



Citation: *LC v Minister of Employment and Social Development*, 2022 SST 1186

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

Decision

Appellant: L. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 25, 2021 (issued by
Service Canada)

Tribunal member: Antoinette Cardillo

Type of hearing: Videoconference

Hearing date: November 15, 2022

Hearing participants: Appellant
Appellant's witness

Decision date: December 5, 2022

File number: GP-21-1837

Decision

[1] The appeal is dismissed.

[2] The Appellant, L. C., isn't eligible for the Canada Pension Plan (CPP) survivor's pension. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant applied for a CPP survivor's pension on December 4, 2020. On the application, she stated that she had lived with the deceased contributor from 1984 until 2000.¹ In letters dated November 30, 2020 and February 4, 2021, she said that she had lived with him from 1984 but until 1992, afterwards, they lived a few blocks apart and she was his sole provider of all necessities.² The Appellant says that she played a key role as partner to the deceased contributor for 20 years and that they lived apart because of his alcoholism.

[4] The Minister says that the CPP states that a survivor must be a person who was residing with the contributor in a conjugal relationship, continuously for at least one year before his or her death. The information in the Appellant's file shows that she was not living with the contributor at the time of his death. Her common-law relationship with the deceased contributor ended on December 2000 and he passed away on February 10, 2020, she therefore did not meet the eligibility requirements for a survivor's pension.

What the Appellant must prove

[5] For the Appellant to succeed, she must prove she was the person in a common law relationship with the deceased contributor when he passed away.

¹ See application at GD2-4.

² See letters at GD2-10 and GD2-17.

Reasons for my decision

[6] The contributor passed away on February 10, 2020.³

[7] The CPP says that a survivor's pension shall be paid to the survivor of a deceased contributor. A survivor is defined as the person who was the common-law partner of the contributor at the time of the death, if he or she was not married.⁴

[8] A common-law partner means a person who cohabited with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year. The relevant time means the time of the contributor's death.⁵

[9] In the November 30, 2020 letter, the Appellant called the deceased contributor her partner and friend. She said that they lived together from 1984 to 1992 approximately and that he moved in an apartment a few blocks away because of alcoholism. He remained at that same address until he passed away. She became his sole provider of all necessities and he always provided help in return whenever she needed. He was diagnosed with cancer and had two surgeries, she was by his side throughout this period.

[10] In a subsequent letter dated February 4, 2021, the Appellant said the same thing than in the November 30, 2020 letter and added that not a day or week went by that she was there for the deceased contributor in heart, body and soul to help him succeed in his job or life. They had a happy relationship only three blocks away from each other, there was always love and protection.

³ See death certificate at GD2-18.

⁴ See subsections 44(1)(d) and 42(1) of the CPP.

⁵ See section 2 of the CPP.

[11] She submitted insurance and pension plan documents showing that up until 2019, she was the deceased contributor's beneficiary.⁶

[12] At the hearing, the Appellant testified that she was in a conjugal relationship with the deceased contributor and although they had their own place, she did sleep at the deceased contributor's apartment from time to time and they had relations. They were also viewed by their friends as a couple. They occasionally shared expenses. She would do groceries for him, prepare meals, and attend doctor's appointments with him.

[13] The Appellant also had a good friend testify. He said that they were in a conjugal relationship and that the Appellant took care of the deceased contributor until the end.

[14] The parties to a common-law relationship have to show a mutual intention to live together in a marriage-like relationship of some permanence. A common-law relationship cannot exist without the mutual intention of both parties. Factors that are indicative of a common-law relationship include whether the parties lived under the same roof, slept together, personal behaviour, including maintaining an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness or buy each other gifts, whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members.⁷

[15] In this case, based on the evidence, the Appellant and the deceased contributor lived apart for more than 20 years. The CPP clearly says that a common-law partner must continuously cohabit with the contributor for at least one year before the contributor's death. I realize that they had a loving and devoted relationship. I also realize that the Appellant provided for the deceased contributor's needs, that she was a companion and they occasionally shared expenses but these facts do not support that

⁶ See documents at GD2-19 to 21.

⁷ See *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.

they were in a conjugal relationship while living three blocks away for many years. It would appear that they were very close and they supported each other in many ways including having some moments of intimacy but I cannot come to the conclusion that their living arrangements amounted to a marriage like relationship. As much as I sympathize with the Appellant, sadly, the requirements to receive the CPP survivor's pension have not been met.

Conclusion

[16] I find that the Appellant isn't eligible for the CPP survivor's pension.

[17] This means the appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section