



Citation: *AS v Minister of Employment and Social Development*, 2021 SST 845

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

Decision

Appellant: A. S.
Representative: Mary Sillett

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 5, 2020 (issued by
Service Canada)

Tribunal member: Jackie Laidlaw

Type of hearing: On the Record

Decision date: November 15, 2021

File number: GP-20-1134

Decision

[1] The appeal is allowed.

[2] The Claimant, A. S., is eligible for a CPP death benefit for her late common law spouse, E. W..

Overview

[3] The Claimant was the common-law spouse of the deceased contributor, E. W. The death benefit had originally been paid to J. W., the son of the deceased. The Minister changed her position and agreed the Claimant is eligible for the death benefit.

What the Claimant must prove

[4] For the Claimant to succeed, she must prove she was the common-law spouse of the deceased contributor.

Matters I have to consider first

The Claimant wasn't at the hearing

[5] A hearing can go ahead without the Claimant if she got the notice of hearing.¹

[6] The Claimant does not have a phone. I cannot confirm if she received the notice of hearing. However, I do not find it relevant whether the Claimant received the notice of hearing. I will explain in the next few paragraphs.

The Minister requested the appeal be determined on the record

[7] The Minister's response to the appeal, dated May 7, 2021, was misfiled at the Tribunal. While investigating if the Claimant received the notice of appeal, I found the response today, November 15, 2021. In the response, the Minister requested the appeal proceed in writing based on the current record. For this error, I apologise to the parties for the confusion in proceeding with an oral hearing.

¹ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

[8] As the Minister's response provided missing relevant evidence, I have made my determination based on the record.

[9] Therefore, it is not relevant whether the Claimant attended the hearing, as I have determined the appeal based on the record.

Reasons for my decision

[10] The Minister supplied substantial evidence that the Claimant is the common-law spouse of the deceased contributor.

[11] The Minister accepts the Claimant is eligible for the CPP death benefit, and has requested the appeal be allowed.

Conclusion

[12] I find that the Claimant is eligible for a CPP Death Benefit.

[13] This means the appeal is allowed.

Jackie Laidlaw
Member, General Division – Income Security Section