



Citation: *KW v Minister of Employment and Social Development and Estate of GV*, 2025 SST 1476

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: K. W.

Respondent: Minister of Employment and Social Development

Respondent's representative: A. G.

Added Party: Estate of G. V.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 13, 2025 (issued
by Service Canada)

Tribunal member: Carol Wilton

Type of hearing: Teleconference

Hearing date: October 16, 2025

Hearing participants: Appellant
Added Party
Minister's representative

Decision date: December 18, 2025

File number: GP-25-991

Decision

[1] The appeal is dismissed.

[2] The Appellant, K. W., lived common-law with G. V., the deceased contributor (contributor), from 2007 to his death on April 29, 2021. In her Statutory Declaration of Common-law Union, the Appellant said 2007 is the date she and the contributor began living together.¹

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

Overview

[4] The Appellant is 82 years old. In November 2008, she began receiving an Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS). She received both at the single rate.

[5] The contributor was born in August 1951 and started collecting the GIS as a single person in 2016.²

[6] In May 2021, the Appellant applied for a death benefit and a survivor's pension.³ She stated that she was the surviving common-law partner of the contributor.

[7] The Appellant's application for a survivor's pension triggered an investigation into her marital status with the contributor.⁴ This was because on other government documents she described herself as divorced.

¹ See GD2-25.

² See GD2-33.

³ See GD8-1 and 7.

⁴ See GD8-22.

[8] The GIS is paid to a person who receives the OAS pension and who has little or no other income.⁵ If the pensioner is married or in a common-law relationship, then their entitlement to the GIS is based on the couple's combined income.⁶

[9] In November 2023, the Minister informed the Appellant that there was an overpayment of \$18,309.29 on her GIS account.⁷

[10] The Appellant asked for a reconsideration of that decision.

[11] In February 2025, the Minister stated on reconsideration that the amount owing was the overpayment she had incurred between November 2011 and April 2021.⁸

[12] The Appellant appealed the reconsideration decision to the Social Security Tribunal's General Division (Tribunal).

[13] After she was notified of the overpayment, the Appellant stated that she and the contributor were friends rather than common-law spouses.

[14] The Minister submits that the Appellant was the contributor's common-law spouse from May 2007 to April 29, 2021. Her overpayment began in July 2010 and ended in April 2021. The overpayment balance as of October 30, 2025, was \$15,564.81.⁹

What the Appellant must prove

[15] For the Appellant to succeed, she must prove that she was not in a common-law relationship with the contributor.

⁵ There are other requirements, but they aren't an issue in this appeal.

⁶ See section 12 of the *Old Age Security Act*.

⁷ See GD2-90.

⁸ See GD2-98.

⁹ See GD14-2.

Matters I have to consider first

The Appellant's right to appeal the reconsideration decision

[16] The reconsideration decision letter of February 13, 2025, didn't give the Appellant notice of her right to appeal the reconsideration decision to the Tribunal.

[17] In response to an enquiry from the Tribunal, an agent of the Minister stated that the reconsideration decision letter should have given the Appellant notice of her right to appeal. The appeal was "at level" and could proceed.¹⁰

Case conference

[18] On August 19, 2025, I held a case conference. The main purpose was to clarify the amount of the claimed overpayment. There was a conflict between two letters from Service Canada about the amount owing. A letter of November 2023 stated that the Appellant owed \$16,437.29. In February 2025, Service Canada wrote that the Appellant owed \$18,309.29.¹¹ Both documents left blank the terms of the proposed repayment schedule.

I accepted documents after the hearing

[19] The hearing took place on October 16, 2025. The Appellant had a friend who was unable to attend the hearing. But the friend wanted to submit a written statement. I gave the friend until October 31, 2025, to submit it.

[20] In addition, at the hearing the Minister's representative agreed to provide printouts of the GIS payments to the Appellant, along with the claimed incomes of her and the contributor. I also asked for an explanation of how the Minister arrived at \$15,564.81 as the amount of the Appellant's claimed overpayment. I said I would continue the hearing at a later date if it was necessary.

¹⁰ See correspondence of July 21, 2025.

¹¹ See GD2-90, 97.

[21] I accepted documents from both parties and allowed them each 14 days, to November 14, 2025, to review the other party's submissions and respond if they wished.

Reasons for my decision

What the law says

[22] The OAS Act defines common-law partners this way: common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year.¹²

[23] When I am deciding whether two people were cohabiting in a conjugal relationship, I have to look at factors like these:¹³

- marital status on various documents
- shared use of assets
- common residence
- funeral arrangements
- sexual relationship
- care for one another when ill
- 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

Evidence for and against a common-law relationship

[24] The Appellant showed some confusion over time about the timeline of her relationship with the contributor and how she documented it. She gave several different answers to questions about when she and the contributor started living together.¹⁴ In addition, she said she didn't know that providing an inaccurate statement about her

¹² See section 2 of the *Old Age Security Act*.

¹³ See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

¹⁴ See GD2-87.

marital status could lead to penalties.¹⁵ Further, she wasn't aware that she was receiving the survivor's pension. She said at the hearing that she didn't remember applying for it.

[25] The Witness Statement of the Appellant's friend, M. L., stated that the Appellant was not a "detail person". Also, the Appellant did not think through the consequences of her actions.¹⁶

Evidence for a common-law relationship

[26] The following documents stated that the Appellant was the common-law spouse of the deceased:

- Service of Celebration for the Appellant and the contributor, August 2009 (commitment ceremony)¹⁷
- her application for the OAS in March 2008¹⁸
- her 2021 applications for the death benefit and the survivor's pension.¹⁹ She got both.
- the funeral service contract²⁰
- the contributor's death certificate²¹
- her Statutory Declaration of Common-law Union, June 2021²²
- the deceased's obituary²³

[27] The Appellant's tax returns for 2021, 2023, and 2024 listed her as a widow.²⁴

¹⁵ See GD2-55.

¹⁶ See GD15-4.

¹⁷ See GD2-27.

¹⁸ See GD2-4.

¹⁹ See GD8-1, 7.

²⁰ See GD8-5.

²¹ See GD8-4.

²² See GD2-25.

²³ See GD2-50.

²⁴ See GD8-12-17.

[28] In August 2023, the Appellant stated that over the years, the contributor became progressively ill with a lung condition. She cared for him.²⁵

[29] At the hearing, the Appellant testified about her relationship with the contributor:

- They shared a 1500-square foot home that she owned.
- Each had their own bedroom.
- The contributor didn't pay rent.
- They socialized with both her family and his.
- People knew about the commitment ceremony in August 2009 and assumed they were married.
- She gave the contributor a ring at the commitment ceremony.
- He would have Christmas dinner with her and her children.
- She and the contributor exchanged presents.
- He did the outside work, like cutting the grass and providing wood.
- She allowed him to drive her car and insured him for about three years. After that, he had his own vehicle.
- His mother telephoned the Appellant for news in preference to the contributor.
- His family kept in touch with her after he died.
- She looked after his dog after he died.

Evidence against a common-law relationship

[30] At the hearing, the Appellant testified that she and the deceased were just good friends:

- At some point, she wasn't sure when, they stopped having sex.
- Their finances were completely separate.

²⁵ See GD2-92.

- The contributor didn't have a will or life insurance.
- He had almost no property.
- She needed help with the funeral expenses. It seems she thought that she could only get the CPP death benefit if she were the common-law spouse. The lady at the funeral home filled in the documents and the Appellant just signed them.

[31] In November 2022, the Appellant stated on a questionnaire that she and the contributor had no rental agreement or joint bills.²⁶

[32] In August 2023, the Appellant stated that she and the contributor filed their taxes separately.²⁷

[33] In June 2024, the Appellant stated that the obituary naming her as the contributor's wife was written by a friend in the community. She didn't remember whether she proofread it.²⁸

[34] In October 2025, the Appellant's witness stated that the Appellant and the contributor "led mostly separate lives."²⁹

Documents showing the relationship wasn't common-law

[35] The Appellant's 2009, 2011, and 2012 applications for renewal of the GIS said she was divorced.³⁰ So did a May 2021 notice from Revenue Canada.³¹

The Appellant was in a common-law relationship with the contributor

[36] On balance, I find that the evidence supports a common-law relationship. The parties lived together. They had a sexual relationship at least initially. She was close to the contributor's mother. The community assumed that she and the contributor were a couple. After the contributor died, the Appellant applied for the death benefit and the

²⁶ See GD2-52.

²⁷ See GD2-93.

²⁸ See GD2-87.

²⁹ See GD15-3.

³⁰ See GD2-5.

³¹ See GD9-4.

survivor's pension. She identified herself as a widow on tax returns in three of four years beginning in 2021.

The Minister's explanation of the overpayment

[37] In October 2025, the Minister's representative submitted a table of payments the Minister had made to the Appellant from November 2008 (when she first began collecting the GIS) to April 29, 2021. A review showed that the Appellant had an overpayment of \$19,861.29 from July 2010 to April 2021 and an underpayment of \$1552 for November 2008 to June 2010. This left an overpayment of \$18,309.29.³²

[38] The Appellant received the CPP death benefit. The Minister had included this in her income. But it was now removed from that category, resulting in an underpayment of \$1872. This was applied to the overpayment, leaving \$16,437.29 remaining.³³

[39] In March 2025, the Minister began recovering the overpayment by applying the recovery rate of \$218.12 per month for four months, from March 2025 to June 2025 (4 x \$218.12 = \$872.48). The Minister stopped collecting the monthly amount when it received the Appellant's appeal. This left an overpayment balance of \$15,564.81.³⁴

[40] The Appellant's GIS payments varied depending on whether she was the common-law partner of someone who didn't receive an OAS pension (November 2008 to August 2016), or the common-law partner of someone who did receive an OAS pension (September 2016 to April 2021).

[41] The Appellant raised no issues with the Minister's calculations.

³² See GD14-2.

³³ See GD14-7.

³⁴ See GD14-7.

The law says that excess benefits must be repaid to the government

[42] The law says that if a person receives a benefit payment that they aren't entitled to, or if a person receives a benefit payment that is more than they are entitled to, then the person must repay the money to the government.³⁵

I can't cancel or reduce an overpayment

[43] I am sympathetic to the Appellant's circumstances.

[44] But I can't make decisions based on compassion. The Minister has discretion, in certain circumstances, to forgive (cancel) all or part of an overpayment.³⁶ However, I don't have that discretion. This means that only the Minister (and not this Tribunal) can cancel or reduce an overpayment for reasons like undue hardship.

[45] The Appellant can contact the Minister to explain her financial circumstances.

Conclusion

[46] The Appellant was in a common-law relationship with the contributor from 2007. That relationship continued until the contributor passed away in April 2021.

[47] This means that the Appellant wasn't eligible for the GIS as a single pensioner from during that period.

[48] This means the appeal is dismissed.

Carol Wilton

Member, General Division – Income Security Section

³⁵ See Section 37(1) of the *Old Age Security Act*.

³⁶ See *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.