



Citation: *LM v Minister of Employment and Social Development*, 2025 SST 996

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: L. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 13, 2024
(issued by Service Canada)

Tribunal member: Selena Bateman

Type of hearing: In person

Hearing date: September 15, 2025

Hearing participant: Appellant

Decision date: September 24, 2025

File number: GP-24-2053

Decision

[1] The appeal is allowed.

[2] The Appellant, L. M., is eligible for the *Canada Pension Plan* (CPP) survivor's pension. The Minister of Employment and Social Development was wrong to cancel the Appellant's survivor's pension. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant was in a relationship with the deceased contributor, R. C.. She says that the common-law relationship began by November 2001. They each maintained their own home. He had cancer and died on September 14, 2007.¹

[4] The Appellant's CPP survivor's pension application was received by the Minister on June 1, 2018. The Minister granted the application in October 2018. Payments began effective November 2017.²

[5] The Appellant then asked for retroactive payments due to alleged erroneous advice that she received years prior. She says she was told she had to wait until the age of 65.³

[6] In September 2024, the Minister changed its decision after an investigation through its integrity services and the erroneous advice/administrative error review. It decided that the Appellant wasn't R. C.'s common law partner because they had separate addresses.⁴

¹ See GD2-286.

² Payments can't begin more than 11 months before a person applies for the pension. See section 72 of the *Canada Pension Plan*.

³ See GD2-257 and 280 to 285.

⁴ See GD2-4 to 7.

[7] The Appellant's survivor's pension was terminated in July 2024. The Minister told her she had to pay back the amount that she had received.⁵ She appealed this decision to the Social Security Tribunal.

What the Appellant must prove

[8] For the Appellant to succeed, she must prove that she is R. C.'s survivor – meaning that she was his common-law partner when he died.⁶

[9] The law says that only one person can be the survivor of a deceased contributor. A common-law partner is a person who was cohabitating with the deceased contributor in a conjugal relationship at the time of his death. The one-year period is the whole year **immediately before** the contributor's death.⁷

[10] The Appellant must prove this on a balance of probabilities (that it is more likely than not).

[11] The Federal Court of Canada in *McLaughlin* listed factors that decision makers can consider in determining whether a person is a common-law partner. These include, but are not limited to:⁸

- **Shelter** – including whether they lived together or slept together, or whether anyone else lived with them or shared accommodations
- **sexual and personal behaviour** – including whether they had sexual relations, maintained an attitude of fidelity to each other, communicated on a personal level, assisted each other with problems or during illness
- **services** – including their roles in household maintenance and performing domestic services

⁵ See GD2-6 to 7. Also see the Minister's submissions on GD5. The Minister alleges an overpayment of \$48,446.37.

⁶ See section 42(1) of the *Canada Pension Plan*.

⁷ See section 2(1) of the *Canada Pension Plan*. Also see *See JR v Minister of Employment and Social Development*, 2021 SST 113.

⁸ See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

- **social** – including whether they participated together or separately in community activities, and their relationship with each other's family members
- **societal** – including the attitude and conduct of the community toward them as a couple
- **support** – including their financial arrangements for the provision of their needs and for the acquisition and ownership of property
- **the conduct of the parties towards children**

Reasons for my decision

[12] I find that the Appellant was R. C.'s common-law partner from September 2006 until his death in September 2007. They cohabitated in a conjugal relationship for more than a year immediately before R. C.'s death.

[13] To explain my decision, I will show how the evidence points to a common-law relationship by at least November 2004. Then I will show how the relationship never ended, even though they didn't live at one shared address.

[14] Some of the evidence in this appeal came from the Appellant's testimony. I found her to be a credible witness. Her story was consistent since she first applied for a survivor's pension and with the documentary evidence within the file.

Applying the factors

– Shelter

[15] The shelter factor supports cohabitation. The reasons for their separate addresses are important. The Appellant explained at the hearing that this was largely had to do with R. C.'s cancer diagnosis and health decline. The Appellant's home-based business and the suitability of their homes were contributing factors in this decision.

[16] It is possible for two people to cohabit even if they don't live under the same roof.⁹ The Appellant didn't need to meet a higher onus to show that she was in a conjugal relationship because they had two addresses.¹⁰ Shelter is only one factor to assess.

[17] The Appellant and R. C. split their time in three homes: hers, his, and a summer trailer. They stayed at each home together regularly. There was no specific schedule.

[18] During the summer months, the Appellant, R. C., and her children lived in a trailer together that he owned.

[19] The Appellant and R. C. owned and maintained their own residential properties. It made sense to them to maintain two homes because of his cancer diagnosis around 2001. They were not sure how his health would be in the following years. They both had a three-bedroom house, about a ten-minute drive away from each other. She had a key to his home and had free access. He knew the code to her home.

[20] The two homes were in the same school catchment zone. While at her home, the children would bus to school. At his home, the children would walk to school. Her children had their own bedrooms in his home and stayed overnight regularly, until around 2006.

[21] Around 2006, the Appellant and R. C. decided to not have the children stay over as much at his home. This decision was made because R. C. started to get very ill. By that time, the children were old enough to stay at her home, without direct supervision. R. C. was described as a very private person, and he didn't want the children witness his declining health. She cared for R. C. during his last year.

[22] The Appellant has run a dance school out of the basement of her home since 2002. The business had a separate entrance. She did choreography for wedding

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

¹⁰ See *LC v Minister of Employment and Social Development*, 2024 SST 114. While not binding, this decision was persuasive.

dances and did dance education. The location of her business also makes sense as to why the two did not share one home.

– **Financial interdependence and shared assets**

[23] The Appellant and R. C. were largely financially independent. This makes sense as they started a relationship later in life after both had been divorced and they owned property.

[24] The Appellant and deceased contributor didn't share a bank account, phone plan, or credit card. They both owned and maintained their own homes. The Appellant ran a dance business from her home. There is no evidence to support that R. C. played a role in her business.

[25] However, other financial factors support a common-law relationship at least by 2004. I put significant weight on the financial arrangements that R. C. made for the Appellant and her children.

[26] The Appellant and her children were listed on R. C.'s extended health care as of November 2004. She says that this wasn't done prior, as she had extended health care before this. This makes sense, as she told me she was working for an employer between 2002 to 2004 in addition to being self-employed.

[27] After R. C.'s death, the Appellant received a vehicle and the trailer that they spent summers in as a family. This was the trailer that they lived in together during the summers.¹¹

[28] The Appellant was named as a common-law partner in R. C.'s survivor pension information form in 2004. This never changed. She received a beneficiary cheque from Great West Life in October 2007 after his passing.¹² This shows that R. C. viewed her as his common-law partner. He didn't change the beneficiary prior to his death.

¹¹ See GD2-300 and 302.

¹² See GD2-322 and 323.

– **The Minister’s arguments on a lack of shared assets**

[29] The Minister argues that if the Appellant and R. C. were in a common-law relationship for the length of time alleged, then they would have likely begun to combine their possessions and assets after six years. The Minister relies on a General Division decision called *BS*.¹³

[30] I was not persuaded that I should rely on the *BS* decision. The facts and findings are not like the appeal before me.

[31] In *BS*, the Tribunal Member didn’t find the Appellant credible. There were inconsistencies in the Appellant’s testimony, and all the *McLaughlin* factors addressed didn’t support a common-law relationship. The Appellant didn’t have an explanation as to why they didn’t share assets.

[32] *BS* isn’t like the appeal before me, except that the Appellant and deceased contributor had separate addresses. I found the Appellant in this file credible. While the Appellant wasn’t listed on the trailer ownership paperwork, the Appellant received the trailer that they lived in together and a vehicle after R. C.’s death. If anything, this shows that the Appellant and R. C. did begin to comingle their possessions. In this file, the Appellant did have a plausible explanation for the decision to not fully share assets.

[33] Lastly, the Appellant doesn’t need to prove that she was in a common-law relationship with R. C. for six years. She only needs to prove that she was in a relationship with him between September 2006 to September 2007.

– **Conduct concerning children**

[34] This factor strongly supports a common-law relationship. R. C. had a strong relationship with the Appellant’s children, which continued over time, including the year of his death. His actions were those of a caring parent, despite not holding the title of “Dad.” It is understandable that he would want to shield the children from his worsening health during the last year of his life.

¹³ The Minister cited *BS v Minister of Employment and Social Development*, 2024 SST 1203.

[35] As I mentioned before, the Appellant's children had their own bedrooms at the R. C.'s home. Before his health decline around 2006, R. C. would take care of the children when she wasn't home, including when she was out of town for work. He would take care of them in both homes. He also had some level of communication and co-parenting relationship with the children's biological father.

[36] The appeal file contains a letter from the Appellant's children. They wrote that the R. C. was part of their lives since they were young. When they traveled to Florida in the winter, R. C. would drive back to Canada with the Appellant's son. The Appellant would fly back with her daughter.¹⁴

– **Personal behaviour and societal factors**

[37] The Appellant cared for R. C. during his last year. This factor supports a common-law relationship. They were faithful to each other. They ate together and helped each other with problems and during illness.

[38] In June 2007, the Appellant spent more time at R. C.'s home caring for him prior to him passing away.¹⁵ At the hearing she told me that she brought him to the hospital for his last days. She helped with funeral arrangements, which she says were done in advance of his death. She cared for him during his last months, along with R. C.'s son, Timothy.

[39] The file documents support that the Appellant and R. C. were recognized as a couple. The Appellant testified that after the R. C.'s death she continued to purchase Christmas presents for Timothy's children.

– **Filing taxes and other forms**

[1] The Appellant and R. C.'s tax filing didn't support that they were in a common-law relationship. It is only one factor in a list of many. On balance, the totality of the factors support a common-law relationship.

¹⁴ See GD8.

¹⁵ See GD8-2.

[2] The Appellant and R. C. filed their taxes separately. She filed as divorced from 1999 to 2021. He filed as single or divorced from 1999 to 2007.¹⁶ I asked her why at the hearing. She said that she was legally divorced so thought she should file that way.

[40] R. C. applied for an Old Age Security pension. He wrote that he was divorced. He didn't fill in the section that asks for a common-law partner.¹⁷ She didn't know why he completed this form how he did.

– The evidence from R. C.'s son

[41] R. C.'s son (Timothy) completed a questionnaire for the Minister. He wrote that he didn't know that R. C. and the Appellant were cohabitating.¹⁸ He noted that they took holidays together and attended functions together. He wrote that they did not live together and were not in a common-law relationship prior to his death. He didn't know if they provided financial support to each other. Timothy noted that he wasn't sure of the definition of a "marriage like state."¹⁹

[42] I gave Timothy's evidence little weight. The term "common-law relationship" isn't defined in the Minister's questionnaire. This term has a specific meaning under the CPP. Without knowing the meaning, Timothy's opinion about the relationship isn't persuasive.

Conclusion

[43] I find that the Appellant is eligible for a CPP survivor's pension. She does not have to pay back what she already received.

[44] The Minister's decision was wrong. The Minister focused largely on the fact that the Appellant and R. C. had two separate addresses. No two common-law relationships are organized in the same way. This is why each of the factors need to be considered and weighed.

¹⁶ See GD-106, 109, 1151, and 170 to 188. See the Minister's argument in GD5-11.

¹⁷ See GD2-341.

¹⁸ See GD2-84.

¹⁹ See GD2-83 to 84.

[45] Issues of possible administrative error and/or erroneous advice are in the hands of the Minister.

[46] My jurisdiction is about whether the Appellant is a survivor as defined in the CPP and entitlement to the survivor's pension only up to the maximum retroactivity stated in the CPP. A pension, once approved, can't be retroactively paid more than 11 months before the application date. The survivor's pension payment starts November 2017.

[47] The appeal is allowed.

Selena Bateman
Member, General Division – Income Security Section