



Citation: *DJ v Minister of Employment and Social Development*, 2025 SST 511

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** D. J.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Érelégna Bernard

**Added Party:** S. M.  
**Representative:** L. M.

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**Decision under appeal:** General Division decision dated September 10, 2024  
(GP-23-1523)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** In person

**Hearing date:** April 30, 2025

**Hearing participants:** Appellant  
Respondent's representative  
Added Party  
Added Party's representative

**Decision date:** May 15, 2025

**File number:** AD-24-823

## Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) survivor's pension.

## Overview

[2] This case involves two competing claims for a Canada Pension Plan (CPP) survivor's pension.

[3] The late T. M. was a contributor to the CPP. He and the Added Party were married in 1965 and raised a family. They separated in 1987 but remained married for the rest of T. M.'s life.

[4] T. M. met the Appellant in 2010, and they began living together the following year. When his health began to decline, the Added Party and their daughter, L. M., began seeing him more often. In July 2022, they had heated argument with the Appellant at T. M.'s home. With the police in attendance, they ordered her to leave and removed her possessions from the premises.

[5] A few weeks later, T. M. was admitted to hospital, where he was diagnosed with lymphoma. He spent his final days at the Added Party's home and passed away on November 2, 2022.

[6] On November 4, 2022, the Added Party applied for a CPP survivor's pension.<sup>1</sup> In her application, she declared that, although they were separated, she and T. M. were still married at the time of his death.

[7] On November 7, 2022, the Appellant also applied for the survivor's pension.<sup>2</sup> In her application, she declared that she had been T. M.'s common-law spouse from January 2016 until his passing. She added that she was not living with the deceased

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<sup>1</sup> See the Added Party's application for the CPP survivor's pension dated November 4, 2022, GD2-10.

<sup>2</sup> See the Appellant's application for the CPP survivor's pension dated November 7, 2022, GD2-7.

contributor at the time of his death, because her stepdaughter was taking care of him during the last few months of his life.

[8] Service Canada, the Minister's public-facing agency, awarded the survivor's pension to the Added Party as T. M.'s married spouse. It decided that the Appellant was not in a common-law relationship with T. M. at the time of his death.

[9] The Appellant appealed Service Canada's decision to the Social Security Tribunal. The Tribunal's General Division held an in-person hearing and dismissed the appeal. It considered the circumstances that led to the Appellant's departure from T. M.'s home in July 2022 and concluded that he intended to end their relationship at the that time. It awarded the survivor's pension to the Added Party.

[10] The Appellant then applied for permission to appeal to the Appeal Division. In December, one of my colleagues on the Appeal Division granted her permission to appeal. Last month, I held a hearing to discuss her appeal in full.

## **Issue**

[11] For the Appellant to succeed, she had to prove that she was in a common-law relationship with T. M. when he died.

## **Analysis**

[12] There can only be one survivor under the law. Having considered the parties' submissions, I have concluded that the Added Party is T. M.'s rightful survivor. I am not satisfied that the Appellant was in a common-law relationship with T. M. at the time of his death.

[13] These are my reasons.

### **The burden of proof was on the Appellant**

[14] Where there are competing interests between the legally married widow of a deceased contributor and an alleged common-law partner, there is a presumption that the pension goes to the legal widow. As a result, the burden was on the Appellant to

prove that she was in a common-law relationship with T. M. when he passed away in November 2022.<sup>3</sup>

[15] The Added Party, as T. M.'s married spouse, didn't have to prove anything. Even so, she produced considerable evidence intended to show that Appellant was not, in fact, cohabiting with her husband in his final years.

**A married spouse is the survivor — unless the deceased contributor was in a common-law relationship**

[16] 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.<sup>4</sup>

[17] 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.<sup>5</sup> The CPP doesn't contain a definition for the term "conjugal relationship." However, the Federal Court of Appeal has said that the existence of a conjugal relationship depends on many factors, including:

- Shelter – whether the parties lived under the same roof;
- Sexual behaviour – whether the parties had sexual relations and were faithful to each other;
- Services – whether the parties prepared meals or performed other domestic services for each other;
- Social – whether the parties participated together in neighbourhood and community activities;
- Societal – whether the parties were seen as a couple by the community; and

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<sup>3</sup> See *Betts v Shannon* (2001), CP 11654 (PAB); *Canada (Attorney General) v Redman*, 2020 FCA 209.

<sup>4</sup> See *Canada Pension Plan*, section 42(1).

<sup>5</sup> See *Canada Pension Plan*, section 2(1).

- Support – whether the parties shared assets and finances.<sup>6</sup>

[18] All the characteristics of a conjugal relationship may be present in varying degrees, but not all are necessary for the relationship to be conjugal.<sup>7</sup> Parties in a common-law relationship have to show, by their acts and conduct, a **mutual intention** to live together in a conjugal relationship of some permanence.<sup>8</sup> Mutual intention must be deduced from available evidence.

### **The Appellant and the Added Party differed about what happened on July 7, 2022**

[19] The first thing to be said about this case is that the Appellant and the Added Party don't like each other. The Appellant claims that the Added Party and her daughter re-entered T. M.'s life when his health began to decline and took active steps to alienate a dying man from his life partner. The Added Party accuses the Appellant of lying about her relationship with T. M. for the purpose of getting a pension that she doesn't deserve. At the hearing, they traded accusations, many of them involving matters that had no relevance to the issue of survivorship.

[20] However, the Appellant and the Added Party did agree on one thing. They agreed that the Appellant departed T. M.'s residence on X on July 7, 2022, although they disagreed about the circumstances leading to that departure.

[21] The Appellant testified that she met T. M. in 2010, when she hired him to help with the renovation of one of her residential properties. The following year, she moved into his house on X, the first of several homes that they shared. She said that they had a loving relationship and that T. M. promised to take care of her after he was gone. She knew that T. M. was still married, although he had little contact with his wife or daughter for most of the time that she knew him. He told her that he never divorced the Added Party because she needed access to his medical benefits.

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<sup>6</sup> See *Canada Pension Plan* sections 55.1 and 55.2.

<sup>7</sup> See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65. See also *McLaughlin v Canada Attorney General*, 2012 FC 556.

<sup>8</sup> See *McLaughlin v Canada Attorney General*, 2012 FC 556.

[22] In early 2022, T. M.'s health began to go downhill. He stopped eating, lost weight, and spent more time in bed. At the time, she didn't know what was wrong with him, but she later learned that it was cancer — lymphoma.

[23] In late June 2022, the Added Party and her daughter appeared at X and informed her that they were taking charge of T. M.'s affairs under power of attorney. They essentially moved in. On July 7, 2022, they accused the Appellant of neglecting T. M. A huge argument ensued, and the police were called — twice. They told her to leave or face a trespassing charge. To keep the peace, she reluctantly left and spent the night in a vacant unit in one of her rental properties. She never returned to the house at X.

[24] The Added Party's daughter packed up the Appellant's possessions and had them shipped to her new address. She refused to take the Appellant's calls and did her best to prevent her from contacting T. M. She managed to see him one last time, stopping by the Added Party's home in August while her daughter wasn't present. By that time, T. M. had been discharged from a hospice for end-of-life care. She never saw or communicated with T. M. again.

[25] The Added Party and her daughter, L. M., had a different version of events. They acknowledged that T. M. and the Appellant had a relationship, but they insisted that it had ended several years earlier. L. M. testified that, in 2019, her father told her that he wanted out of his relationship with the Appellant. He asked her to help him find a new home. She connected him with a realtor, and he eventually purchased the property on X, but before long the Appellant was living there too, and he was back to square one.

[26] The Added Party speculated that the Appellant then shifted back and forth between T. M.'s residence and one of her several rental properties. She admitted that she rarely saw him during that period and had no direct knowledge about how, and with whom, he was living. After a few years, having heard that he wasn't looking well, she visited him and "buried the axe." She attended a medical appointment with him a few days later, and she and their daughter took over his care. The Appellant, she said, was usually not present.

[27] The Added Party maintained that T. M. wanted to sever ties with the Appellant. L. M. testified that her father directly asked her to “get her out.” She insisted that she did not plant this idea in his mind and that it genuinely represented his wishes. She alleged that, On July 7, 2022, her father called her after the Appellant flatly refused his request for water. She went to X, ordered the Appellant to leave and, when she refused, called the police. She denied that she later took control of his phone to prevent him from communicating with the Appellant. Although he was physically ill, he was mentally OK, and he was free to call her. However, he didn’t want to.

[28] In the end, the crucial question in this case was whether T. M. genuinely intended to end his relationship with the Appellant on July 7, 2022. The answer to that question matters because, if he did, then the Appellant did not cohabit with T. M. during the full year immediately preceding his death. The courts have also made it clear that, in order to qualify for a survivor’s pension, a claimant needs to live with a contributor in a marriage-like relationship for the **entire year** preceding the contributor’s death.<sup>9</sup>

### **The Appellant was in a common-law relationship with T. M. up to July 7, 2022**

[29] The file contains very little documentary evidence about T. M.’s living arrangements in the final year of his life. Despite the Added Party’s attempts to prove otherwise, I am satisfied that the Appellant was in fact living in a conjugal relationship with T. M. up to July 7, 2022.

[30] The Appellant produced two witnesses who, although they did not see the Appellant in the final months of his life, confirmed that the Appellant and T. M. presented themselves like a married couple before July 7, 2022. B. T. testified that his friend and former co-worker was living with the Appellant whenever he visited him. He didn’t think it was likely that T. M. intended to end his relationship with the Appellant. D. L. testified that there was “bad blood” between the Appellant and T. M.’s family. He observed that T. M. was very close to the Appellant’s university-aged son.

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<sup>9</sup> See *Canada (Attorney General) v Redman*, 2020 FCA 209.

[31] The Added Party denied that the Appellant was living with her estranged husband on a full-time basis, but by her own account, neither she nor her daughter had much contact with T. M. in the years before his cancer diagnosis. The Added Party did her best to show that the Appellant had several rental properties, one of which might have been her actual principal residence. However, I didn't find this line of argument compelling; the fact that a person owns multiple houses doesn't necessarily mean that they are living in any of them.

[32] In the end, it was photographs that persuaded me that the Appellant cohabiting with T. M. up to July 7, 2022. She submitted pictures of her belongings that she had packed in advance of removing them from T. M.'s home.<sup>10</sup> The sheer volume of material — what appeared to be dozens of boxes containing clothes and other personal items — suggest that the Appellant was not just periodically “visiting” T. M. at the house on X: she was actually living there.

#### **T. M. intended to end his relationship with the Appellant on July 7, 2022**

[33] The Appellant has shown that she was in a common-law relationship with T. M. for eight months of the year preceding his death, but that is not enough for her to be his survivor. The law requires a full year of cohabitation, but T. M. ordered the Appellant out of his home four months before passed away.

[34] I have two vastly different accounts of what happened on July 7, 2022. The Appellant claims that the Added Party coerced and manipulated T. M. into forcing her from the premises. The Added Party insists that T. M. genuinely wanted the Appellant out of his house and that he asked for help in achieving that objective.

[35] Having considered the available evidence, I have concluded that T. M., infirm though he was, intended to end his relationship with the Appellant on July 7, 2022. I don't deny that, in his diminished state, he was under his wife's and daughter's influence, but I

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<sup>10</sup> See photographs submitted by the Appellant, AD1-43 to AD1-63.

am satisfied that he had the capacity to decide for himself that he didn't want to live with the Appellant anymore.

[36] Some cases have recognized that common-law relationships don't end where there is an involuntary separation. If a couple begins living apart because of circumstances beyond their control — for instance, one of the spouses has been transferred to another city for work or has been admitted to long-term care — then, according to the law, they continue to “cohabit in a conjugal relationship,” despite their being physically apart.

[37] I considered whether a similar exception could be made for the Appellant and T. M. Was their separation voluntary? Was T. M. coerced into consenting to the Appellant's expulsion against his wishes? Was he mentally competent to provide such consent?

[38] In the end, I simply couldn't find enough evidence to show that the Appellant was removed from the house at X against T. M.'s will. First, the file contained no evidence, medical or otherwise, suggesting that T. M. was incompetent to make important life choices. Second, there was documentary evidence indicating that he approved the Appellant's removal.

[39] The police made two visits to X on July 7, 2022, the first at around noon, by which time the Appellant had left the premises, the second at 10:00 p.m. after she returned. The first occurrence report indicated that the attending officers talked to T. M. and his daughter separately. It said, “T. M. no longer wishes to pursue a relationship and D. J. will not leave the residence. D. J. does not pay rent nor is she a permanent resident at this address.”<sup>11</sup> It also said “T. M. requested that D. J. be trespassed from his residence until they are able to proceed with a peace bond.

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<sup>11</sup> See Windsor Police Service general occurrence report dated July 7, 2022, GD6-9.

[40] This report clearly suggests that it was T. M.'s decision to bar the Appellant from his property. There is no indication that his daughter or anyone else was coaching him to say what he said.

[41] The second occurrence report, prepared a few hours later, also indicated that T. M. wanted the Appellant to leave.<sup>12</sup> Two different officers attended and, as before, spoke to T. M. and his daughter separately. They wrote that the Appellant and T. M. had had an on-and-off relationship for 10 years. While the Appellant had been helping take care of T. M., he had "grown tired and irritated" by her presence and had asked her to leave that day.

[42] I gave considerable weight to these police reports, because they are closest thing to purely "objective" evidence in the file. They both indicate that, though ill, T. M. was competent enough to form and express an intention to end his relationship with the Appellant. They also indicate that he took active steps to get the Appellant out of his house, enlisting his estranged wife and daughter to do what he, perhaps, lacked the strength to do himself.

[43] The Appellant argued that a weak and tired T. M. submitted to pressure from his daughter because he just wanted some peace amid the turmoil and conflict in his home. There may be some truth to that, but it doesn't alter the fact that, whatever his motivation, he took the side of his wife and daughter and made a conscious choice to evict the Appellant. Whether he did so because he was disenchanted by the Appellant or because he was worn down by his family is beside the point; what matters is that his words and actions demonstrated an intention to definitively end his relationship with her.

[44] As noted, the Appellant saw T. M. only once before his death in November 2022. In August, she made an unannounced visit to the Added Party's home, where T. M. was staying, having been discharged from hospice care. During that visit, she had T. M. sign a form authorizing the tax-free transfer of a vehicle.<sup>13</sup> In signing the form, he declared

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<sup>12</sup> See Windsor Police Service general occurrence report dated July 7, 2022, GD6-14.

<sup>13</sup> See Service Ontario Spouse Declaration and/or Plate Transfer Declaration signed by T. M. on August 13, 2022, GD2-35.

that he was the Appellant's "spouse," as defined by the Ontario *Family Law Act*, but I disagree with the Appellant that this declaration helped her case in any significant way. It appears that T. M. chose to make a small misrepresentation to expedite the gifting of his truck to the Appellant, but this act was far outweighed by the reality that, by then, he had been living in his estranged wife's residence for more than a month and would continue to do so until his death.

## Conclusion

[45] The Appellant and Added Party were both sympathetic claimants who lost a person to whom they were close. However, the *Canada Pension Plan* allows me to award only one survivor's pension. I followed the facts and law where they led me and, in the end, I had to conclude that T. M. made a conscious decision to end his relationship with the Appellant four months before his death. That means the pension must go to the Added Party, as the deceased contributor's legal widow.

[46] The appeal is dismissed.



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Member, Appeal Division