



Citation: *MK v Minister of Employment and Social Development*, 2024 SST 110

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

Decision

Appellant: M. K.

Respondent: Minister of Employment and Social Development

Representative: Anita Hoffman

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 15, 2023 (issued by
Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: January 30, 2024

Hearing participants: Appellant
Respondent's representative
Interpreter

Decision date: February 5, 2024

File number: GP-23-1115

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. K., isn't eligible for a Canada Pension Plan (CPP) survivor's pension in respect of the deceased contributor, A. K. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant and A. K. married on June 21, 2008, and divorced on January 11, 2016.¹ At some point after that, they began living together again. There is conflicting evidence about the nature of their relationship after the divorce. A. K. died on December 7, 2021, in Canada.² At the time, the Appellant was visiting her family in Germany.

[4] The Appellant applied for a survivor's pension on October 26, 2022. She claimed that she and A. K. had lived together as common-law partners since March 20, 2016.³

[5] The Minister of Employment and Social Development refused the Appellant's application. According to the Minister, although the Appellant and A. K. were living together when he died, they weren't common-law partners. Rather, the Appellant was more like A. K.'s caregiver. So she wasn't A. K.'s "survivor." Only a survivor can get a survivor's pension.

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

What I have to decide

[7] The law says only the survivor of a deceased contributor to the CPP is entitled to a survivor's pension.⁴ 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

¹ See GD2-23 and 24.

² See GD2-33.

³ See GD2-4 to 10.

⁴ See section 44(1)(d) of the *Canada Pension Plan*.

person.⁵ The definition of a survivor under the *Canada Pension Plan* is different from the definition in other legislation. I have to apply the *Canada Pension Plan* definition when I make my decision.⁶

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

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

- 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

⁵ See section 42(1) of the *Canada Pension Plan*.

⁶ The Appellant argued that she is a survivor under Alberta's *Adult Interdependent Relationships Act* and *Family Property Act*. This is irrelevant to what I have to decide.

⁷ See section 2(1) of the *Canada Pension Plan*.

⁸ See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

- 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**

[10] To succeed in her appeal, the Appellant must prove that she is the deceased contributor's survivor. She must prove this on a balance of probabilities (that it is more likely than not to be true).

Reasons for my decision

[11] I find that the Appellant isn't A. K.'s survivor. She wasn't in a common-law relationship with A. K. for at least a year at the time of his death. To explain my decision, I will first discuss the reliability of the Appellant's evidence. Then I will set out my conclusions about key facts. And I will consider how those facts relate to the factors I described earlier.

– The Appellant's evidence is inconsistent

[12] The Appellant gave conflicting accounts of her relationship with A. K.:

- In January 2019, she applied for a credit split in respect of A. K.'s CPP contributions.⁹ In her application, she said they last lived together in March 2015.¹⁰
- In letters from August and September 2019, she clarified that actually they **were** living together, but not as common-law partners. She explained that her mother died in March 2015, so she went to Germany (where her mother lived) for three months. Upon her return to Canada, she lived with friends for two months. Then she lived with her children for three months. Eventually, she rented an apartment on her own. In April 2016, she started living with A. K. again as his "roommate." She described this as a temporary arrangement that

⁹ A credit split is when a couple's CPP contributions are combined and divided evenly between them upon a separation or divorce.

¹⁰ See GD2-19 to 22.

was made for financial reasons. She said they had separate bedrooms and separate “TV rooms.” She paid him rent. She also paid him for her share of the utilities.¹¹

- In October 2022, she applied for a survivor’s pension. In her application, she said they lived together as common-law partners since March 2016.¹²
- In March 2023, she completed a statutory declaration of common-law union. She said they lived together continuously from May 2008 until A. K. died.¹³
- At the hearing, she said they lived together from March 2016 (two months after they divorced) until 2018. Later in the hearing, she said 2019. During this period, they slept together in the same bed. They separated before re-uniting again in December 2019. They lived together until A. K. died.

[13] In summary, the Appellant gave three distinct versions of events:

- they **did not** live together **at all** from March 2015 until at least January 2019
- they **did** live together from April 2016 until at least September 2019, but only as **roommates**
- they **did** live together, either from May 2008 or from March 2016, until 2018, 2019, or December 2021, as **common-law partners**

[14] I asked the Appellant to explain why she gave different dates for when she and A. K. were common-law partners. She didn’t directly answer this question. I note that the Appellant didn’t mention a language barrier as a reason why she gave conflicting statements in written documentation. At the hearing, she testified through a German interpreter, so a language barrier can’t explain why her testimony was internally inconsistent either.

¹¹ See GD2-25 to 27.

¹² See GD2-4 to 10.

¹³ See GD2-29.

– **What I conclude about the Appellant and A. K.’s relationship**

[15] I conclude that the Appellant and A. K. stopped living together for the first time in March 2015. The Appellant gave a detailed timeline of where she lived after March 2015 in a letter that she wrote to Service Canada to support her credit split application. I doubt that she would have invented all of those details. It is more likely that what she wrote actually happened.

[16] I conclude that the Appellant and A. K. started living together again in April 2016. This date comes from the same letter, which I have accepted as a reliable timeline of events. Her memory of what happened in 2016 would have been more reliable than compared to when she completed documents in 2022 and 2023 and gave testimony at the hearing. I also accept what the letter says about the Appellant and A. K. living together as roommates with separate bedrooms.

[17] This arrangement lasted until at least September 2019, because that is when she wrote to Service Canada about the arrangement.

[18] After that, there are two possibilities: either this roommate-type arrangement continued until A. K.’s death; or this arrangement turned into a common-law relationship in early 2021. In either case, the Appellant doesn’t meet the definition of a survivor.

– **Scenario one: the Appellant and A. K. were roommates until he died**

[19] Some evidence suggests that the Appellant and A. K. lived together as roommates until his death.

[20] The Appellant went to Germany in September 2021. She intended to stay there for four or five months. Before leaving, she asked Service Canada to forward her mail to Germany because she was living “separately” in her “ex-husband’s house” and would not get the mail while she was away. She added that she would provide a new mailing address when she returned.¹⁴ I asked the Appellant why she had her mail forwarded. She testified that she wanted to be sure she got it.

¹⁴ See GD2-18.

[21] The Appellant's request to have her mail forwarded is **most consistent** with her and A. K. living separately in the same house as roommates. Indeed, this is essentially the explanation that the Appellant gave to Service Canada. If they were in a common-law relationship, I believe that the Appellant would have asked A. K. to check her mail and advise her of anything that needed her attention. According to her testimony, they spoke every day, the mail was delivered to their shared address, and A. K. was in fine health.

– **Scenario two: the Appellant and A. K. became common-law in 2021**

[22] Some evidence supports that the Appellant and A. K.'s relationship changed in early 2021 so that they became common-law partners.

[23] The Appellant testified that she and A. K. did everything together, like shopping, making meals, and eating together. They also slept together. But it is clear from her 2019 letter to Service Canada that they didn't always live that way. The Appellant's testimony focused on two potential timeframes for when their relationship became more intimate: December 2019 or early 2021.¹⁵

[24] First, the Appellant testified that their relationship was difficult in 2018. But they set their disputes aside when news of Covid-19 began circulating in December 2019 because they knew that there would be lockdowns. They were fearful of that situation and sought comfort and stability in each other's companionship.

[25] Second, the Appellant testified that A. K.'s health declined in early 2021 (but recovered by the time she left for Germany). In March 2021, A. K. fell in their yard and the Appellant had to help him get up. At that time, A. K. questioned why they were divorced, suggesting that he wanted to reconcile with the Appellant. It was around the same time that A. K. developed cataracts. The Appellant says she drove A. K. to medical appointments and helped him with daily tasks during his recovery.

¹⁵ By "intimate," I do not mean that I should evaluate the quality of the relationship. The Federal Court warned against this in *McLaughlin v Canada (Attorney General)*, 2012 FC 556. Rather, I must focus on the factors listed earlier in this decision.

[26] Out of these two timelines, the second is more likely, for two reasons. The Appellant's testimony about when she lived with A. K. in 2018 and 2019 was inconsistent. And the Appellant didn't mention Covid-19 at all in her written statements, whereas her written statements did mention A. K.'s poor health having a significant impact on their relationship.¹⁶

[27] If the Appellant and A. K.'s lifestyle did indeed change from that of roommates in early 2021, that could support a common-law relationship.

[28] However, the law says a person is only the survivor of a deceased contributor if they were common-law partners **for at least a year** when the deceased contributor died. So even if the Appellant and A. K. became common-law partners in early 2021, that relationship didn't last a year before A. K. died in December 2021.

– **Other factors to consider**

[29] It is important to remember that the factors I listed earlier in this decision are not a checklist. Not all of the factors will be equally relevant to every relationship. I have already discussed many of the factors. Now I will address two more: A. K.'s relationship to the Appellant's children, and A. K.'s financial arrangements.

[30] The Appellant has children from a previous marriage. They were already adults and lived independently by the time she married A. K. I understand that A. K. didn't see the Appellant's children often even when they were married.¹⁷ So I don't find his relationship with the Appellant's children to be a helpful factor to consider.

[31] A. K.'s financial arrangements don't add much support for a common-law relationship. He was the sole owner of the house where he and the Appellant lived. He died without a will. Apparently, his sons (who were estranged from him) inherited the house.¹⁸ The Appellant testified that she didn't care much about A. K.'s financial affairs while he was alive. His death came unexpectedly. Yet at the same time, she testified

¹⁶ See GD1-4, GD2-13 and 15, and GD3-2.

¹⁷ See the hearing recording.

¹⁸ See the hearing recording and GD1-10 to 12.

that she asked him every day why he didn't put his intentions in writing. Regardless, it is significant that the Appellant didn't inherit the "family home."

[32] A. K. did leave behind a tax-free savings account at Canadian Western Bank which was transferred to the Appellant. The transfer letter calls the Appellant the "surviving spouse" of A. K..¹⁹

[33] I agree with the Minister that I should not put much weight on this letter because we don't know how the bank defines or determines whether someone is a spouse. We don't know when the account was opened. Furthermore, the Appellant testified that she didn't even know of the account's existence until after A. K. died.

[34] In closing, I want to emphasize that I didn't put any weight on the fact that the Appellant was in Germany when A. K. died. A. K.'s death was unexpected, and the Appellant's own health kept her from returning to Canada before A. K. passed away.²⁰

Conclusion

[35] At most, the Appellant and A. K. were common-law partners from early 2021 until his death in December of that year. This is less than the one year required to make someone a "survivor." Since the Appellant wasn't A. K.'s survivor when he died, she isn't eligible for a survivor's pension.

[36] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section

¹⁹ See GD2-31.

²⁰ See the hearing recording.