



Citation: *VM v Minister of Employment and Social Development and CS*, 2025 SST 1067

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: V. M.

Respondent: Minister of Employment and Social Development
Representative: Rubina Hussain

Added Party: C. S.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 21, 2025 (issued
by Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Teleconference
Hearing date: September 12, 2025
Hearing participants: Appellant
Respondent's representative
Added Party

Decision date: October 9, 2025
File number: GP-25-305

Decision

[1] The appeal is dismissed.

[2] The Appellant, V. M., isn't eligible for a Canada Pension Plan (CPP) survivor's pension. This is because the Added Party, C. S., has shown that she is the contributor's survivor. The Added Party is eligible for the CPP survivor's pension.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The contributor, M. M., passed away on July 16, 2024.¹ After he died, both the Appellant and the Added Party applied for the CPP survivor's pension.

[5] The Appellant applied for the pension in July 2024 and then again in November 2024.² In her applications, she said that she and the contributor married in 1995 and even though they were still legally married, they were no longer living together at the time of the contributor's death.

[6] The Added Party applied for the pension in September 2024.³ In her application, she said she was the contributor's common-law partner. She said she began living with the contributor in May 2020 and that they were still living together at the time of the contributor's death.⁴

[7] The Minister of Employment and Social Development (Minister) approved the Added Party's application and awarded her the survivor's pension effective August 2024.⁵

¹ See page GD2-29.

² See pages GD2-15 and GD2-19.

³ See page GD13-2.

⁴ See pages GD13-4 and GD13-9.

⁵ See page GD13-23.

[8] Because the Minister determined that the Added Party was the contributor's survivor, the Minister denied the Appellant's application at both the initial and reconsideration levels of review.

[9] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[10] The Appellant says that she should receive the survivor's pension because she was still married to the contributor when he died and because the contributor was not in a common-law relationship with the Added Party. The Appellant says the contributor and the Added Party were just roommates.

[11] The Minister says the Added Party is the contributor's survivor. The Minister says the evidence shows the couple had been living together for more than four years at the time of the contributor's death. The Minister also says the contributor declared the Added Party as his common-law partner for tax purposes.

[12] The Added Party says that she should receive the survivor's pension because she was in a common-law relationship with the contributor at the time that he died. She says that when the contributor died, they were engaged and living together in a committed relationship.

What the Added Party must prove

[13] The onus in this appeal is on the Added Party.⁶ The Added Party must prove that she is the contributor's "survivor."

[14] A "**survivor**" is a person who was the common-law partner of the contributor at the time of the contributor's death or, if there is no common-law partner, a person who was married to the contributor at the time of the contributor's death.⁷

⁶ See *Betts v Shannon* (October 22, 2001), CP 11654 (PAB).

⁷ The term "survivor" is defined in section 42(1) of the *Canada Pension Plan*.

What “common-law partner” means

[15] The CPP says a “**common-law partner**” is a person who was cohabiting with the contributor in a conjugal relationship for a continuous period of at least one year at the time of the contributor’s death.⁸ The one-year period is the whole year **immediately** before the contributor’s death. It doesn’t matter if a couple lived together for a whole year (or more) at a different time.⁹

[16] The word “cohabitation” doesn’t mean “co-residence.” This means that two people can cohabit even though they don’t live under the same roof. It also means that two people can live under the same roof but not be cohabiting in a marriage-like relationship.¹⁰

[17] When I am deciding if two people were cohabiting in a conjugal relationship, I have to look at factors like:¹¹

- their living and sleeping arrangements
- their financial arrangements
- their behaviour toward each other privately and in public
- the help they gave each other in the home
- how the community viewed their relationship

[18] A couple doesn’t have to meet all of these factors. And they may meet them in varying degrees. I have to take a flexible approach in deciding whether there was a conjugal relationship at the relevant time.¹²

⁸ See section 2(1) of the *Canada Pension Plan*.

⁹ See *J.R. v Minister of Employment and Social Development*, 2021 SST 113 at paragraphs 8 and 80. While decisions of the Tribunal’s Appeal Division are not binding on me, I find this decision persuasive and I see no reason to depart from it.

¹⁰ This is explained in *Minister of Human Resources Development v Hodge*, 2004 SCC 65.

¹¹ See *McLaughlin v Canada (Attorney General)*, 2012 FC 556. These factors are substantially similar to the factors set out in *Betts v Shannon* (October 22, 2001), CP 11654 (PAB).

¹² See *M v H*, [1999] 2 SCR 3 at paragraphs 59 and 60.

Reasons for my decision

[19] The Added Party was the contributor's common-law partner when the contributor died. This means the Added Party, not the Appellant, is the contributor's survivor. The Added Party is entitled to the survivor's pension.

– The circumstances of the contributor's death

[20] There is conflicting evidence about how the contributor died. The Added Party testified that she was told the contributor had a heart attack. The Appellant testified that the contributor died because he overdosed on methamphetamine. Neither party provided documents to support their evidence.

[21] What wasn't disputed is that the contributor's deceased body was found on the street by a mail delivery person and that the first person the police notified was the contributor's sister.

[22] The circumstances of the death are relevant because the Appellant suggested that the Added Party wasn't a common-law partner because she wasn't bothered by the fact that the contributor hadn't come home the night he died and was one of the last people notified of his death. The Appellant also said the Added Party was only notified because one of the contributor's nieces contacted her. She said the niece knew the Added Party because one was allegedly buying pills from the other.

[23] I haven't put much weight on how or when the Added Party came to learn of the contributor's death. I don't know if the contributor was found with identification on him. Also, if the contributor was struggling with substance abuse (which the Added Party didn't deny), then his lifestyle may well have been one characterized by unpredictable behaviour. In other words, his absence from the home the night he passed away may not have been an unusual event.

– **Living and sleeping arrangements**

[24] There is no dispute between the parties that the contributor and the Added Party shared an apartment and were still living under the same roof at the time of the contributor's death.

[25] The Appellant said that the contributor and the Added Party lived together for only one year and only as roommates.¹³

[26] A common-law relationship can be established with only one year of cohabitation. In any event, the supporting evidence shows the contributor and the Added Party lived together for more than one year. The company that managed their rental apartment confirmed in July 2024 that the contributor and the Added Party had been tenants at the same address continuously since April 1, 2021.¹⁴

[27] Because the Added Party had reported that she began living with the contributor in May 2020 and because credibility is an issue in this appeal, I asked the Added Party where she and the contributor lived before April 2021. She said they were homeless and stayed together at a shelter.

[28] Turning to the sleeping arrangements, the Added Party testified that she and the contributor shared the bedroom in their one-bedroom apartment and had sexual relations.

[29] The Appellant testified that the contributor also slept in her bed and that the contributor told her he slept on the couch at the apartment he shared with the Added Party.

[30] I don't know if the contributor had sex with the Appellant during the one-year immediately before his death. I also don't know what the contributor said to the Appellant, if anything, about his sleeping arrangements with the Added Party. But I

¹³ See page GD2-8.

¹⁴ See page GD13-11.

accept that there was likely some intimacy between the contributor and the Added Party. The one-bedroom apartment is telling.

– **Financial arrangements**

[31] The Added Party acknowledged that she and the contributor didn't own any joint property and didn't have any joint bank accounts or credit cards.¹⁵ She said they split their joint expenses "50/50". She said their joint expenses included their rent, groceries, and mobile phone bills. She said they each had their own mobile phone but split the total costs of the bills.

[32] The Added Party didn't provide any documents to support their equal contribution to expenses. However, not much turns on this. The splitting of expenses "50/50" isn't unique to marriage-like relationships.

[33] However, there is **some** evidence to show that the Added Party and the contributor had financial arrangements that went beyond a roommate type relationship.

[34] First, the evidence shows that the contributor had identified the Added Party as his spouse on his dental care benefit plan by mid January 2021.¹⁶

[35] Second, even though there are no tax returns on file, there is some evidence to show the contributor likely reported his common-law relationship with the Added Party on at least his most recent income tax return.

[36] The day after the contributor's death, the contributor's accountant called Service Canada to report the contributor's death. During that call, the accountant identified the Added Party as the contributor's common-law partner.¹⁷ It's reasonable to infer from this that the contributor likely reported his marital status as common-law on his income tax return for at least the taxation year 2023.

¹⁵ See page GD13-9 and the Added Party's testimony.

¹⁶ See page GD8-3.

¹⁷ See pages GD6-3, GD6-6 and GD13-26 and the Minister's representative's oral submissions.

[37] The Appellant testified that the day the contributor died, he went to his union and put his “insurance money” into his children’s names. She also said that before he made this change, he had previously named his niece as his beneficiary. There is no documentary evidence to support what the Appellant said. So, I haven’t given this much weight.

– **Behavior toward each other privately and in public**

[38] The Added Party testified that she and the contributor were in love with each other and spent much time together. She also said the contributor gave her a ring around their “4th year in” and they had planned to get married.

[39] The Appellant testified that the contributor and the Added Party were just roommates. She said the contributor told her that he asked the Added Party to leave, but she wouldn’t leave. The Added Party denied this. She said the contributor never asked her to leave their apartment and they never ended their relationship.

[40] Neither party filed much in the way of supporting evidence and neither party brought a witness to the hearing.

[41] The Appellant said that she has text messages and Facebook messages from the contributor that say he wanted to get back together with her and that the Added Party was only a friend and a roommate.

[42] The Appellant filed some messages, but not much. Some of the text messages she filed are of little value because they don’t show the dates they were sent.

[43] As an example, one of the contributor’s text messages says:

Just everything. Trying to get my life organized. Long story short I’m not working, can’t work cause I’m injured from work... Can’t get wsib. Can’t get welfare. I haven’t eaten in 3 days. She’s still here and won’t leave (nowhere to go) I’m at my wits end. Got no smokes. My rent is in arrears. I’m ready to throw in the towel. I don’t talk to family. The list goes on too far. I haven’t got 2 nickels...Stressed to the max. Sorry¹⁸

¹⁸ See pages GD1-11 and GD4-14.

[44] The top left corner shows “Tue Feb 18”, but this is likely either Tuesday, February 18, 2025 (which is after the contributor passed away and therefore possibly the date the Appellant took a screen shot of the text or retrieved the message) or February 18, 2020 (the last time before 2025 when February 18 fell on a Tuesday). Either way, the date of “Tue Feb 18” is irrelevant.

[45] Another text message that was allegedly sent from the contributor to the Appellant says “Not interested in relationship or girlfriend, just interested in you.”¹⁹ Again, the Appellant didn’t include the part of the text that shows the date it was sent by the contributor. The document shows the date of “Thu Feb 27”, but again this appears to be either February 27, 2025 (the date the Appellant took a screen shot of the text or retrieved the text) or February 27, 2020 (the last time before 2025 that February 27 fell on a Thursday).

[46] The only text messages the Appellant filed that show the date they were sent are those of April 28, 2023, May 22, 2023 (each person just said “Morning”), and May 26, 2023.

[47] On April 28, 2023, the contributor said he hadn’t been using drugs for a long time and wasn’t drinking much alcohol. He also wrote:²⁰

I just want to be around what’s left of my family. My heart loves u guys so much and I need u guys in my life so much. If in fact we never get back together I’ll be ok as long as u and the kids will be close by when I pass. I love u guys and whatever happens I’m ok with. Always remember I will never stop loving u.

[48] On May 26, 2023, he wrote “U never text never write love letters and such. Lmao” and “Oh my Precious V. M. I miss ur love and tenderness, mostly ur beautiful face gazing at my handsome face. Lol.”²¹

[49] The messages of April and May 2023 support the Appellant’s claim that the contributor wanted to get back together with her – at least during the Spring of 2023.

¹⁹ See page GD4-14.

²⁰ See page GD1-13.

²¹ See page GD1-14.

The messages were sent more than one year before the contributor's death, but nonetheless during the period of time the Added Party says she was in a common-law relationship with the contributor.

[50] These messages show that the contributor was probably not as committed to the Added Party as she claims. Other evidence supports this too. For example, the Added Party acknowledged that, even though the contributor's three sons lived close by (about a 10-minute drive or one bus ride away), she never met any of the sons. She said she only said hello to them on the telephone. When the Added Party was asked why she hadn't met the contributor's sons, she didn't have much of an explanation. She said the contributor didn't get to see his sons very often and that if "I didn't go, then I didn't go."

[51] The Added Party also acknowledged that she didn't meet the contributor's sisters before he died. She said she met his mother and that he met a lot of her family members, including her four grandchildren, her daughter, and her aunt.

– **Help in the home**

[52] The Added Party said that she and the contributor shared the chores in their home. For example, they both did the laundry and they both cleaned up after the meals they shared together.

[53] The Added Party also said that the contributor was working in the last year of his life, but she wasn't. She explained that she made his lunches and usually had dinner ready for him when he got home from work.

[54] I accept the Added Party's evidence. She wasn't prone to exaggeration, and she acknowledged facts that weren't in her favour.

– **How the community and family members viewed the relationship**

[55] The Appellant filed three witness statements to support her position that the contributor and the Added Party were not in a common-law relationship.²²

²² See pages GD4-2 to GD4-3.

[56] I haven't given weight to any of these witness statements.

[57] First, not one of the witnesses signed their statements, either manually or digitally.

[58] Second, all three of the witness statements are embedded in an email sent from the Appellant. There's nothing to show that these statements originated from another email address and there's nothing to show when any of the statements were prepared.

[59] Third, the Appellant didn't bring any of the witnesses to the hearing. So, it was impossible for me to question any of them.

[60] Questioning witnesses can be effective way to test the credibility of the witness. In this case, there's good reason to question the credibility of the witnesses. For example, the contributor's sister (J.) reportedly prepared one of the statements. She said that the family invited the Added Party to the contributor's funeral, but she didn't show. This directly contradicts the Added Party's testimony that one of the contributor's sisters told her that if she went to the funeral she would be escorted out.

[61] The same witness statement also says the contributor and the Appellant were "finally back together." This directly contradicts the Appellant's evidence. The Appellant testified that she and the contributor were **talking** about getting back together. She didn't say they had gotten back together.

[62] I turn now to holidays and special occasions. The Appellant said that the contributor spent every Christmas, Thanksgiving, and Easter with her and their three kids.²³ The Added Party said that she and the contributor spent special events like birthdays together and she said they spent Christmas together at her daughter's home.

[63] It's possible that each party is telling the truth. In other words, it's possible that the contributor spent time with each party during holidays. The Appellant and the contributor shared three children together and so it makes sense the contributor would want to spend time with them during holidays. What's more, the Added Party

²³ See page GD1-4.

acknowledged that the contributor saw his boys at Christmas, and she said she encouraged those visits.

[64] I acknowledge that the Proof of Death Certificate signed by the funeral director identifies the Appellant as the contributor's next-of-kin.²⁴ I also acknowledge that the Added Party didn't attend the contributor's funeral.

[65] I don't know what information the funeral director relied on to determine the Appellant was the contributor's next-of-kin. So, this isn't an important factor in this decision. As for the funeral, the Added Party acknowledged she didn't arrange it or attend it. She explained that she was told that if she went to the funeral, she would be escorted out. Again, I find the Added Party's evidence credible.

– **Weighing the factors together**

[66] The evidence in this appeal is thin. However, it favours a finding of a common-law relationship between the Added Party and the contributor. They shared a one-bedroom apartment for more than three years, the contributor probably identified the Added Party as his common-law spouse on his most recent income tax return, and the contributor had previously identified the Added Party as his spouse on his dental health care plan in 2021.

[67] The contributor may not have been as committed to the relationship as the Added Party had hoped, but this doesn't mean the relationship had ended or didn't exist.

Conclusion

[68] The Appellant isn't a "survivor" as defined the CPP. As a result, she isn't eligible for a CPP survivor's pension.

[69] The Added Party is a "survivor." She is eligible for a CPP survivor's pension.

²⁴ See page GD2-29.

[70] This means the appeal is dismissed.

Shannon Russell
Member, General Division – Income Security Section