



Citation: *RS v Minister of Employment and Social Development and AI*, 2024 SST 353

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

## Decision

<b>Appellant:</b>	R. S.
<b>Representative:</b>	A. S.
<b>Respondent:</b>	Minister of Employment and Social Development
<b>Representative:</b>	Judy Au
<b>Added Party:</b>	A. I.

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<b>Decision under appeal:</b>	Minister of Employment and Social Development reconsideration decision dated February 27, 2023 (issued by Service Canada)
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<b>Tribunal member:</b>	Jackie Laidlaw
<b>Type of hearing:</b>	Videoconference
<b>Hearing date:</b>	April 4, 2024
<b>Hearing participants:</b>	Appellant Appellant's representative Respondent's representative Added Party Italian interpreter
<b>Decision date:</b>	April 10, 2024
<b>File number:</b>	GP-23-528

## Decision

[1] The appeal is dismissed.

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

## Overview

[3] The Appellant is the married spouse of the deceased, S. S. (referred to as the deceased in this decision). The deceased lived with the Added Party for 30 years in a common-law relationship. The Added Party has been granted the survivor's pension for the deceased. The Appellant is claiming she is entitled to the benefit because the deceased always said he would give it to her.

[4] The Minister says the Added Party is the common-law spouse of the deceased, and according to the legislation she is entitled to the benefit.

## What the Appellant must prove

[5] As the married spouse of the deceased, the Appellant is presumed to be his survivor. For the Appellant to succeed, the Added Party must fail to prove she is the common-law spouse of the deceased.<sup>1</sup>

## Matters I have to consider first

### I changed the form of hearing

[6] The Appellant requested an in-person hearing. I determined a videoconference would be in the best interest given the Appellant and the Added Party were not getting along because of the nature of this appeal. I have determined holding an in-person hearing would not allow for a full and fair hearing because there may be some security concerns.<sup>2</sup> A videoconference would allow me to see the Appellant and the Added Party

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<sup>1</sup> See *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.

<sup>2</sup> See section 2(3) of the *Social Security Tribunal Regulations, 2022*. This outlines that the Tribunal must hold the hearing in the format as requested by the appellant, unless the Tribunal determines that the

if that was their intention. Just before the hearing, the Appellant eventually requested a teleconference. The hearing was held as a teleconference.

## **Reasons for my decision**

[7] I agree with the Minister that the Added Party is the common-law spouse of the deceased, and therefore according to the legislation she is the proper beneficiary of the survivor's pension.

### **– The Legislation**

[8] A survivor's pension is payable to the common-law partner, even if there is a married spouse. If there is no common-law partner, the benefit is payable to the married spouse.

[9] A common-law spouse is a person who lived with the deceased for at least one year in a conjugal relationship immediately before the deceased's death.<sup>3</sup>

### **– Undisputed Facts**

[10] The Appellant continued to be married to the deceased. They were not divorced.

[11] The deceased only had one will, which was written the day before he died.

[12] The deceased died November 3, 2021.

### **– The Appellant's Submissions**

[13] The Appellant claimed the deceased lived with her during the day, and continued to have sex with her. She also claimed he did not stay with her at night because he had a girlfriend and lived somewhere else. While the deceased may have spent his days with the Appellant and they continued to have sex, this does not have a bearing on whether he was the common-law spouse of the Added Party according to the

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requested format a) would not allow for a full and fair hearing; b) would raise security or health concerns that cannot be mitigated to the Tribunal's satisfaction.

<sup>3</sup> See the definition of "common-law partner" in section 2 of the *Canada Pension Plan*.

legislation. Visiting a person during the day, even if it is every day, is not the same as sharing a common residence. The evidence shows the deceased shared a common residence with the Added Party.

[14] The Appellant also claimed that the deceased told her his CPP pension would go to her. Only the legislation determines who receives the CPP pension, and therefore his wishes do not determine the matter in this case.

[15] The Appellant did not provide any physical evidence to show the Added Party is not the common-law spouse of the deceased.

**– The Added Party is the common-law spouse**

[16] There is case law that explains what is meant by cohabitating in a common-law conjugal relationship.<sup>4</sup> There is a non-exhaustive list of elements, and not all elements must be met:

- financial interdependence, i.e., shared bank accounts, credit cards, ownership of property
- a sexual relationship
- a common residence
- a sharing of responsibility for the household and raising children
- shared assets such as cars
- named beneficiary in each other's will or insurance policy
- knowledge of medical needs
- public recognition of the parties as a couple
- what marital status was declared by the parties on various applications, or forms, completed by them

[17] In this case, the Minister has provided evidence which shows the Added Party lived with the deceased from December 5, 1991, to November 3, 2021. The Added Party provided the following evidence:

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<sup>4</sup> See *Betts v. Shannon*, 2001 (October 22, 2001), CP 11654 (PAB)

- The deceased's will dated November 2, 2021 noting her as his common-law spouse.<sup>5</sup>
- A dental bill dated December 5, 2019 noting she is a named party under his dental insurance, and that they shared the same dentist.<sup>6</sup>
- A statutory declaration of Common-Law Union dated December 2, 2021, stating she and the deceased lived together from December 5, 1991, until November 3, 2021. It also indicates they had a joint residence, joint bank account, and joint insurance.<sup>7</sup>
- An Elections Canada card for the election held September 20, 2021 showing the deceased registered at the same home as the Added Party.<sup>8</sup>
- A bail recognizance dated December 17, 2019 for the deceased showing they both had the same address.<sup>9</sup>
- Driver's licences for both the Added Party and the deceased showing the same address. The driver's licence for the deceased was issued September 21, 2020.<sup>10</sup>
- A letter to the Added Party from the Operating Engineers Benefits Administration Corporation dated November 12, 2021, after the deceased's death, indicating she is the deceased's spouse.<sup>11</sup>
- A change of address card for the Added Party, her son, and the deceased dated February 24, 2017, indicating all occupants listed above moved from York, Ontario to the last address for the deceased and the Added Party in Alliston, Ontario.<sup>12</sup> The Added Party still lives at this address.

[18] I accept all these documents prove the deceased had been living with the Added Party for more than one year immediately before his death.

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<sup>5</sup> See GD 2R-8.

<sup>6</sup> See GD 2R-30

<sup>7</sup> See GD 2R-52.

<sup>8</sup> See GD 2R-34.

<sup>9</sup> See GD 2R-32.

<sup>10</sup> See GD 2R-53.

<sup>11</sup> See GD 2R-54

<sup>12</sup> See GD 2R-26.

[19] The deceased also indicated, just prior to his death, in a note to the Trillium Drug Program that he has been separated from the Appellant for over 30 years and does not have a separation agreement. He noted they do not reside in the same house.<sup>13</sup> As this is signed by the deceased himself, I am putting weight on this document.

[20] The Appellant's son indicated that he has known the Added Party for almost 30 years as his father's girlfriend. I accept given this acknowledgement that the Appellant's family perceived the Added Party and the deceased to be in a relationship as a couple.

[21] The Added Party satisfied the factors which indicate she was the common-law spouse of the deceased, according to the CPP legislation.

## **Conclusion**

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

[23] This means the appeal is dismissed.

Jackie Laidlaw  
Member, General Division – Income Security Section

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<sup>13</sup> See GD 2R-55.