIS, and if so, for how much?

## ANALYSIS

[6] The OAS Act provides for the payment of a GIS benefit to low-income OAS pensioners. Benefits for a payment period are based on the pensioner's current marital status and income received in the previous calendar year. Pensioners who are not married or living in a common-law relationship are considered single and have their GIS eligibility assessed on the basis of their own income. Pensioners who have spouses or common-law partners are assessed on the basis of their joint income. Pensioners must notify the department of any change to their marital status. For those who have married or become a common-law partner, they must provide the name, address and income of their spouse or common-law partner and indicate if their spouse or common-law partner is a pensioner.<sup>6</sup>

[7] The Claimant started to receive the GIS as a widow based on the marital status of single effective June 2003. She continued to receive the benefit based on the single status even though she entered into a common-law relationship in April 2011. Pursuant to the OAS, her marital status change to common-law as of May 2012, after she had been in a common-law relationship for one year.<sup>7</sup> From May 2012 to July 2018, her GIS should have been calculated at the married rate based on her and M. S.'s combined income. Accordingly, she was overpaid \$27,812.33 for GIS from May 2012 to July 2018.<sup>8</sup>

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<sup>5</sup> This request is confirmed by the Tribunal telephone conversation logs dated July 20 and 23, 2021.

<sup>6</sup> The applicable statutory provisions are set out in the Minister's submissions at GD4, paras 14, 15

<sup>7</sup> The definition of common-law partner for the purposes of the OAS is set out in section 2 of the OAS.

<sup>8</sup> The calculation of the overpayment is set out at GDR-10

[8] In her request for reconsideration, the Claimant stated that she paid her own expenses while she lived with M. S. and left the relationship permanently in December 2015.<sup>9</sup> However, even if she paid her own expenses, this does not mean that she and M. S. were not in a common-law relationship. Her statement that the common-law relationship ended in December conflicts with her statements made in support of her CPP survivor application. She would not have been entitled to the CPP survivor benefit unless she was in a common-law relationship with M. S. at the time of his death.

[9] In her notice of appeal, the Claimant stated that although she and M. S. lived together, they lived separate lives and she was more like a caregiver than a common-law partner. However, this position contradicts her previous statements.

[10] There is compelling evidence in the hearing file that the Claimant and M. S. were common-law partners from April 2011 to July 2018 as follows:

- In a handwritten letter dated July 10, 2018 M. S. stated that he learned from a notary that the Claimant was his legal spouse even though they are common-law partners and not married.<sup>10</sup>
- In his last will and testament made July 11, 2018, M. S. referred to the Claimant as his spouse and appointed her his alternate executrix and trustee.<sup>11</sup>
- In her November 2018 application for the CPP Survivor's benefit, the Claimant stated that she was M. S.'s surviving spouse or common-law partner and that they were still living together at the time of his death.<sup>12</sup>
- In a January 2019 statutory declaration, the Claimant declared under oath that she and M. S. had lived together continuously from April 28, 2011 to July 21, 2018.<sup>13</sup>

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<sup>9</sup> GD2R-15

<sup>10</sup> GD2R-72

<sup>11</sup> GD2R-75

<sup>12</sup> GD2R-79, box 3 and GD2R-80, box 80

<sup>13</sup> GD2R-73, box 1

[11] I find that it is more likely than not that the Claimant and M. S. were common-law partners from April 2011 to July 2018. I also find that she was overpaid \$27,812.33 for GIS.

**CONCLUSION**

[12] The appeal is dismissed.

Raymond Raphael  
Member, General Division - Income Security