



Citation: *BB v Minister of Employment and Social Development*, 2021 SST 855

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

Decision

Appellant (Claimant): B. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 21, 2021 (issued by
Service Canada)

Tribunal member: Pierre Vanderhout

Type of hearing: Teleconference

Hearing date: November 1, 2021

Hearing participant: Appellant

Decision date: November 23, 2021

File number: GP-21-1277

Decision

[1] The appeal is dismissed.

[2] The Claimant, B. B., isn't eligible for a Canada Pension Plan ("CPP") survivor's pension with respect to the late R. E. (the "Contributor"). This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant now lives in New Brunswick. She has family there. However, for many years, she lived in northern Alberta and British Columbia. For at least part of that time, she had a relationship with the Contributor. The Contributor died on April 13, 2019, in X. He had lived in the same apartment for more than 13 years. While the Claimant had returned to New Brunswick in early 2018, she was still involved in medical decisions during the last week of the Contributor's life.

[4] The Claimant applied for the CPP Survivor's Pension in May 2020. The Minister of Employment and Social Development (the "Minister") denied her application initially and on reconsideration. The Claimant then appealed to the Tribunal.

[5] The Claimant says she should get the CPP Survivor's Pension because she had been the Contributor's common-law partner since 2008. She said she moved to New Brunswick in February 2018 because she was sick and wanted to be near her family. However, she said that the Contributor was planning on moving to New Brunswick too, once she found a suitable apartment for them. Alas, he became sick and was unable to travel. She also took care of many things after he died, as she was the Executor of his will and "my name was on everything with him."¹

[6] The Minister says the Claimant's appeal must fail because she did not live with the Contributor for the twelve months immediately before his death (or for any consecutive 12-month period). While common-law cohabitation can be interrupted by temporary separations in the last year of the contributor's life, that principle does not

¹ GD1-5

apply in this case. The Minister added that the time between the date of involuntary separation and the Contributor's death was more than one year.

What the Claimant must prove

[7] For the Claimant to succeed, she must prove that she was the Contributor's common-law partner when he died on April 13, 2019. To do that, I must decide whether the Claimant and the Contributor cohabited in a conjugal relationship at the time of his death and for at least one year.²

Matters I must consider first

I accepted the documents sent in after the hearing

[8] Two sets of documents were filed after the hearing. The Minister filed the first set (indexed as "GD15") on November 3, 2021. GD15 contained unredacted copies of documents previously filed by the Claimant. However, the Minister previously only filed redacted copies of these documents with the Tribunal. One page was from an e-mail sent on December 7, 2020.³ The other pages were from the Contributor's will.⁴

[9] I elected to accept the late GD15 documents. They were potentially relevant to the appeal. I had also asked for these documents before the hearing. I first asked for them, along with other improperly redacted documents, on September 29, 2021.⁵ The Minister omitted the GD15 pages, apparently by oversight, in its response of October 5, 2021.⁶ On October 15, 2021, I again asked for those unredacted documents.⁷ As they were filed within a couple of weeks, and the Claimant would already have had access to the unredacted documents, I see no prejudice.

[10] The Minister also filed additional submissions on November 16, 2021 (indexed as "GD16"). GD16 responded to documents⁸ the Claimant filed less than two weeks before

² See s. 2(1) of the *Canada Pension Plan*.

³ The redacted page is at GD2-68.

⁴ The redacted pages are at GD2-27 to GD2-30.

⁵ GD6-1

⁶ See GD8.

⁷ GD9-1

⁸ GD10, GD12 and GD13.

the hearing. On November 2, 2021, I invited the Minister to make submissions on the Claimant's late documents by November 19, 2021. As the Minister responded before the deadline, I received the GD16 document even though it was filed after the hearing.

Reasons for my decision

[11] I accept that the Claimant and the Contributor may once have cohabited in a conjugal relationship. However, the key issue is whether they did so at the time of the Contributor's death and for at least one year.

[12] The *Canada Pension Plan* does not define "cohabitation in a conjugal relationship". However, a 2001 decision called *Betts* sets out which factors are usually relevant to that question.⁹ I will call these the "Betts Factors". The Betts Factors are:

- (a) Financial interdependence
- (b) Sexual relationship
- (c) Common residence
- (d) Purchasing gifts on special occasions
- (e) Sharing of household responsibilities
- (f) Shared use of assets
- (g) Shared responsibility for children
- (h) Shared vacations
- (i) Expectation of mutual dependency
- (j) Beneficiary of will
- (k) Beneficiary of insurance policy
- (l) Where clothing was kept
- (m) Care for one another when ill, and knowledge of medical needs
- (n) Communications between the parties
- (o) Public recognition
- (p) Attitude and conduct of the community
- (q) Marital status on various documents
- (r) Funeral arrangements

[13] Not all Betts Factors are relevant or persuasive in every case. The evidence in this case is not completely for or against a common-law relationship. However, complete certainty is not necessary. The onus is on the Claimant to prove that she was

⁹ *Betts v. Shannon*, 92001 CP 11654 (Pension Appeals Board). Although this is not a binding decision, it is persuasive and is frequently cited in Tribunal decisions. It has also been cited in cases such as *Farrell v. Canada (Attorney General)*, 2010 FC 34.

cohabiting in a conjugal relationship with the Contributor at the time of the Contributor's death, and for at least one year. I find that the Claimant and the Contributor were not in such a relationship. I will explain why I came to this conclusion, after applying the Betts Factors to the facts of this case.

Applying the Betts Factors

[14] Several Betts Factors do not support cohabitation in a conjugal relationship. For example, the Claimant and the Contributor were financially independent. They did not have shared bank accounts or credit cards. They did not sign a lease together. They had no jointly owned property.¹⁰ They did not live together for at least a year before the Contributor's death. At best, they lived together until February 2018.¹¹ And, as I will set out in more detail below, it is doubtful that they lived together for at least a year. They did not name each other as life insurance beneficiaries.¹² The Claimant said the Contributor's family "didn't bother with him until he passed away," so she does not seem to have been recognized by them as a common-law partner.

[15] Other Betts Factors do not support cohabitation in a conjugal relationship either. The Claimant said she always claimed to be single on applications and forms. She said the Contributor probably claimed he was single as well. While the Claimant was the Contributor's primary contact in hospital, she was only described as his "friend".¹³ I also see contradictory evidence about the Contributor's marital status on his 2019 (terminal) tax return. The form submitted shows that he was both "single" and "living common law" when he died. The Claimant could not explain this at the hearing: she said tax professionals prepared the form and she never noticed the conflicting information. In addition, I see no answer to the following question: "Were you married or living common law at any time in this tax year?"¹⁴ Once again, she could not explain this omission at

¹⁰ GD2-31

¹¹ GD2-31

¹² GD2-31

¹³ GD2-39

¹⁴ GD12-37

the hearing. The Contributor had no funeral. I also note that the Contributor's sister paid the burial costs from the Contributor's bank account.¹⁵

[16] Some Betts Factors are of little relevance. While they did not have a sexual relationship, the Claimant attributed to the Contributor's prostate cancer. They could not share the use of assets like cars or boats, because they did not have any during the last few years of the Contributor's life. They had no children. She said they didn't take many vacations together because, before her disability, her life revolved around work.

[17] Some Betts Factors could partly support a common-law relationship. In cases of illness, the Claimant said they cared for each other. There is some evidence of this, as the Claimant was the Contributor's primary contact when he was admitted to the Dawson Creek Hospital on April 5, 2019. However, as noted above, she was only listed as a "friend".¹⁶ At the hearing, she said she was called by the hospital and approved a "Do Not Resuscitate" order. This implies that they had knowledge of each other's medical needs. Even so, the hospital records still showed the Claimant as having an unknown X address.¹⁷ This suggests that the Contributor made the Claimant his primary contact a long time before his April 2019 hospital admission and never got around to choosing a new contact. Similarly, the Claimant was named as a beneficiary and the trustee in the Contributor's will.¹⁸ However, this is not determinative: he made the will in 2015. I also note that the Claimant never prepared a will of her own.

[18] Many of the Betts Factors that favour cohabitation in a conjugal relationship are those for which the Claimant has provided uncorroborated evidence. The Claimant said they bought gifts for each other on special occasions. She said they shared the household responsibilities. She said they kept all their clothing in the Contributor's apartment. During the last year of the Contributor's life, she said they talked to each other 2-3 times per day. However, no evidence was filed to support this (in the form of telephone bills, for example). She said they were publicly recognized as a couple, as

¹⁵ GD12-24 and GD12-27

¹⁶ GD2-39

¹⁷ GD2-39

¹⁸ GD2-26

well as by her mother, but I see no reliable independent verification of this. It is also hard to see how they could be publicly recognized as a couple in the last year of the Contributor's life. He lived thousands of miles away from the Claimant, and she said there had been heavy turnover at his apartment building. She also implied that there was mutual dependency each day. However, I do not place much weight on such uncorroborated evidence. Where there is objective evidence, it can conflict with the Claimant's evidence.

[19] For example, in the Claimant's statutory declaration, she says that she lived together with the Contributor for eight full years. She declared that this was from February 1, 2010, to February 1, 2018.¹⁹ At the hearing, she said she gave the wrong date, and said that they actually started living together in 2008. This conflicts substantially with the Claimant's residence history, as reported by the Claimant herself to various federal government departments.

[20] The Contributor reported only one address from December 2005 until his death: X ("the Contributor's Apartment").²⁰ However, from the beginning of 2008 until the Contributor's death, the Claimant reported at least eleven distinct addresses to federal government agencies²¹:

<u>Start Date</u>	<u>End Date</u>	<u>Address</u>
March 2007	February 2008	X
February 2008	October 2008	X
October 2008	February 2009	X
February 2009	March 2009	X
March 2009	August 2009	X
August 2009	May 2010	X.
May 2010	January 2011	X
January 2011	November 2014	X
September 2014	February 2018	X
September 2016	July 2017	X.
February 2018	Present	X

¹⁹ GD2-31

²⁰ GD2-74 to GD2-75

²¹ GD2-72 to GD2-73

[21] According to this objective information, the Claimant resided with the Contributor for less than a year. Most notably, I see a 22-month period between November 2014 and September 2016 when the Claimant reported only an address in X. At the hearing, she said this was her mother's address. She said she only went there "for a visit."

[22] The Claimant says she and the Contributor maintained their own apartments at X for most of their relationship. She said they both had previous bad experiences and liked their independence. She said their motto was "what's his is his, what's mine is mine, and what's ours is ours."

[23] I note that the Claimant only provided two documents showing her residence as the Contributor's Apartment. One (a letter from Sears) was from December 2016.²² This was in a period when she gave the same address to the Federal government. The other document was a partly illegible Canada Revenue Agency form from 2017, but I see no specific date.²³ Without other evidence confirming her shared residence, I cannot find that she lived in the Contributor's Apartment at any time other than September 2016 to July 2017. I have concerns about the reliability of the Claimant's evidence.

Reliability of the Claimant's evidence

[24] I find it very important that the Claimant's account of her move to X (the "X Apartment"), was not consistent with her objective address history. In January 2021, she said she moved back to New Brunswick in 2018 due to illness and was unable to return to X.²⁴ At the hearing, she said she came to New Brunswick partly because of her disability and partly to find a place to live. She said it took her "more than half a year" to find a suitable place to live for a person with a disability. This was the X Apartment. She said she lived with her mother until then. By the time she had moved into the X Apartment, she said the Contributor was no longer able to travel.

²² GD12-23

²³ GD2-61.

²⁴ GD2-69

[25] I do not accept the Claimant's account. She reported the X Apartment address already on February 6, 2018.²⁵ It could not have taken her more than half a year to find it, if she had been in X until February 2018. In any case, I see no reliable evidence of any significant health concerns for the Contributor until he was admitted to the hospital on April 5, 2019.²⁶ This was more than a year after the Claimant found the X Apartment, yet I see no evidence of any attempt by the Contributor to move to X from X. This makes it highly unlikely that the Claimant and the Contributor had an involuntary separation in February 2018.

[26] The Claimant's previous 2014 relocation to New Brunswick makes it even more unlikely that she and the Contributor involuntarily separated in 2018. When asked about living in New Brunswick from September 2014 to February 2018, the Claimant said "I was never there that long". She denied living in New Brunswick at that time: she said she just went for a visit after completing her Vancouver rehab program. I have difficulty with this account. She reported no addresses, other than the one in New Brunswick, from at least November 2014 to September 2016. Her explanation for notifying both the CPP and the Canada Revenue Agency of her New Brunswick address during that time was "I always thought I had to let people know where I was."²⁷ If so, then she was likely in New Brunswick for at least the period from November 2014 to September 2016. Her 2014 return to New Brunswick also contradicts her oral evidence at the hearing that she hadn't seen her family in New Brunswick for 16 years when she returned in 2018.

[27] Finally, the reliability of the Claimant's evidence is not enhanced by her oral statement that she forgets what she has said "5 seconds later." She added that she "kept notes, because that's the best way to keep track when you have a memory problem." I will now make my conclusion on the Betts Factors.

²⁵ GD2-72

²⁶ GD2-39

²⁷ Pages GD2-72 and GD2-73 show that she notified both agencies in 2014.

Conclusion on the Betts Factors

[28] I find that the factors not supportive of a common-law partnership are considerably more persuasive than those which do support a common-law partnership. For example, there is clear, unequivocal evidence that they were not financially interdependent and had little in the way of shared assets. They almost always had different addresses, and lived separately for the last year of the Contributor's life. They claimed to be single on other forms. I assign a lot of weight to those factors. The Contributor only described the Claimant as his "friend" in both his will and his hospital records. The evidence that could support a common-law partnership was almost always uncorroborated and based on the Claimant's evidence only. However, as noted, I have difficulty relying on her evidence. I also note that some factors, such as the Contributor's will and hospital contact information, do not appear to relate to the last year of his life.

[29] The burden of proof is on the Claimant. She has not persuaded me that, on a balance of probabilities, she and the Contributor were in a common-law relationship at the time of his death. Nor am I persuaded that they were in a common-law relationship beyond the period from September 2016 to July 2017, when they shared the same address in X. In this case, sharing an address is particularly important.

[30] In reaching the above conclusion, I place essentially no weight on the brief October 24, 2021, statement from Karen Shute. This was filed only a week before the hearing. Ms. Shute said she was the Claimant's home care worker when the Claimant resided at the Contributor's Apartment in X.²⁸ But Ms. Shute did not give any other information about herself. She did not give an address or any contact information. Nor did she say when she was the Claimant's home-care worker. I asked the Claimant how she got the letter from Ms. Shute. The Claimant said Ms. Shute also happened to be her home care worker in New Brunswick for the past few months. However, she apparently stopped being the Claimant's home care worker on the day before the hearing. In these

²⁸ GD13-1

highly unusual circumstances, and considering the vast distance between northern B.C. and the Claimant's home in rural New Brunswick, I cannot rely on the letter.

[31] I also place relatively little weight on the Claimant's extensive evidence about the actions of the Contributor's family members after his death.²⁹ That evidence may show some distance between the Contributor and his family. While that is unfortunate, the Contributor's alienation from his family does not establish a common-law relationship between the Claimant and the Contributor at the time of his death. It is equally consistent with the Contributor's need to rely on friends and acquaintances.

Conclusion

[32] I find that the Claimant isn't eligible for the CPP survivor's pension. She was in a common-law relationship with the Contributor from September 2016 to July 2017. This was less than a year. There was no common-law relationship at the time of the Contributor's death, or in the last year of the Contributor's life.

[33] This means the appeal is dismissed.

Pierre Vanderhout
Member, General Division – Income Security Section

²⁹ See, for example, the very long e-mail at GD2-62. An unredacted version of that e-mail is at GD8-1 to GD8-6 and GD15-6.