Citation: *BP v Minister of Employment and Social Development*, 2024 SST 1310

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	B. P.
Respondent:	Minister of Employment and Social Development
Representative:	Viola Herbert

Decision under appeal:	General Division decision dated March 26, 2024 (GP-23-1515)

Tribunal member:	Neil Nawaz
Type of hearing:	Teleconference
Hearing date:	October 17, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	October 29, 2024
File number:	AD-24-427

Decision

[1] The appeal is dismissed. The Appellant is not entitled to the Canada Pension Plan (CPP) survivor's pension.

Overview

[2] The Appellant is an American citizen who lives in California. For many years, she was in a relationship with the late N. L., a contributor to the CPP and a resident of British Columbia. N. L., who I will refer to as the Deceased Contributor, died suddenly in May 2022 at the age of 52.

[3] The Appellant applied for a CPP survivor's pension in November 2022.[1] In her application, she said that she was the Deceased Contributor's common-law spouse at the time of his death. In an attached statutory declaration, she said that she and the Deceased Contributor lived together in British Columbia from September 2007 to October 2014, when she began to spend more time back in California to help take care of her grandchildren.[2] She added that they regularly continued to see each other until early 2020, when pandemic restrictions closed the border. She insisted that they never intended to end their common-law relationship.

[4] The Minister refused the application after determining that the Appellant was not the Deceased Contributor's survivor. The Minister placed weight on the fact that the Appellant was not living with the Deceased Contributor at the time of his death.[3]

[5] The Appellant appealed the Minister's refusal to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It found that, although the Appellant and the Deceased Contributor maintained an ongoing relationship, they stopped being common-law partners in October 2014.

---

[1] See the Appellant's application for the CPP survivor's pension dated November 21, 2022, GD2-4.
[2] See the Statutory Declaration of Common-law Union sworn by the Appellant on November 7, 2022, GD2-11.
[3] See the Minister's reconsideration decision letter dated July 10, 2023, GD2-27.

[6] The Appellant then applied for permission to appeal to the Appeal Division. Earlier this year, one of my colleagues granted the Appellant permission to appeal. I then held a hearing to discuss her claim in full.

[7] Now that I have considered submissions from both parties, I have concluded that the Appellant is not entitled to the survivor's pension. The evidence shows that, while the Appellant and the Deceased Contributor had a longstanding relationship, they did not cohabit in the years leading up the latter's death.

Issue

[8] For the Appellant to receive the survivor's pension, she had to prove that she was the Deceased Contributor's survivor. Put another way, she had to show that, if they weren't married, she and the Deceased Contributor were in a common-law relationship when he died.

Analysis

[9] As an applicant for benefits, the Appellant bore the burden of proof. In other words, it was up to her to show that she was the Deceased Contributor's survivor.[4]

[10] I have reviewed the record and concluded that the Appellant didn't meet that burden. On balance, the available evidence indicates that, although the Appellant cohabited with the Deceased Contributor up to October 2014, they were merely boyfriend and girlfriend during the last eight years of his life.

Survivorship depends on many factors

[11] A CPP survivor's pension is payable to the survivor of a deceased contributor. A survivor is a person who was legally married to the contributor at the time of his death. However, if the contributor was in a common-law relationship at the time of his death, then the survivor is the contributor's common-law partner.[5]

---

[4] See *Canada Pension Plan*, section 44(1).
[5] See *Canada Pension Plan*, section 42(1).

[12] A common-law partner is a person who was cohabiting with the contributor in a conjugal relationship at the time of the contributor's death, having done so for a continuous period of at least one year.[6] The CPP doesn't contain a definition for the term "conjugal relationship," but the courts have said that it depends on many factors, including the following:

- shelter — whether the couple lived under the same roof;
- sexual behaviour — whether they had sexual relations and were faithful to each other;
- services — whether they prepared meals or performed other domestic tasks for each other;
- social — whether they participated together in neighbourhood and community activities;
- societal — whether they were seen as a couple by the community; and
- support — whether they shared assets and finances.[7]

[13] All the characteristics of a conjugal relationship may be present in varying degrees, but not all are necessary for the relationship to be conjugal.

[14] In this case, the Appellant and the Deceased Contributor were never married. When the Deceased Contributor died, they weren't common-law partners either. The evidence shows that they lived together up to October 2014 and then separated. After that, they remained close, but they lacked many of the characteristics of a conjugal relationship.

---

[6] See *Canada Pension Plan*, section 2(1).
[7] See *McLaughlin v Canada Attorney General)*, 2012 FC 556. See also *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65; *Canada (Attorney General) v Redman*, 2020 FCA 209; and *J.R. v Minister of Employment and Social Development*, 2021 SST 113.

The Appellant and the Deceased Contributor were common-law partners up to October 2014

[15] I accept that the Appellant and the Deceased Contributor were common-law partners before October 2014. The evidence shows that they started living together in September 2007 and, for the next seven years, their relationship was much like that of a married couple:[8]

- They shared a common residence from September 2007 to October 2014. They first lived with the Deceased Contributor's brother in Surrey. Then they moved to a rental property in the B.C. interior, where they lived for about 18 months while the Deceased Contributor was off work because of a disability. When he recovered, they moved back to Surrey and rented an apartment. Both their names were on the leases and on some utility accounts.
- During the seven years they lived together, they shared domestic chores. The Appellant did most of the cooking, cleaning, and laundry; the Deceased Contributor did most of the maintenance and yard work. The Deceased Contributor supported the Appellant by paying all their expenses.
- They shared a bedroom and had a sexual relationship. They were faithful to each other.
- Their family and friends viewed them as a close, committed couple. They socialized as a couple. They went to family weddings together. The Deceased Contributor got along well with the Appellant's children, and she got along well with most of his friends and relatives.
- The Appellant estimated that she spent about 10 months of the year in B.C., returning to California for a few weeks to visit her children. She stayed with her children and the Deceased Contributor occasionally went with her.

[8] I relied on the Appellant's testimony, as well as affidavits from her friends and family at GD7-4–14, GD3-112–114, GD3-116–118, GD3-121–123, and GD3-125–131.

[16] The above circumstances are enough to convince me that the Appellant and the Deceased Contributor were in a common-law relationship for seven years. It is true that, as a couple, they lacked some of the typical characteristics of mutually dependent partners—they didn't co-own assets or share bank or credit card accounts—but it is not uncommon for individuals who come together in midlife to keep their finances separate.

[17] However, their relationship then entered a new phase, one in which they began to live essentially separate lives.

The Deceased Contributor and the Appellant stopped living together in October 2014

[18] The CPP requires survivors to demonstrate continuous cohabitation for at least one year. However, the available evidence shows that the Appellant spent relatively little time with the Deceased Contributor in the eight years preceding his death.

[19] In October 2014, the Appellant moved to California to take care of her newborn granddaughter. At the time, her son had two jobs—at a casino and at a parcel delivery service—and his wife worked the evening shift in a health maintenance organization call centre. The Appellant's daughter-in-law needed help, but she was reluctant to entrust her baby to a non-family member because of trauma that she had experienced as a child.

[20] The Appellant left on the understanding that the arrangement was temporary and that she and the Deceased Contributor would eventually resume living together when her granddaughter was older. After the Appellant left for California, the Deceased Contributor moved to an all-season cabin he owned near Princeton, B.C.

[21] The move made a significant difference to the amount of time the Appellant and the Deceased Contributor spent together. She came to Canada to see him about twice a year and stayed for three or four weeks each time. He usually went to California twice a year and stayed for four to five weeks each time. The Appellant explained that the Deceased Contributor was able to take so much time off work because he had years of seniority as a Canada Post employee.

[22] The Appellant testified that she and the Deceased Contributor remained committed to each other, despite the distance between them. They talked almost every day over Skype. They kept clothing and personal items at each other's homes. They each had access to the other's internet passwords. They slept together during their visits. The Appellant insisted that their relationship remained the same, except they were physically together less often.

[23] After a few years, the Appellant began thinking of returning to Canada, but her son and daughter-in-law had another baby, and the cycle of need started all over again. Then COVID hit, and that put a stop to their visits altogether. The Appellant said that their last visit was in October 2019. She had a plane ticket to Vancouver booked for March 2000, but she cancelled it for fear of being stranded in Canada if the borders closed. As it turned out, that's what happened. The Appellant and the Deceased Contributor never again saw each other in person.

[24] The Appellant insisted that the fact that she and the Deceased Contributor were apart for nearly 75 percent of the time after 2014 didn't make them any less of a couple. I disagree. It's true that cohabitation is just one factor in determining whether a couple are in common-law, but it's a very important factor. The physical distance between the Appellant and the Deceased Contributor affected many other aspects of their relationship. It meant that they no longer depended on each other for household tasks unless they were together. They didn't, for instance, cook together, eat together, sleep together, or socialize together except for the 16 or so weeks of the year that they visited each other.

[25] Add this to the fact that, during their 15-year relationship, neither the Appellant nor the Deceased Contributor named each other in wills. Neither of them gave the other power of attorney. They didn't list each other as beneficiaries in any life insurance policy or savings account. The Appellant didn't file an income tax return in the U.S. or Canada, but the Deceased Contributor did in this country, and he repeatedly described himself as single.

[26] The Appellant explained that, during much of her seven years in B.C., she lived in Canada illegally, and the Deceased Contributor didn't want to put her name on anything in case it drew the attention of the authorities. She explained that, on one or two occasions while crossing the border by land, she and the Deceased Contributor were closely questioned about her status. She worried that, if they described their relationship as anything more than boyfriend-girlfriend, she might be barred from the country.

[27] Given this background, I can understand why the Appellant's and the Deceased Contributor's relationship lacked many of the typical trappings of a common-law partnership. However, the fact remains that they spent most of their time apart. The Appellant maintained that they wanted to spend more time with each other and would have done so had circumstances beyond their control not intervened. I considered those circumstances, but they failed to persuade me that the Appellant and Deceased Contributor maintained a common-law relationship after October 2014.

A couple's intentions can be discerned from their behaviour

[28] The Appellant argued that her common-law relationship continued after October 2014, because neither she nor the Deceased Contributor intended it to end. She based her argument on court decisions that interpreted provincial laws governing the division of assets between spouses and other family law matters.

[29] However, those decisions have limited value in this case because provincial laws don't apply to claims under the *Canada Pension Plan*, which has its own definition of what constitutes a common-law relationship. As it happens, many of the Appellant's cases rely on a Supreme Court of Canada decision that dealt with a CPP survivorship claim.[9] In *Hodge*, the claimant separated from her partner in February 1993 but argued that she did not end their common-law relationship until a year later. The Supreme Court held that coresidence and cohabitation are not the same thing. It determined that

[9] See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65.

the claimant's common-law relationship ended only when, **by her conduct and behaviour**, she intended for it to end.

[30] An intention to end a common-law partnership can be discerned from the factual circumstances surrounding the couple's relationship. In this case, the Appellant and the Deceased Contributor's conduct and behaviour suggests that one or both of them intended to cease their conjugal cohabitation in October 2014. That was the month the Appellant decided to move to another country, more than a thousand miles from the Deceased Contributor's home, to look after her granddaughter for an indefinite period. It was not an involuntary separation prompted by, say, a job transfer or a medical crisis; instead, it was a choice—a difficult one, no doubt, but a choice nonetheless—one that prioritized her family over her relationship.

[31] The Appellant and the Deceased Contributor carried on this long-distance arrangement for eight years. They remained close but lacked the close connection and mutual dependency that can only come from living under the same roof with another person. Despite frequent visits, they maintained separate lives.

[32] I find it notable that they did not see each other in December 2019, during the last holiday season before the onset of the COVID-19 pandemic. The Appellant insisted that the pandemic dashed their plans to resume living together. She said that they were prevented from seeing each other for the final 2½ years of the Deceased Contributor's life when the U.S. and Canadian governments closed their borders to nonessential travel.

[33] I won't speculate about whether the Appellant and Deceased Contributor would have resumed cohabitation if not for the pandemic. But even if it could be established that they had a firm plan to reunite, it remains a fact that they didn't. I acknowledge that the pandemic disrupted the lives of millions of people, especially those with cross-border relationships. However, the border was not closed for the entire crisis—it reopened in July 2021 for travellers who could produce proof of vaccination. The Appellant testified that this did not help her or the Deceased Contributor, because they didn't trust the safety and efficacy of the vaccines.

[34] They had every right to feel that way but, again, they were making a choice, one that placed their health concerns above any desire they may have had to resume cohabitation. They chose to part in 2014, and they chose to remain apart after 2020. Those choices, however hard they may have been, meant that they were not interdependent in the way that is characteristic of life partners.

[35] Again, I don't deny that the Appellant and the Deceased Contributor had a loving relationship. But I do deny that they were common-law partners after 2014. The Appellant insisted that she and the Deceased Contributor saw themselves as something akin to married partners despite their distance. However, I must base my decision on more than just her subjective view of their relationship. In this case, the evidence, looked at as a whole, suggests they weren't in a common-law relationship when the Deceased Contributor passed away.

Conclusion

[36] The Appellant and the Deceased Contributor remained close after their separation in October 2014, but they did not have a common-law relationship. I had to follow the facts and the law where they led me and, in the end, I was forced to conclude that the Appellant was not the Deceased Contributor's survivor.

[37] For this reason, I am denying the Appellant's claim for the survivor's pension. The appeal is dismissed.

Member, Appeal Division