



Citation: *JD v Minister of Employment and Social Development*, 2026 SST 105

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** J. D.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Viola Herbert

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**Decision under appeal:** General Division decision dated September 8, 2025  
(GP-25-298)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** In writing

**Decision date:** February 17, 2026

**File number:** AD-25-789

## Decision

[1] The appeal is allowed. The Appellant is entitled to the Canada Pension Plan (CPP) survivor's pension.

## Overview

[2] The Appellant and the late D. G. were married in September 1997. They had two daughters together and were divorced in June 2013.

[3] D. G. contributed to the CPP, and I will refer to him from now on as the Contributor. He died of cancer in January 2024, and the Appellant applied for a CPP survivor's pension in May 2024.<sup>1</sup> She said that she and the Contributor were in a common-law relationship from December 2020 until his death.

[4] Service Canada, the Minister's public-facing agency, refused the application because, in its view, the Appellant had not been cohabiting with the Contributor in a conjugal relationship for at least a year when he died.

[5] The Appellant appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It agreed with the Minister that the Appellant wasn't entitled to the survivor's pension. It found that, although the Appellant and the Contributor were close at the end, they kept their finances largely separate and declared themselves "divorced" on their income tax returns.

[6] The Appellant then submitted new evidence and asked the Appeal Division for permission to appeal. Last December, one of my colleagues on the Appeal Division allowed the Appellant's appeal to proceed.

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<sup>1</sup> See the Appellant's application for the CPP survivor's pension and child(ren)'s benefit dated stamped May 21, 2024, GD1-81.

[7] On January 20, 2026, the Minister submitted a letter informing the Tribunal that it had changed its position.<sup>2</sup> It asked the Tribunal to issue a decision recognizing the Appellant as the Contributor’s survivor.

## Issue

[8] For the Appellant to succeed, she had to prove that she was in a common-law relationship with the Contributor at the time of his death.

## Analysis

[9] The Appellant bore the burden of proving that she was entitled to the survivor’s pension.<sup>3</sup> In my view, the Appellant met that burden. She may not have been living under the same roof as the Contributor when he passed away in January 2024, but she still met enough of the criteria necessary to qualify her as his survivor.

[10] 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>

[11] 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 one-year period must immediately precede the contributor’s death.<sup>6</sup>

[12] The *Canada Pension Plan* doesn’t define “conjugal” relationship, but the courts have said that it is characterized by factors such as:

- Shelter — whether the parties lived under the same roof;

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<sup>2</sup> See the Minister’s letter dated January 20, 2026, AD3.

<sup>3</sup> See *Canada Pension Plan*, section 44(1).

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

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

<sup>6</sup> See *Redman v Canada (Attorney General)*, 2020 FCA and *J.R. v Minister of Employment and Social Development*, 2021 SST 113.

- 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
- Support — whether the parties shared assets and finances.<sup>7</sup>

[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. For instance, cohabitation doesn't necessarily mean co-residence. It is possible for a couple to cohabit, even if they don't live under the same roof.<sup>8</sup> Other cases have recognized that there can be valid medical, educational, or vocational reasons for a common-law couple to live separately, provided they don't intend to end their relationship.

[14] Having reviewed the record, I am satisfied that the Appellant and the Contributor rekindled their relationship in 2019 and were, for all intents and purposes, common-law partners when he died. I base this conclusion on the following factors:

- They presented themselves as a couple in family and social settings.<sup>9</sup>
- They travelled together.<sup>10</sup>
- They had a sexual relationship with each other.<sup>11</sup>
- The Appellant cared for the Contributor during his final illness.<sup>12</sup>

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

<sup>8</sup> See *Hodge*, *ibid*.

<sup>9</sup> See the letter dated August 22, 2024 by N. G., GD2-13. I acknowledge that the Appellant's adult daughter is far from a disinterested observer, but I nonetheless found her account persuasive.

<sup>10</sup> See itinerary for flights to Panama City (GD2-6), Cancun (GD2-7), Punta Cana (GD2-9), and Playa Del Carmen (GD2-80).

<sup>11</sup> See selected texts between the Appellant and the Contributor, GD2-29.

<sup>12</sup> See letter by Dr. John Neary dated August 24, 2024, GD2-11.

- The Contributor's death notice identified him as the Appellant's "husband."<sup>13</sup>
- They were discussing remarriage with their pastor.<sup>14</sup>

[15] An important contextual factor in this case is that the Appellant and Contributor were once married. When they reconciled, they already had well-established separate homes and finances and, like many people who come together in late middle age, did not see the need to immediately co-mingle every aspect of their lives.

[16] That said, I was struck by the fact that, in November 2023, the Appellant contributed \$10,000 towards the Contributor's mortgage after receiving an inheritance from her mother.<sup>15</sup> It seemed to me that this act, which occurred a year before the Contributor's cancer diagnosis, went far beyond what someone involved in a typical "boyfriend-girlfriend" relationship would do. It implied instead a level of trust and intimacy more characteristic of a marriage — or something like one.

## Conclusion

[17] I find that the Appellant is the Contributor's survivor. According to the *Canada Pension Plan*, CPP survivor's pension payments start one month after the month in which a contributor passed away. That means the Appellant's survivor's pension begins effective February 2024.<sup>16</sup>

[18] The appeal is allowed.



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Member, Appeal Division

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<sup>13</sup> See Egan Funeral Home obituary card, GD3-3.

<sup>14</sup> See email dated August 16, 2024 by Jeremy Lowther, pastor, Caven Presbyterian Church, GD2-12.

<sup>15</sup> See Interac money transfer confirmations dated November 1, 2023, GD2-27 and GD2-47, as well as CIBC mortgage statement dated November 2, 2023, GD2-68).

<sup>16</sup> See section 72(1)(b) of the *Canada Pension Plan*.