



Citation: *CC v Minister of Employment and Social Development and AL*, 2023 SST 1303

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: C. C.

Respondent: Minister of Employment and Social Development

Added Party: A. L.

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated February 17, 2023 (issued by Service Canada)

Tribunal member: James Beaton

Type of hearing: In writing

Decision date: September 19, 2023

File number: GP-23-377

Decision

[1] The appeal is dismissed.

[2] The Appellant, C. C., isn't entitled to a Canada Pension Plan (CPP) survivor's pension in respect of the deceased contributor, J. C. The Added Party, A. L., is entitled to the survivor's pension instead.

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

Overview

[4] The Appellant was married to J. C. when he died on May 24, 2022.¹ She applied for a CPP survivor's pension. The Minister of Employment and Social Development refused her application because the Minister had already approved the Added Party's application for a survivor's pension. The Minister found that the Added Party was J. C.'s common-law partner when he died.

[5] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

What I have to decide

[6] The law says only the survivor of a deceased contributor to the CPP is entitled to a survivor's pension.² The *Canada Pension Plan* defines "**survivor**" as the common-law partner or (if there is no common-law partner) the married spouse of the deceased person.³

[7] Under the *Canada Pension Plan*, a **common-law partner** is someone who cohabited with the deceased person in a conjugal relationship for at least one year at the time of their death.⁴

¹ See GD1-10 and GD4-2.

² See section 44(1)(d) of the *Canada Pension Plan*.

³ See section 42(1) of the *Canada Pension Plan*.

⁴ See section 2(1) of the *Canada Pension Plan*.

[8] To decide whether two people are common-law partners, I must look at things like:⁵

- a) **shelter**—including whether they lived together or slept together, or whether anyone else lived with them or shared their accommodations
- b) **sexual and personal behaviour**—including whether they 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
- c) **services**—including their roles in preparing meals, doing laundry, shopping, conducting household maintenance, and performing other domestic services
- d) **social**—including whether they participated together or separately in neighbourhood and community activities, and their relationship with each other's family members
- e) **societal**—including the attitude and conduct of the community toward them as a couple
- f) **support**—including their financial arrangements for the provision of their needs and for the acquisition and ownership of property
- g) **attitude and conduct concerning any children**

[9] There can only be one survivor. So to succeed in her appeal, the Appellant must prove that she is J. C.'s survivor. She must prove this on a balance of probabilities (that it is more likely than not to be true).

[10] If I find that the Added Party was J. C.'s survivor because she was his common-law partner, then the Appellant can't be his survivor, even though she was still married to him when he died.

⁵ See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

Matters I have to consider first

[11] The Appellant asked for a hearing in writing. To ensure a full and fair hearing process, I sent the Appellant and the Added Party a letter describing the issue I had to decide and what factors I would consider in the process.⁶ I invited them to provide documents to support their positions. I then allowed them to respond to each other's (and the Minister's) evidence and written submissions.

[12] The hearing of this appeal was delayed because it took a lot of time and effort (including five letters to the Minister and a case conference) to get unredacted copies of all of the relevant evidence from the Minister.⁷

Reasons for my decision

[13] I find that the Added Party and J. C. were common-law partners. As a result, the Added Party (not the Appellant) is J. C.'s survivor and is entitled to a survivor's pension. Put another way, the Appellant didn't convince me that she is J. C.'s survivor.

[14] To explain my decision, I will:

- summarize the Appellant's position
- summarize the Added Party's position
- summarize the Minister's position
- show how the evidence supports that the Added Party is J. C.'s survivor

The Appellant's position

[15] The Appellant says she was still married to J. C. when he died, and they both wanted to stay married to each other. The Added Party never signed a common-law agreement with J. C. J. C. was in St. Catharines to receive cancer treatment before he died, but his permanent address was the Appellant's home in Mississauga.⁸

⁶ See GD17.

⁷ See GD3, GD6, GD9, GD12, GD17, and GD19.

⁸ The Appellant's submissions are at GD1-1 and 4, GD4-3 and 4, GD10, GD14, and GD15.

The Added Party's position

[16] The Added Party says she and J. C. started living together in December 2019 in St. Catharines, before he was diagnosed with cancer in December 2020. J. C. met with a lawyer to initiate divorce proceedings, but didn't follow through because of his poor health.⁹

The Minister's position

[17] The Minister says the Added Party is J. C.'s survivor because they were common-law partners. The Minister points to a statutory declaration, a tenancy agreement, driver's licences, and a Power of Attorney as evidence.¹⁰ I will discuss this evidence later.

The Added Party is J. C.'s survivor

[18] The evidence supports that the Added Party was J. C.'s common-law partner and, therefore, his survivor. I will consider the evidence under each of the headings that I listed above (shelter, sexual and personal behaviour, and so on).

– Shelter

[19] This factor supports that the Added Party and J. C. were common-law partners since December 2019.

[20] The Added Party says J. C. moved in with her in St. Catharines in December 2019. He received cancer treatment in Hamilton from January to March 2021. In April 2022, they both moved to a rental home in X. They lived together until he died. The Added Party signed a statutory declaration to this effect.¹¹

[21] Documentary evidence includes the following letters and invoices addressed to J. C. in St. Catharines:

⁹ The Added Party's submissions are at GD13-1 to 6 and GD21-1 to 4.

¹⁰ The Minister's submissions are at GD11.

¹¹ See GD20-8.

- a letter from Aviva dated March 6, 2020¹²
- a Canadian Automobile Association invoice dated January 31, 2021¹³
- a letter from Aviva dated November 28, 2021¹⁴
- a letter from the 407 Express Toll Route dated February 7, 2022—another letter from the same date is addressed to the Added Party at the same St. Catharines address¹⁵

[22] The Added Party provided a copy of a residential lease for a property in X listing her and J. C. as tenants. The term of the lease was from March 31, 2022, to March 31, 2023.¹⁶

[23] Both the Added Party and the Appellant got new Ontario driver's licences on April 8, 2022, listing the same X address as their home address.¹⁷ On April 19, 2022, their property insurer sent them a letter regarding their property in X.¹⁸ A letter from the Canada Revenue Agency to J. C. on May 13, 2022, was sent to X as well.¹⁹

[24] There are three proof of death certificates in the appeal record.²⁰ This is because the Added Party and J. C.'s daughter jointly signed the contract for funeral services.²¹ The funeral director issued a death certificate to each of them, one with the Added Party as the informant (her relationship is given as common-law spouse) and another with the daughter as the informant. A third lists both as informants. All of the certificates state that J. C. lived in X when he died.

[25] The only evidence to suggest that J. C. **was not** living with the Added Party is the Appellant's claim that he lived with her in Mississauga, and a letter from Service

¹² See GD21-11.

¹³ See GD21-14.

¹⁴ See GD20-26.

¹⁵ See GD21-15 to 17.

¹⁶ See GD20-11 to 13.

¹⁷ See GD20-14 and GD21-5.

¹⁸ See GD20-25.

¹⁹ See GD13-26.

²⁰ See GD8-3, GD13-40, and GD20-42.

²¹ See GD13-1 and 41 to 46.

Canada about J. C.'s Guaranteed Income Supplement that was sent to him in Mississauga on February 26, 2022.²²

[26] While there isn't documentary evidence to show that J. C. started living with the Appellant in December 2019, I have no reason to doubt that he did. The rest of the Added Party's story is backed up by documentary evidence. Only a single letter in evidence was sent to his old address, which can be explained by a failure to update Service Canada with his new address. That letter doesn't necessarily contradict what the Added Party says.

[27] The Appellant argues that she and J. C. were involuntarily separated when he was receiving cancer treatment. I don't find that to be the case. I accept that J. C. lived with the Added Party both before and after he received cancer treatment in Hamilton. He chose to live with the Added Party until his death.

– **Sexual and personal behaviour**

[28] This factor supports that the Added Party and J. C. were common-law partners.

[29] The Appellant says she and J. C. remained in constant communication while they were physically separated. He visited her when he was physically able.

[30] The Added Party says the Appellant communicated with J. C. only to try to control his finances, and J. C. only visited the Appellant to retrieve his personal belongings from the old family home and to exchange paperwork. By contrast, the Added Party says she drove J. C. to all of his cancer treatments and accompanied him to medical appointments. They attended marriage counselling together. They were sexually intimate.

[31] Much of the evidence about this factor is in the form of statements made by the Appellant and the Added Party that isn't supported (and in some cases can't be supported) by documentary evidence. But there is **some** documentary evidence.

²² See GD7-11.

[32] For example, the Added Party provided what she says are copies of notes that she took during J. C.'s medical appointments.²³ She submitted a receipt for a "consultation" dated May 8, 2019, for \$226. She says this was for a consultation with a lawyer about J. C. getting a divorce, although the details of the consultation aren't given on the receipt itself. She did, however, provide handwritten notes from the consultation meeting.²⁴ Emails between J. C. and a lawyer's office from August 2021 about separation proceedings mention a previous consultation, which also supports the Added Party's claim.²⁵

[33] The Appellant didn't challenge any of this evidence. Instead, she produced copies of emails between her and J. C. from May and September 2021.²⁶ In these emails, J. C. updated the Appellant on the treatment he was receiving. On March 4, 2022, J. C. emailed the Appellant: "I want to be with only you I will fight this cancer till I die I just want to be with you. J. C. Your husband xoxo." On March 27, 2022, he wrote: "Always thinking [of] you. [You're] my heart and soul. J. C. xoxo."

[34] At first, these emails seem to reflect the sort of personal communication that one might expect to see between spouses. But J. C. had shown in other emails that he wasn't honest when communicating with the Appellant. As a result, I don't put weight on these emails.

[35] Specifically, in May 2021, J. C. told the Appellant that he wasn't going to a lawyer (presumably about a divorce) and that "she" (presumably the Added Party) was looking for places where he could live **alone**. A couple days later, he wrote: "I know you don't trust me but I will not lie to you. There is nothing happening between her and me and never will be again."²⁷ The "her" isn't identified, but given the context it is reasonable to conclude that "her" refers to the Added Party. I have already found that J. C. **did** see a

²³ See GD21-24 to 37.

²⁴ See GD13-18 to 22.

²⁵ See GD13-16 and 17.

²⁶ See GD4-7, 10, and 11.

²⁷ See GD7-8.

lawyer about a divorce, and that he **was** living with the Added Party. So what he said to the Appellant was misleading at best, and untruthful at worst.

[36] I conclude that J. C. and the Added Party had a caring and intimate relationship, even if J. C. and the Appellant still shared some affection for each other, occasionally communicated, and never initiated a divorce. In coming to this conclusion, I put weight on the fact that the Added Party took him to treatment and medical appointments. I don't find the emails helpful because I don't think they accurately reflect J. C.'s intentions.

– **Services**

[37] This factor supports that the Added Party and J. C. were common-law partners.

[38] The Appellant provided no evidence (written or documentary) about this factor. By contrast, the Added Party wrote that she and J. C. shared a family doctor, dentist, and pharmacist. She was listed as the Power of Attorney on hospital paperwork in December 2020.²⁸ She paid for the funeral expenses.²⁹

– **Social**

[39] This factor supports that the Added Party and J. C. were common-law partners.

[40] Again, the Appellant provided no evidence about this factor. The Added Party supplied a photo that she says shows her and J. C. attending a sporting event with his grandchildren.³⁰ The Appellant didn't challenge that evidence. I also accept that there was at least some degree of cooperation between J. C.'s daughter and the Added Party since they both signed the contract for funeral services.

– **Societal**

[41] I don't have any evidence about the attitude and conduct of the community toward J. C. and either the Added Party or the Appellant as a couple.

²⁸ See GD16-34 and 35.

²⁹ See GD13-1.

³⁰ The photo is at GD21-22.

– **Support**

[42] This factor supports that the Added Party and J. C. were common-law partners.

[43] The Appellant says she and J. C. always filed their taxes as a married couple. However, emails between J. C.'s daughter and the Appellant indicate that he no longer approved of this arrangement by 2021, and that the Appellant refused to cooperate with J. C.'s wishes.³¹ Ultimately, it seems that the Added Party filed J. C.'s taxes for the 2021 tax year.³²

[44] The Added Party says J. C. directed his pension payments to his new bank account in St. Catharines after he moved there. This is supported by a Meridian Bank wire transfer information sheet from December 2019 and emails to his United Kingdom pension administrator in March 2020.³³ In February 2022, J. C. and the Added Party joined their accounts for paying highway 407 toll route expenses.³⁴

– **Attitude and conduct concerning any children**

[45] This factor supports that the Added Party and J. C. were common-law partners.

[46] The Appellant provided no evidence about this factor. The little evidence I have suggests a friendly relationship between the Added Party and J. C.'s grandchildren (based on a photo), and at least a cooperative one between her and J. C.'s daughter (based on the funeral contract).

– **Weighing the factors together**

[47] When I consider all of the evidence, I am convinced it is more likely than not that the Added Party and J. C. were common-law partners from December 2019 until J. C.'s death. They lived together and shared services and financial arrangements. Their relationship was intimate and characterized by care for each other, notably by the Added Party's care for J. C. during his illness.

³¹ See GD13-14.

³² See GD4-10.

³³ See GD16-17 and 21.

³⁴ See GD21-15 to 17.

[48] This makes the Added Party the survivor of J. C. As a result, the Appellant can't be considered J. C.'s survivor and isn't entitled to a survivor's pension.

Conclusion

[49] I find that the Appellant isn't entitled to a survivor's pension in respect of J. C. The Minister's decision stands: the Added Party is entitled to a survivor's pension.

[50] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section