



Citation: *SL v Minister of Employment and Social Development*, 2024 SST 337

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: S. L.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 9, 2023 (issued by
Service Canada)

Tribunal member: Adam Picotte

Type of hearing: In person

Hearing date: April 2, 2024

Hearing participants: Appellant

Decision date: April 4, 2024

File number: GP-23-1484

Decision

[1] The appeal is dismissed.

[2] The Appellant, S. L., isn't eligible for a survivor's benefit. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is the former common-law partner of the deceased contributor, S. P. (the "Deceased Contributor"). The Deceased Contributor passed away on January 27, 2023. At the time of his passing, the Appellant had been living separate and apart from him since May 2019.

[4] The Appellant says that her separation from the Deceased Contributor was involuntary and as such she ought to be entitled to a survivor's benefit under the Canada Pension Plan (CPP).

[5] The Minister says that while the separation was involuntary, due to a no-contact order put in place by Victim Services in British Columbia, the parties were not living in a conjugal relationship for the year proceeding the death of the Deceased Contributor and as such, the Appellant is not entitled to a survivor's benefit.

What the Appellant must prove

[6] For the Appellant to succeed, she must prove she was a survivor in relation to the Deceased Contributor.

[7] Under the CPP a survivor's benefit is paid to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period.

[8] A “survivor” is defined as:¹

(a) if there is no person described in paragraph (b), a person who was married to the contributor at the time of the contributor’s death, or

(b) a person who was the common-law partner of the contributor at the time of the contributor’s death;

[9] The CPP defines a common-law partner:²

“common-law partner”, in relation to a contributor, means a person who is cohabiting 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. For greater certainty, in the case of a contributor’s death, the “relevant time” means the time of the contributor’s death.

[10] A conjugal relationship usually involves the parties identifying themselves as “common law” and having some common financial interests. One Court stated that the question is “whether the parties lived in a conjugal relationship that is similar to marriage.”³

[11] The CPP does not define “cohabitation in a conjugal relationship.” However, a 2001 decision called *Betts* sets out factors that are usually relevant to that question.⁴ I will call these the “Betts factors”. The most relevant of them for the purposes of this appeal are:

(a) Financial interdependence

(b) Sexual relationship

¹ Section 42(1) *Canada Pension Plan*

² Section 2 *Canada Pension Plan*

³ The Federal Court said this in *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

⁴ *Betts v Shannon*, (October 22, 2001), 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. The list of *Betts* factors is much longer.

- (c) Common residence
- (d) Purchasing gifts on special occasions
- (e) Shared vacations
- (f) Beneficiary of will
- (g) Beneficiary of insurance policy
- (h) Attitude and conduct of the community
- (i) Funeral arrangements
- (j) Marital status on various documents

[12] The Supreme Court of Canada has stated that a legally separated common-law spouse is not entitled to a survivor's pension. It considered the situation of a woman who some years before the contributor's death was both physically separated from her former common-law partner and intended to make the separation permanent. The Court decided that at the time of the contributor's death, she was not a separated common-law spouse but a former common-law spouse. This means that she was no longer a spouse in any sense at common law.⁵

[13] The onus is on the Appellant to prove that it was more likely than not that she had been cohabiting in a conjugal relationship with the contributor for at least one year when he died.⁶

Reasons for my decision

The Appellant was no longer in a conjugal relationship with the Deceased Contributor at the time of his death

[14] At the oral hearing for this appeal, I heard from the Appellant about her relationship with the Deceased Contributor. She told me that she entered into a relationship with him at the age of 17. Together, they had three children. They

⁵ *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65.

⁶ *S.K. and Minister of Human Resources and Skills Development v B.E.* (July 9, 2010) CP25866 (Pension Appeals Board).

cohabitated from 2014 to 2019. During that time, they were in a conjugal relationship. They shared a home, raised three children together, and were generally accepted by the broader community as being in a marriage-like relationship. However, that changed in 2019.

[15] In May 2019, the Appellant was hospitalized following a physical altercation in which the Deceased Contributor injured her. The injuries were of such severity that she was examined for a possible spinal fracture.

[16] Following the physical altercation, a no-contact order was entered against the Deceased Contributor. This prevented him from contacting the Appellant or their children. For a short time, the Appellant maintained contact with him. However, this ceased in mid-2019 when the Appellant was advised by Victim Services that if she continued to maintain contact, she would have her children taken into protective custody.

[17] As a result, she ceased contact save for two occasions. The two occasions were single days: once when the Appellant ran into the Deceased Contributor at a Walmart and once when she stopped in at his mother's house to visit him. Aside from these two incidents the Appellant did not see the Deceased Contributor over the next 3.5 years until his death in January 2023.

[18] During the oral hearing, I spoke to the Appellant about any ongoing relationship she had with the Deceased Contributor. She explained to me that there was no ongoing relationship. He left no life insurance policy, had no will, and the Appellant was not involved in his funeral arrangements. They rarely saw each other after the physical altercation in 2019, and as such, did not spend time together.

[19] While the Appellant had a spousal support agreement in place for their children, the Deceased Contributor did not abide by the payment schedule. The Appellant explained that the Deceased Contributor was generally unemployed from 2019 until his death in 2023. As such, he provided no financial support to either the Appellant or their children.

[20] The Appellant told me that from 2019 to 2023, she was worried about the Deceased Contributor as he had an active drug addiction. She made some attempts to contact him but was unsuccessful in doing so.

[21] It was clear to me through the oral hearing that the Appellant continued to care for the Deceased Contributor following the separation. However, I cannot conclude that they maintained a conjugal relationship. The Appellant was ordered to not maintain contact and she generally abided by this order. She moved out of their shared home and ceased contact with him save for a short period following the physical altercation.

[22] She did not spend time with him save for a single interaction at his mom's home following the physical altercation. He provided no financial support for her or their children.

[23] The Betts factors require that individuals reside in a marriage-like relationship. Aspects such as financial interdependence, ongoing sexual relations, common residence, shared time and vacations, and naming each other as beneficiaries in wills and insurance policies are not present in this case. When I think about the Betts factors and the nature of the relationship, I am unable to conclude that a conjugal relationship existed after May 2019. Because of this, I am not satisfied that the Appellant has met her onus for proving a conjugal relationship existed in the year immediately before the Deceased Contributor's death.

[24] As a result, I must dismiss this appeal.

Conclusion

[25] I find that the Appellant isn't eligible for a survivor's benefit.

[26] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section