



Citation: *The Estate of WN v Minister of Employment and Social Development & BC*,  
2022 SST 1154

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

# Decision

<b>Appellant:</b>	The Estate of W. N.
<b>Representative of the Estate:</b>	T. R.
<b>Respondent:</b>	Minister of Employment and Social Development
<b>Representative:</b>	Alka Chopra
<b>Added Party:</b>	B. C.
<hr/>	
<b>Decision under appeal:</b>	Minister of Employment and Social Development reconsideration decision dated October 4, 2021 (issued by Service Canada)
<hr/>	
<b>Tribunal member:</b>	Carol Wilton
<b>Type of hearing:</b>	Teleconference
<b>Hearing date:</b>	July 28, 2022
<b>Hearing participants:</b>	Representative of the Estate Witness - Appellant's brother P. R. Respondent's representative Added Party
<b>Decision date:</b>	October 23, 2022
<b>File number:</b>	GP-21-2337

## Decision

[1] The appeal is allowed.

[2] The Estate of W. N. is eligible for the Canada Pension Plan (CPP) death benefit.

[3] This decision explains why I am allowing the appeal.

## Overview

[4] The deceased contributor (the deceased), W. N., died on February 16, 2021.<sup>1</sup> He did not have a will. B. C., the Added Party, claimed that she was his common-law partner. She is recorded as having paid for his funeral. On February 25, 2021, she applied for the death benefit.<sup>2</sup> On April 10, 2021, the Minister awarded the death benefit to her.

[5] On April 19, 2021, T. R., son of the deceased, applied for the death benefit on behalf of the estate.<sup>3</sup> The Minister refused the application initially and on reconsideration.

[6] T. R., as estate trustee, appealed the reconsideration decision to the General Division of the Social Security Tribunal (Tribunal).

[7] The Appellant stated that in August 2021, he and his brother, P. R., became the estate trustees of their father's estate.<sup>4</sup> The Added Party was with their father just before he died. But she did not notify them that he had passed away.<sup>5</sup> They only found out a month later, when she answered their father's telephone. They had to contact funeral homes and the hospital to find out what had happened.<sup>6</sup>

---

<sup>1</sup> GD2-17

<sup>2</sup> GD2-25

<sup>3</sup> GD2-13. For the sake of convenience, I will refer to T. R. as "the Appellant."

<sup>4</sup> GD1-10. The Certificate of Appointment of Estate Trustee without a Will was dated in August 2021.

<sup>5</sup> The Added Party didn't dispute that she failed to notify the deceased's children of his death in a timely way.

<sup>6</sup> GD1-3. On April 1, 2021, a London, Ontario law firm wrote to the Appellant and his brother as Estate Trustees, confirming that the firm had been retained as solicitors to the Estate.

[8] The Appellant stated that the Added Party was not the deceased's common law spouse, but a former girlfriend from 30 years before. He stated that she drained the deceased's bank accounts and took other property of his after his death. The Appellant submitted that the death benefit should be paid to the estate.<sup>7</sup>

[9] The Minister says the Appellant did not receive the CPP death benefit because it had already been paid to another eligible applicant. A CPP death benefit cannot be paid to more than one applicant.<sup>8</sup> The Minister said the Appellant did not apply within 60 days of the contributor's death, so the Minister could pay the death benefit out at that time to another applicant who met the statutory requirements.

[10] The Minister accepted that the Added Party was the common-law spouse. A common-law partner gets the death benefit in priority to a son. In addition, the Added Party had documents showing that she had paid for the funeral. The Minister asked that the appeal be summarily dismissed.

## **Matters I must consider first**

### **Missing information**

[11] The Tribunal tried to obtain an unredacted copy of the 31-page reconsideration file from the Minister.<sup>9</sup> The Minister missed three deadlines for producing this. I informed the Minister that I would draw an adverse inference if it did not produce this information.<sup>10</sup>

[12] In June 2022, the Minister submitted unredacted copies of the deceased's proof of death, proof of paid funeral expenses, and Statutory Declaration of Common-Law Union. The Minister's representative stated that she didn't have a copy of the notice of entitlement – the letter telling the Added Party her application was approved. The Added Party's application for the death benefit had been approved on April 10, 2021. The

---

<sup>7</sup> GD1-2-4

<sup>8</sup> Subsection 71(3) of the CPP

<sup>9</sup> GD6, 8 and 11.

<sup>10</sup> GD12

representative stated that entitlement letters were automatic and she didn't have access to them.<sup>11</sup>

## Post-hearing developments

[13] At the hearing, it was agreed that the Tribunal would send all parties a copy of a relevant decision of the Appeal Division of this Tribunal: *R. S. v Minister of Employment and Social Development and Z. T.*, 2019 SST 1043. The parties would have until August 29, 2022, to provide submissions on that decision should they wish. The Tribunal sent out copies of the decision but received no submissions in response.

## What the Appellant must prove

[14] For the Appellant to succeed, he must prove that the Minister was not authorized to pay the CPP death benefit to the Added Party.

## Reasons for my decision

[15] For the reasons that follow, I find that the Estate is entitled to the CPP death benefit.

[16] The estate of a deceased contributor has priority, subject to certain exceptions, over other potential claimants to the CPP death benefit. Under the law, the death benefit goes to the estate of the contributor, except under these circumstances:

- The Minister is satisfied that there is no estate; or
- The estate has not applied for the death benefit within 60 days of the contributor's death.<sup>12</sup>

[17] If the estate hasn't applied within 60 days, the Minister **may** give the death benefit to the individual who has paid for or is responsible for the payment of the funeral

---

<sup>11</sup> GD16

<sup>12</sup> Section 71 of the CPP and subsection 64(1) of the CPP *Regulations*

expenses, or if there is no such person, to the survivor of the contributor; or to the next of kin of the contributor.<sup>13</sup>

[18] The law says that the “survivor” is the legal spouse of the deceased contributor, unless there is a common-law partner.<sup>14</sup> A common-law partner is someone who lived together with the contributor in a conjugal relationship for at least the year before the contributor’s death.<sup>15</sup>

[19] The law doesn’t say that if the estate doesn’t apply for the death benefit within 60 days, the Minister **must** pay a death benefit to another applicant. If the estate doesn’t apply within 60 days, the Minister has the discretion to pay the benefit to statutorily prescribed persons. The Minister’s obligation to pay the death benefit to the estate continues, even if representatives of the estate do not apply for it within 60 days.<sup>16</sup>

[20] Since the estate did not apply for the death benefit within 60 days of the deceased’s death, the Minister in this case notionally had the discretionary authority to direct the death benefit to the person who it found had paid for the funeral expenses, the survivor, or the next-of kin (in that order).<sup>17</sup>

[21] However, that does not end the matter. As a recent decision of the Appeal Division of this Tribunal stated, the Minister has a duty to act in good faith when exercising discretionary power.<sup>18</sup> Discretionary decisions are reviewable if a decision-

---

<sup>13</sup> Subsection 64(1) of the *CPP Regulations*

<sup>14</sup> Subsection 42(1) of the *CPP*.

<sup>15</sup> Section 2 of the *CPP*.

<sup>16</sup> *R. S. v Minister of Employment and Social Development and Z. T.*, 2019 SST 1043, citing *Cormier v. Canada (Minister of Human Resources Development)*, 2002 FCA 514. Decisions of the Appeal Division of this Tribunal are not binding on me, but I find this one persuasive.

<sup>17</sup> This is subject to the information in para. 36 below.

<sup>18</sup> *R. S. v Minister of Employment and Social Development and Z. T.*, 2019 SST 1043, citing *Canada (Attorney General) v. Uppal*, 2008 FCA 388. I have considered another decision of the Appeal Division, *S.W. v. MESD*, AD-22-295, September 2022. I do not find that it states that the General Division (GD) *generally* lacks the authority to make a decision on the Minister’s exercise of discretion. The AD decision in that case was considering whether the GD had the authority to consider the Minister’s 8-year delay in terminating the Appellant’s CPP disability pension after finding that he was no longer disabled. In the present case, the reconsideration decision explicitly stated that the Minister had considered “whether an error was made in applying the legislation, or whether a provision, qualifier, or other relevant piece of information was overlooked during the initial determination.” GD2-10.

maker has acted in bad faith, or for an improper purpose or motive, took into account an irrelevant factor, ignored a relevant factor, or acted in a discriminatory manner.<sup>19</sup>

[22] The role of the Tribunal in appeals such as this is not to determine whether the Minister made the correct determination. Rather, the Tribunal must decide whether the Minister exercised its discretion judicially. If the Minister did not exercise its discretion judicially, the Tribunal must make the decision that the Minister should have made.

### **The Minister did not exercise its discretion judicially**

[23] I find that the Minister failed to exercise its discretion judicially. It is true that the estate failed to apply for the death benefit within 60 days. However, the Minister failed to take relevant factors into account when it gave the death benefit to the Added Party.

[24] The first relevant factor is that the Added Party's Statutory Declaration did not support her claim of being the deceased's common-law partner.

[25] The second relevant factor is that the 60 days were not up when the Minister approved payment of the death benefit to the Added Party.

#### **- The Added Party's Statutory Declaration did not support that she was the common-law partner (survivor) of the deceased**

[26] There is no dispute that the deceased was unmarried. The Added Party claimed that she had been his common-law partner for 30 years at the time of his death.<sup>20</sup> But her Statutory Declaration of Common-law Union does not bear this out. In fact, it fails to show that the Added Party was the deceased's common-law partner for the year before his death, or for some time before that.

[27] The Minister's representative stated that there were no red flags in the Added Party's application. I disagree.

---

<sup>19</sup> *Canada (Attorney General) v. Purcell*, 1995 CanLII 3558 (FCA).

<sup>20</sup> GD16-6

[28] The case law outlines several criteria for a common-law partnership. These include, but are not limited to the following: financial interdependence, common residence, jointly owned property, beneficiary of insurance policy, and marital status on various documents.<sup>21</sup>

[29] In February 2021, the Added Party completed a Statutory Declaration of Common-law Union. She stated that she and the deceased had no lease, mortgage, or purchase agreement relating to property together. They jointly owned no property. They did not have bank, trust, credit union, or charge card accounts together. They didn't have life insurance on each other. The Added Party was "unsure" of other documentary evidence that would support that she and the deceased had a conjugal relationship as common-law partners.<sup>22</sup>

[30] On the statutory declaration form, the Added Party had the opportunity to state that her relationship with the deceased demonstrated that they were in a common-law relationship. She checked off none of the possibilities. Her statutory declaration suggested that the parties did not live together since they owned no property together and had no joint lease or other property documents together. It also suggested that they were not financially interdependent. This should have alerted the Minister's staff that perhaps the Added Party was not in fact the deceased's common-law partner. Yet the Minister's staff took the Added Party at her word that she was. They did no investigation.<sup>23</sup>

[31] By failing to investigate, the Minister ignored a relevant factor. Thus it failed to act judicially.

[32] Further information has come to light that casts doubt on the Added Party's claim:

---

<sup>21</sup> *Betts v. Shannon*, (October 22, 2001) CP 11654 (Pension Appeals Board). This decision is not binding on me but I find it persuasive.

<sup>22</sup> GD2-28

<sup>23</sup> If they had investigated, it might have delayed consideration of the Added Party's application long enough for the Minister to receive the Appellant's application.

- The deceased was the sole owner of his house.<sup>24</sup> The Added Party lived at another address;<sup>25</sup>
- The deceased's 2018 and 2020 income tax returns stated that he was single;<sup>26</sup>
- From 2011 to May 2017, the deceased listed his mother as his emergency contact at the hospital.<sup>27</sup> In May 2017, the Added Party was listed as the deceased's spouse or wife. In June, August, September, October, and December 2017, the deceased listed the Added Party as his emergency contact, stating that she was his "friend."<sup>28</sup> She was listed the same way in 2018, 2019, and 2020.<sup>29</sup>
- The Added Party's 2016 income tax return stated that she was single.<sup>30</sup>
- So did her application for Old Age Security in the same year.<sup>31</sup>
- In 2017, her application for the Guaranteed Income Supplement said she was single.<sup>32</sup>
- In her application for the Ontario Trillium benefit, she listed her marital status on December 31, 2019, as single;<sup>33</sup> and
- In July 2020, the letter that came with the Added Party's Guaranteed Income Supplement stated that government records showed she was single.

[33] The evidence fails to show that the Added Party was the common-law partner of the deceased for the year before his death. If the Minister had investigated the gaps in the Added Party's statutory declaration, it likely would not have paid the death benefit to her.

---

<sup>24</sup> GD14-4: W. N. is listed as the sole owner of a house on XX on a 2021 city tax bill.

<sup>25</sup> GD1-8. On the Service Ontario Statement of Death, the Added Party stated that they both lived in an Apartment on X Street. The Appellant stated that his father had lived for many years in his own house on Y Street.

<sup>26</sup> GD14-2, 5. His 2019 income tax return is not in the file.

<sup>27</sup> GD9-I-48-62. The Appellant's mother passed away in 2018.

<sup>28</sup> GD9-I-67

<sup>29</sup> GD14-II-9-36

<sup>30</sup> GD9-I-40. The Added Party used the surname name "M." on this document.

<sup>31</sup> GD9-I-43

<sup>32</sup> GD9-I-34

<sup>33</sup> GD9-I-39



- **The Minister did not observe the 60-day deadline**

[34] At the hearing, the Appellant testified that the Estate's application for the death benefit reached Service Canada on April 15, 2021. However, it wasn't processed until April 19. The application has a stamp on it that says "Dropped Off." The application is date stamped April 19, 2021 at the Minister's mail room. The Appellant was unable to provide the Tribunal with a tracking slip. It is more likely than not that the Minister received the application on April 19, 2021, 62 days after the deceased passed away.

[35] However, the Minister did not observe the 60-day deadline. The Appellant died on February 16, 2021. The Minister awarded the death benefit to the Added Party on April 10, 2021. This was 53 days after the deceased passed away.

[36] If the Minister wished to pay the death benefit to the Added Party before the 60 days were up, it should first have investigated whether there was an estate.<sup>34</sup> There is no indication that the Minister did so.

[37] By failing to observe the 60-day deadline, the Minister ignored a relevant factor. Thus, it failed to act judicially. If the Minister had observed the 60-day deadline, it likely would not have paid the death benefit to the Added Party before it received the Estate's application.

- **The decision the Minister should have made**

[38] The Minister didn't exercise its discretion judicially.

[39] The Minister should have followed up on the Added Party's claim to be the deceased's survivor. In the meantime, the estate would have applied and would have asserted its right to the death benefit. It would also have been able to cast doubt on the Added Party's claim to be a survivor and to have paid the funeral expenses.

[40] Since the Minister did not exercise its discretion judicially, I must give the decision the Minister should have given. I find that the estate is entitled to the death

---

<sup>34</sup> Paragraph 71(2)(a) of the CPP.

benefit. As stated above, the Added Party was not the deceased's common-law spouse. Further investigations show that her own funds did not pay for the funeral. Therefore she is not entitled to the death benefit.

- **The Added Party and the funeral expenses**

[41] The funeral director's receipt shows that the Added Party paid the funeral expenses of \$2,000.<sup>35</sup> However, that is not the end of the story.

[42] There are two accounts of where the money for the funeral came from. The Appellant says it came from the estate. The Added Party says it came from her brother.

[43] The Appellant claimed that the Added Party paid for the funeral from estate funds. He stated that on the date of the deceased's death, someone began taking money from the deceased's accounts. This was well before the Appellant and his brother learned that the deceased had passed away.<sup>36</sup>

[44] One of the deceased's bank accounts showed daily ATM withdrawals of \$1,000 from February 16 to February 19, 2021. Thousand-dollar withdrawals occurred again on February 22 to February 24, 2021, and again on March 1, 2021.<sup>37</sup>

[45] Similarly, \$1,000 was withdrawn from the deceased's account at another bank on each of February 16, 17, and 18, 2021. At the end of February 2021, there were also several Interac purchases from clothing stores and other retail outlets. By the end of February 2021, the amount in that account was down to \$3.00 from \$10,000 on February 15, 2021.<sup>38</sup>

[46] The Added Party, on the other hand, stated that she did not know who had taken the money from the deceased's bank accounts. She did testify at the hearing that the deceased told her that he didn't want his sons to get anything from his estate.

---

<sup>35</sup> GD16-7

<sup>36</sup> There is no documentary evidence before me that anyone except the Added Party knew of the deceased's death. The exceptions would be the ambulance, hospital, and funeral home staff. There is no dispute that no obituary was published.

<sup>37</sup> GD9-I-18-19. Presumably, \$1,000 was the most that could be withdrawn from an account on one day.

<sup>38</sup> GD9-I-22

[47] The Appellant stated that the Added Party had told him that the deceased's last words going into the ambulance were that she should take his wallet and drain his accounts. At the hearing, she did not deny having said this.<sup>39</sup> The Appellant was doubtful that the deceased, who was having trouble breathing and was going into cardiac arrest, would have been capable of giving these directions.<sup>40</sup>

[48] The Added Party could not have afforded to pay for the funeral out of her own pocket. Her major ongoing source of income was federal government benefits of approximately \$1,500 a month.<sup>41</sup>

[49] The Added Party claimed that her brother gave her money that she used to pay for the funeral. Her savings account records show that she received a deposit of \$25,000 on October 1, 2020. A note on the photocopy states that the money was from her brother.<sup>42</sup> On February 19, 2021, there was a cash withdrawal from the account of \$2,500. A note on the photocopy states that \$2,000 of this was used to pay the funeral expenses.<sup>43</sup>

[50] The funeral home receipt shows that on February 19, 2021, the Added Party paid the deceased's funeral expenses of \$2,000. It does not indicate whether the amount was paid in cash or by cheque.<sup>44</sup> By that time, more than \$6,000 had been withdrawn from the deceased's bank accounts.

[51] The Added Party produced her savings account records, and records from a chequing account that she opened in April 2021. She stated that she did not remember whether she had a chequing account before that. I find this improbable. I find it more likely than not that she used money from the deceased's bank accounts to pay for the funeral.

---

<sup>39</sup> GD14-8

<sup>40</sup> See GD14-8 and GD9-I-15.

<sup>41</sup> GD15-4: Added Party's savings account payments, October 2020

<sup>42</sup> GD15-3. There is no documentary evidence about the source of this money. The note, and the one relating to the cash withdrawal on February 19, 2021, appear to be in the handwriting of J. H., the woman at the mental health organization who was helping the Added Party in this proceeding.

<sup>43</sup> GD15-10. She paid the additional \$16.00 on February 24, 2021: GD16-7.

<sup>44</sup> GD15-2

[52] I do not find the Added Party credible. She lied about being the common-law partner of the deceased. She lied about this to the hospital,<sup>45</sup> to the funeral director, and to Service Canada. She failed to tell his family members about the deceased's death or to authorize an obituary in the newspaper. In the meantime, the deceased's bank accounts were drained. There is no documentary evidence about the source of the \$2,000 that the Added Party says paid for the funeral. She said she didn't remember whether she had a chequing account at the time the deceased passed away.

[53] I find it more likely than not that funds from the deceased's bank accounts (the estate) paid for his funeral.

- **Other issues between the parties**

[54] I must stress that nothing in this decision endorses or criticizes any party. The Tribunal's jurisdiction is limited to the narrow issue of whether the CPP death benefit is payable to the Appellant. This authority is derived from statute and the October 2021 reconsideration decision. I decided the issue by looking at the applicable legislation, as well as certain facts that are not reasonably in dispute. I cannot resolve any other issues between the parties. Similarly, I cannot levy penalties or launch a prosecution against anyone.

## **Conclusion**

[55] The Added Party was not the common-law partner of the deceased. She did not pay the funeral expenses from her own funds. I find that the CPP death benefit should go to the estate.

[56] This means that the appeal is allowed.

Carol Wilton

Member, General Division – Income Security Section

---

<sup>45</sup> GD9-I-17