



Citation: *MB v Minister of Employment and Social Development*, 2023 SST 1676

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** M. B.

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

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**Decision under appeal:** General Division decision dated March 15, 2023  
(GP-22-979)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Videoconference

**Hearing date:** November 10, 2023

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

**Decision date:** November 23, 2023

**File number:** AD-23-535

## Decision

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

## Overview

[2] The Appellant was in a relationship with the late C. M., a contributor to the CPP. On November 4, 2021, while working at a sporting goods store, C. M. (who I will refer to as the Deceased Contributor) was murdered during a robbery.

[3] Later that month, the Appellant applied for a CPP survivor's pension. In her application, she said that, at the time of his death, she had been living with the Deceased Contributor since April 15, 2021.<sup>1</sup>

[4] The Minister refused the application after determining that the Appellant had not been in a common-law relationship with the Deceased Contributor when he died. The Appellant appealed the Minister's decision to the Social Security Tribunal.

[5] The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It decided that the Appellant did not qualify for the survivor's pension because she had been living with the Deceased Contributor for less than 12 consecutive months when he passed away.

[6] The Appellant then applied for permission to appeal to the Appeal Division. Earlier this year, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. I then held a hearing to discuss her claim in full.

[7] Now that I have considered submissions from both parties, I have concluded that the Appellant is not eligible for the survivor's pension. The evidence shows that, while the Appellant and the Deceased Contributor had a longstanding relationship, they did not cohabit during the entire year before the latter's death.

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<sup>1</sup> See the Appellant's application for the CPP survivor's and/or children's benefit dated November 16, 2021, GD2-4.

## Preliminary Matter

[8] In December 2022, the law governing the appeals to the Social Security Tribunal changed.<sup>2</sup> Under the new law, the Appeal Division, once it has granted permission to proceed, must now hold a *de novo*, or fresh, hearing about the same issues that were before the General Division.<sup>3</sup> As I explained at the outset of the hearing, that meant I would not be bound by any of the General Division's findings. I also made it clear that I would be considering all available evidence, including new evidence, about whether the Appellant was entitled to the CPP survivor's pension.

## Issue

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

## Analysis

[10] The Appellant bore the burden of proving that she was in a common-law relationship with the Deceased Contributor when he died on November 4, 2021.<sup>4</sup> I have reviewed the available evidence, and I have concluded that she did not meet that burden. On balance, the evidence indicates that the Appellant and the Deceased Contributor split up in June 2020 and did not reconcile until February 2021.

[11] I don't question the Appellant's credibility, but her appeal must still fail. That's because there simply wasn't enough evidence to show that she and the Deceased Contributor were in a common-law relationship in the months immediately before February 2021.

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<sup>2</sup> See section 58.3 of the *Department of Employment and Social Development Act*. This appeal is subject to the new law, because the Appellant's application for permission to appeal was filed with the Tribunal on May 17, 2023, after the new law came into force.

<sup>3</sup> The Appeal Division was previously restricted to considering three types of error that the General Division might have made in coming to its decision.

<sup>4</sup> See *Canada Pension Plan*, section 44(1).

## **A survivor must have been married or in a common-law relationship with a deceased contributor**

[12] 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>5</sup>

[13] 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>6</sup> The CPP doesn't contain a definition for the term "conjugal relationship," but the Federal Court of Appeal has said that it generally depends on these factors:

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

[14] All the characteristics of a conjugal relationship may be present in varying degrees, but not all are necessary for the relationship to be conjugal.

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<sup>5</sup> See *Canada Pension Plan*, section 42(1).

<sup>6</sup> See *Canada Pension Plan*, section 2(1).

<sup>7</sup> See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

## **The survivor must have continuously cohabitated with a deceased contributor in the year leading up to death**

[15] The Appellant argued that a couple doesn't necessarily need to live together to be in a common-law relationship. In doing so, she may have been relying on two cases — one from the Appeal Division called *J.R.* and another from the Federal Court of Appeal called *Beaudoin*.<sup>8</sup>

[16] However, neither of these cases are much help to the Appellant. In a case called *Redman*, the Federal Court of Appeal overturned *J.R.* because the Appeal Division made a legal error in citing *Beaudoin* for its definition of the term, “common-law partner.”<sup>9</sup> The Court said that *Beaudoin* only addressed the term in passing and, moreover, did not subject it to a full statutory interpretation in the context of a survivor's pension claim.

[17] The Court returned *Redman* to the Appeal Division, which considered the text, context, and purpose of the term “common-law partner” as set out in section 2(1) of the *Canada Pension Plan*.<sup>10</sup> In the end, the Appeal Division concluded that, 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. Although I am not bound to follow a decision of another member of the Appeal Division, I find my colleague's analysis in this case to be persuasive.

## **The Appellant wasn't cohabiting with the Deceased Contributor in a marriage-like relationship during the entire final year of his life**

[18] Looking at the evidence as a whole, I am satisfied that the Appellant and the Deceased Contributor were not common-law partners at the time of the latter's death. I acknowledge that the two had a deep and long-lasting relationship, but I conclude that

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<sup>8</sup> See *J.R. v Minister of Employment and Social Development*, 2019 SST 1357 and *Beaudoin v Canada (Minister of National Health and Welfare)*, 1993 CanLII 2961 (FCA), [1993] 3 FC 518.

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

<sup>10</sup> See *J.R. v Minister of Employment and Social Development*, 2021 SST 113.

they were separated between June 2020 and February 2021. I base this conclusion on the following factors:

– **The Appellant swore in two statutory declarations that she and the Deceased Contributor cohabited for less than a year**

[19] Cohabitation — living under the same roof — is a key element of the definition for a common-law relationship. Since applying for the survivor’s pension, the Appellant has twice sworn under oath that she lived with the Deceased Contributor for a continuous period of less than a year before his death:

- In December 2021, the Appellant declared that she and the Deceased Contributor lived together from April 15, 2021 to November 4, 2021;<sup>11</sup>
- In August 2023, the Appellant declared she and the Deceased Contributor lived together from February 1, 2021 to November 4, 2021.<sup>12</sup>

[20] Declarations such as these don’t decide matters by themselves, but they are strong evidence that the Appellant didn’t share a residence with the Deceased Contributor until either seven or nine months before his death. Either way, they suggest that the one-year requirement was not met.

– **The Appellant and the Deceased Contributor broke up in June 2020**

[21] The Appellant and the Deceased Contributor were involved with each other for several years, but that does not mean they were in a common-law relationship for the entire time. The evidence indicates that they broke up in June 2020.

[22] The Appellant testified that she and the Deceased Contributor had an “on and off again” relationship. They met in 2013 and started living together around February 2014 at his apartment on X. the Deceased Contributor’s elder daughter and her boyfriend lived in the same apartment at the time, and it caused tension. In December 2015, the Appellant moved to another apartment in the same building in the first of what she

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<sup>11</sup> See the Appellant’s Statutory Declaration of Common-Law Union dated December 6, 2021, GD2-9.

<sup>12</sup> See the Appellant Statutory Declaration of Common-Law Union dated August 4, 2023, AD2-20.

described as “cooling off” periods. They resumed cohabiting in May 2016, after the Deceased Contributor’s daughter moved out.

[23] In June 2018, after another period apart, the Appellant and the Deceased Contributor moved into a townhouse at on X. By that time, the Deceased Contributor’s younger daughter had moved in. The Appellant found herself taking on the role of the girl’s mother when her father was away for weeks at a time working in the oilfields. The responsibility began to stress her out. She wanted a home of her own. She found employment as a job coach and saved up enough to put a down payment on a house in Yellowhead County. In June 2020, she moved out.

[24] This account tells me that the Appellant and the Deceased Contributor definitively broke up in the summer of 2020. They no longer lived together and, as we will see, they had only sporadic contact in the following months.

– **The Appellant and the Deceased Contributor lived separate lives from June 2020 to February 2021**

[25] Two people can cohabit or be in a common-law relationship even though they do not live under the same roof. A common-law relationship ends “when either party regards it as being at an end and by his or her conduct has demonstrated in a convincing manner that this particular state of mind is a settled one.”<sup>13</sup>

[26] In this case, the evidence suggests that the Appellant intended to end her relationship with the Deceased Contributor in the summer of 2020. Her actions indicate that she wanted more than just a “cooling off period.” Not only did she buy a house of her own, she also opened utility accounts in her name only and notified her bank and other service providers of a change in address.<sup>14</sup> She started dating other people, although it’s not clear whether the Deceased Contributor did so too.

[27] There is no documentary evidence of financial interdependence from the summer of 2020 until February 2021. The Appellant provided bank statements with handwritten

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<sup>13</sup> See *Hodge v Canada (Minister of Human Resources Development)*, 2002 FCA 243.

<sup>14</sup> See Alberta Workers Compensation Board questionnaire — Statutory Declaration and Claim, Adult Interdependent Partner, completed by the Appellant on November 4, 2021, GD6-57.

notes indicating shared expenses, but they all had dates from before June 2020 or after February 2021 — times when no one disputes that she and the Deceased Contributor were living together.

[28] There is an invoice on file for car repair addressed to the Deceased Contributor.<sup>15</sup> The Appellant said that it was proof that the Deceased Contributor helped maintain her vehicle but because of the way in which the date is written, I can't tell if the repair happened on April 8, 2020, when the Appellant and the Deceased Contributor were still living together or on August 4, 2020, after the relationship ended. In any case, I don't see how the Deceased Contributor occasionally helping out the Appellant can be characterized as financial interdependence.

[29] The Appellant testified that she and the Deceased Contributor resumed their relationship shortly after she moved out. In July 2020, the Deceased Contributor was laid off from his job in the oilfields. Suddenly, he didn't have to leave town for extended periods. He got a job in a sporting goods store. He frequently came to her house to visit. He came over to fix things. If she needed help, she knew that she could call him.

[30] There is a Blue Cross insurance card on file.<sup>16</sup> It shows that the Deceased Contributor was insured through his employment with X, where the Appellant said he started after his layoff. The card names the Appellant as a dependent, but it has no date on it. So, I can't be sure whether the Deceased Contributor listed the Appellant when they were living apart or after they resumed a relationship in February 2021.

[31] I don't doubt that the Appellant and the Deceased Contributor stayed in touch after June 2020. After all, there was a history between them. But that doesn't mean they immediately resumed a common-law relationship.

[32] The Appellant said that she and the Deceased Contributor did not get together during the Christmas holidays, nor did they exchange gifts. She said that they hung out a few times at her place and occasionally had sex, but this does not point to a

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<sup>15</sup> See X invoice dated "04/08/2020" at GD6-95.

<sup>16</sup> See Blue Cross insurance card, GD2-192.



committed relationship or anything resembling a common household. At most, it suggests a casual relationship.

[33] In all, the conduct of the Appellant and the Deceased Contributor between June 2020 and February 2021 does not suggest two people who were cohabitating in a conjugal relationship. This means that the Appellant falls short of the 12 months needed to establish a common-law relationship.

**– The Appellant and the Deceased Contributor didn't resume living together until February 2021**

[34] The Appellant and the Deceased Contributor eventually reconciled, but it didn't happen until February 2021 — only nine months before the Deceased Contributor's death.

[35] The Appellant unexpectedly got pregnant in February 2021. She said that's when she and the Deceased Contributor started discussing common living arrangements. At that point, the Deceased Contributor was in a rental whose lease he couldn't break, so they went back and forth between residences. By April 2021, he was free, and that's when he came to live with the Appellant at her house. He was in a new job that he loved. His younger daughter was about to go to college in Edmonton. It looked like he was back on his feet.

[36] The Appellant insisted that she and the Deceased Contributor were already common law when she got pregnant, but I think that's unlikely. I think it is more likely that she and the Deceased Contributor, having rekindled their relationship on a casual basis, got serious when they discovered they would be having a child. It was this milestone that led them to resume cohabitation and enter into a marriage-like relationship one more time. However, it came too late for the Appellant to qualify for a survivor's pension under the terms of the CPP.

**– Text messages show the Deceased Contributor wasn't cohabiting with the Appellant for the entire year preceding his death**

[37] I see further evidence that the Appellant and the Deceased Contributor were separated for most of the period between June 2020 and February 2021. The Appellant submitted an extensive record of texts that she and the Deceased Contributor exchanged from June 2020 to April 2021.<sup>17</sup> She did so in an apparent bid to show that she and the Deceased Contributor remained close after she moved out of their shared townhouse in June 2020. The texts show that the Appellant and Deceased Contributor remained in contact, but they also demonstrate that the two were essentially living separate lives during most of the period in question.

[38] I was most struck by what I was not supposed to see. The Appellant attempted to redact some of the texts with a black marker, supposedly for privacy reasons. However, I was still able to read the texts, even though they were blacked out. They revealed that the Appellant and the Deceased Contributor did not truly get back together until well after the Appellant said they did. For example:

- On December 29, 2020, the Appellant asked the Deceased Contributor if he had “met anyone” over the holidays. He replied, “Nope.”
- On January 18, 2021, the Appellant wrote, “I know I don't talk to you much.”
- On January 20, 2021, the Appellant wrote, “I'd love for you to come over but might have to wait until ex moves out or working.” The Deceased Contributor replied, “OK let me know when he's gone.”
- On January 25, 2021, the Deceased Contributor asked the Appellant, “When's captain [presumably the Appellant's ex-boyfriend] movin?” The Appellant replied, “Hopefully the weekend feb 1st at the latest.”

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<sup>17</sup> See texts between the Appellant and the Deceased Contributor from June 1, 2020 to April 1, 2021, AD8-34 to AD8-151.

- On January 31, 2021, the Appellant wrote, “Sorry about that. I regret not giving myself time before hopping in another relationship. It was dumb and desperate.”
- On February 6, 2021, the Appellant invited the Deceased Contributor to her home: “You haven’t seen the place yet.” She proceeded to give the Deceased Contributor directions.
- On March 1, 2021, the Appellant told the Deceased Contributor that she was pregnant.

[39] Taken as a whole, the texts indicate that the Appellant and the Deceased Contributor did not see each other in person much, if at all, from June 2020 to February 2021. They suggest that the Appellant was living with another man for much of that period. They also indicate that there was a three-month period, from September 24, 2020 to December 26, 2020, in which they had no apparent contact. Only after the holidays did they begin to revive their relationship, and not until April 2021 did they move in together once again.

## Conclusion

[40] This was a hard case. The Deceased Contributor died under the most tragic circumstances imaginable, leaving behind an infant son. But no matter how much I may sympathize with the child’s mother, I had to follow the facts and law where they led me. In the end, I was forced to conclude that the Appellant had not been cohabiting with the Deceased Contributor for a full year at the time of his death. For that reason, she is not entitled to the CPP survivor’s pension.

[41] The appeal is dismissed.



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Member, Appeal Division