Citation: *MJ v Minister of Employment and Social Development*, 2024 SST 330

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	M. J.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated July 10, 2023 (issued by Service Canada)

Tribunal member:	James Beaton
Type of hearing:	In writing
Decision date:	April 3, 2024
File number:	GP-23-1512

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant applied for a CPP survivor's pension in respect of E. D. after he died on September 25, 2019.[1] She applied on December 3, 2019, and again on August 22, 2022.[2] The Minister of Employment and Social Development refused her application both times. The Appellant appealed the Minister's second decision to the Social Security Tribunal's General Division.

[4] The Minister says the Appellant isn't eligible for a survivor's pension because she wasn't E. D.'s common-law partner during the year immediately before he died. The Appellant says they **were** common-law partners.

[5] I agree with the Minister.

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.[3] 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.[4]

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[1] See GD2-31.
[2] The first application is at GD2-21 to 27 and the second is at GD2-4 to 11.
[3] See section 44(1)(d) of the *Canada Pension Plan*.
[4] See section 42(1) of the *Canada Pension Plan*.

[7] 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 immediately before the other person's death.[5]

[8] To decide whether two people are common-law partners, I must look at things like:[6]

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 factors**—including whether they participated together or separately in neighbourhood and community activities, and their relationship with each other's family members

e) **societal factors**—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] To succeed in her appeal, the Appellant must prove that she is E. D.'s survivor. In other words, she must prove that she cohabited with E. D. in a conjugal relationship

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[5] See section 2(1) of the *Canada Pension Plan*.
[6] See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

for at least one year immediately before his death. She must prove this on a balance of probabilities (that it is more likely than not to be true).[7]

Matters I have to consider first

I didn't accept late documents

[10] The Appellant asked for a hearing in writing. On September 28, 2023, I sent her a letter explaining what it means to be someone's survivor under the CPP, and the factors that are relevant to making that determination.[8] On February 20, 2024, I sent her a list of written questions and gave her until March 20, 2024, to respond. I gave the Minister until April 10, 2024, to respond to the Appellant's answers.[9]

[11] The Appellant's and the Minister's responses were received on March 18 and March 25.[10] The Minister's submissions were brief and didn't introduce any new evidence or arguments that required me to give the Appellant an opportunity to respond.

[12] On March 27, the Appellant emailed the Tribunal to say that she was disappointed with the Tribunal's decision. But the Tribunal had not made a decision yet. It seems the Appellant mistakenly thought that the Minister's March 25 response was the Tribunal's decision. In any case, the Appellant's March 27 email didn't add anything relevant and substantive to her evidence or submissions. She submitted it after her deadline (March 20) and there was no reason for me to accept it.[11]

Reasons for my decision

[13] I find that the Appellant didn't cohabit with E. D. in a conjugal relationship for at least one year immediately before his death—that is, from September 25, 2018, to

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[7] See *McLaughlin v Canada (Attorney General)*, 2012 FC 556. See also *SK and Minister (HRSD) v BE* (July 9, 2010) CP 25886 (Pension Appeals Board).
[8] See GD3.
[9] See GD0.
[10] The Appellant's response is at GD7. The Minister's response is at GD8.
[11] Section 42(2) of the *Social Security Tribunal Rules of Procedure* (Rules) sets out what factors to consider when deciding whether to accept late evidence. Under section 8(5) of the Rules, I can apply these factors to late submissions (arguments) as well, even though these aren't considered evidence. Section 5 of the Rules defines "evidence."

September 25, 2019. She was not his common-law partner and, therefore, she is not his survivor, nor is she eligible for a survivor's pension.

What the Appellant says about her relationship with E. D.

[14] The Appellant gave two dates for when she and E. D. first started living together: September 1, 2010, and January 1, 2014.[12]

[15] At some point, they stopped living together because E. D. had mental health and addiction issues that made living together difficult. E. D. moved to Powell River, BC, while the Appellant moved to Port Moody, BC.[13] In 2018, the Appellant moved to Powell River so that she could care for E. D., who had been diagnosed with cancer. His health continued to decline until he eventually died. They never moved in together in Powell River.

[16] Despite not living under the same roof during the year before E. D.'s death, the Appellant says she took care of "every aspect of his life" by:

- buying his groceries
- making his meals
- maintaining his apartment
- paying his bills
- giving him "financial guidance"
- being his "professional advocate"
- administering his medication
- driving him to appointments
- visiting him in the hospital

[17] She says they were sexually intimate.[14]

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[12] See GD2-4 to 12 and 28.
[13] It is also possible that the Appellant and E. D. had been living in Port Moody together; it is unclear from the evidence. Whether the Appellant moved to Port Moody or was already living there when she separated from E. D. doesn't impact my decision.
[14] See GD1, GD2-4 to 12, and GD7-9 to 14.

[18] E. D. gave the Appellant power of attorney in August 2019 so that she could manage his estate when he died. She arranged his memorial service.[15]

[19] A letter from the Appellant's sister says the Appellant and E. D. celebrated birthdays and Christmas together, and bought each other gifts. The same letter mentions the Appellant's daughter from a previous marriage living with the Appellant and E. D., when the Appellant and E. D. still lived in the same house. That must have been before the Appellant and E. D. started living apart—that is, before 2018.[16]

[20] The Appellant also provided letters from W. B. and D. E., two mutual friends of the Appellant and E. D. They reiterate much of what the Appellant wrote in her own submissions.[17]

The Appellant's evidence is unreliable

[21] The lifestyle described by the Appellant **could** support a common-law relationship. But there are inconsistencies and gaps in the Appellant's evidence that ultimately make her evidence unreliable. These inconsistencies and gaps touch on key aspects of the Appellant's relationship with E. D.

– When the Appellant and E. D. lived together

[22] The Appellant gave different dates for when she and E. D. lived together. In a statutory declaration from December 2019, she said they lived together from January 1, 2014, to December 30, 2016.[18] In her application from August 2022, she said they lived together beginning September 1, 2010.[19] In a second statutory declaration dated March 7, 2023 (which she didn't get commissioned), she said they lived separate and apart from April 3, 2017, on.[20]

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[15] See GD7-9 to 14. The power of attorney is at GD7-3 and 4.
[16] See GD4-4 and 5.
[17] See GD4-2 and 3.
[18] See GD2-28.
[19] See GD2-4 to 11.
[20] See GD2-28.

[23] When I asked the Appellant why she gave different dates, she said it was a "complete oversight from a very confusing, overwhelming time."[21] Regardless of the reason for the different dates, they make me doubt the Appellant's reliability. Other inconsistencies and gaps add to that doubt.

– **The nature of the Appellant's relationship with E. D.**

[24] E. D. applied for medical assistance in dying (MAID) on September 13, 2019.[22] A MAID applicant in BC must complete a written application in front of two witnesses. The Appellant and W. B. served as witnesses. The Appellant gave her relationship to E. D. as "friend," not spouse or common-law partner. More significant, though, is the fact that she initialed next to each of these statements:

- "I do not know or believe that I am a beneficiary under the will of the patient [E. D.], or a recipient, in any other way, of a financial or material benefit resulting from the patient's death."
- "I do not directly provide personal care to the patient."

[25] The first statement is at odds with the Appellant's statutory declaration stating that she was the designated beneficiary of E. D.'s life insurance.[23] And the second statement conflicts with the Appellant's account that she **did** provide extensive personal care to E. D. in the year before his death.

[26] When I asked the Appellant to explain these inconsistencies, she said she was very distraught and not thinking clearly when she completed the MAID form.[24] I accept that the Appellant may have been distraught, but I don't accept that she made a mistake. A MAID application is literally a matter of life and death. It is something to be filled out carefully. She initialled next to each statement individually and wrote in the word "friend" rather than "spouse" or "partner." The statements are unambiguous and

[21] See GD7-11.
[22] See GD5.
[23] See GD2-28.
[24] See GD7-9.

her portion of the form was only one page long, making it unlikely that she misread or overlooked something.

[27] This discrepancy further undermines the Appellant's reliability and calls into question how involved she was in E. D.'s personal care before he died.

– **The Appellant and E. D.'s financial arrangements**

[28] On the Appellant's first statutory declaration, she indicated that she and E. D. had jointly signed a residential lease, mortgage or purchase agreement, **and** had a joint bank, trust, credit union or charge card account.[25] I asked the Appellant to provide copies of documents to support these statements. In response, she said that she didn't have a lease, mortgage or purchase agreement with E. D. She said that she and E. D. shared financial resources, but she didn't provide any documents to support a formal financial arrangement like she indicated they had.[26]

– **Missing tax records**

[29] I asked the Appellant if she ever filed taxes with E. D. and, if she did, to provide copies. She responded that she **always** declared her marital status on her income tax returns and would give E. D.'s information at the same time.[27] I understand this to mean that she declared E. D. her common-law partner on her taxes until E. D.'s death. But she only provided a screenshot of her 2014 income tax return.[28] She didn't provide any recent tax records to the Tribunal or explain why she could not provide such records. This makes me doubt that she gave her status as common-law on tax filings after 2014. If she had, she likely could have produced those records.

[25] See GD2-28.
[26] See GD7-11 and 13.
[27] See GD7-14.
[28] See GD7-8.

There is hardly any documentary evidence

[30] The unreliability of the Appellant's statements leads me to put more weight on the documentary evidence. But there is hardly any documentary evidence to support a common-law relationship during the relevant time period.

– Some of the documentary evidence is irrelevant

[31] An Equifax credit report for the Appellant and E. D. from 2012 doesn't speak to their relationship in the year before his death.[29] The same is true of the Appellant's 2014 income tax return.

– The power of attorney

[32] Apart from the MAID form and the certificate of death, the only other piece of documentary evidence is E. D.'s power of attorney dated August 3, 2019, shortly before his death. In my opinion, the fact that E. D. granted the Appellant a power of attorney supports that he trusted the Appellant and that they had some sort of relationship in 2019. But it doesn't convince me that they were in a **conjugal** relationship for **at least one year** immediately before he died.

[33] While I doubt the reliability of the Appellant's statements, I do note that the Appellant says E. D. had a private pension (but no will). E. D. reportedly made his daughter the beneficiary of that pension when he and the Appellant separated. The Appellant says E. D.'s illness prevented him from reinstating the Appellant as beneficiary (presumably referring to his pension).[30]

[34] If I accept the Appellant's statements on this point, the fact that E. D. didn't change his pension beneficiary designation **despite** executing a power of attorney shortly before he died suggests that he made the conscious decision to keep his daughter as the beneficiary.

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[29] See GD7-5 to 7.
[30] See GD7-11 and 12.

What the evidence shows

[35] At best, the evidence shows that the Appellant and E. D. ended their relationship when E. D. moved to Powell River, and then, when E. D.'s health deteriorated, the Appellant began caring for E. D. Their relationship from 2018 to 2019 might have resembled that of close friends, as indicated on the MAID application. However, I can't find that it evolved into a common-law relationship again by September 25, 2018.

[36] As I mentioned earlier, the lack of documentary evidence in this case is concerning because, according to statements made by the Appellant, there **should** be more of it. There should be a lease or similar document, and evidence of shared financial arrangements like a joint bank account statement. There should be recent income tax returns. The Appellant failed to provide those documents.

[37] The lack of documentary evidence and the unreliability of the Appellant's statements taken together leaves me with insufficient reliable evidence to support the existence of a common-law relationship from September 25, 2018, to September 25, 2019, on a balance of probabilities. I am not prepared to find that the Appellant is E. D.'s survivor based mainly on letters that the Appellant herself gathered from her sister and two friends to support her appeal. I can't be confident that those letters are reliable given my lack of confidence in the Appellant's own evidence.

Conclusion

[38] I find that the Appellant isn't eligible for a CPP survivor's pension in respect of E. D. because she is not his survivor.

[39] This means the appeal is dismissed.

James Beaton

Member, General Division – Income Security Section