



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. C. v Minister of Employment and Social Development*, 2019 SST 1679

Tribunal File Number: GP-18-649

BETWEEN:

**D. C.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Tyler Moore

Claimant represented by: P. C.

Videoconference hearing on: April 25, 2019

Date of decision: May 15, 2019

## **DECISION**

[1] The deceased contributor was not in a common-law relationship between July 2000 and the date of his death in August 2015. As such, his entitlement to the GIS should be based on his marital status being single/divorced during that time. My reasons are as follows.

## **OVERVIEW**

[2] The deceased contributor, or the Claimant's father R. C., first applied for an Old Age Security (OAS) pension on March 18, 1997. On that application he indicated that he was in a common-law relationship with a S. L.. On September 18, 1998 he submitted a declaration indicating that he co-habited with S. L. for six continuous years from March 1992 to March 1998, but they had since separated. In September 2015, S. L. submitted an application for a CPP Survivor's pension in relation to the deceased contributor. On that application S. L. indicated that she and the deceased contributor had actually been in a common-law relationship continuously since March 1991.

[3] As a result of the conflicting marital status declarations, the deceased contributor's GIS was investigated and re-calculated by the Minister. The Minister determined that he had not been entitled to the GIS from July 2000 until the time of his death in August 2015 because he had been in a common-law relationship. As a result, there had been overpayment made to him in the amount of \$39,879.80.

[4] The Claimant's requests that the Minister reconsider the decision to re-calculate the late contributor's GIS were denied. The Claimant, as representative for the deceased contributor's estate, then appealed the reconsideration decision to the Social Security Tribunal on March 14, 2018.

## **ISSUE**

[5] Was the deceased contributor in a common-law relationship with S. L. from March 1991 until the date of his death on August 22, 2015?

## **ANALYSIS**

[6] The *OAS Act* provides for the payment of a GIS benefit to low-income OAS recipients. The benefits are for a payment period and are based on the individual's marital status and income during the previous calendar year<sup>1</sup>. Recipients who are not married or not living in a common-law relationship are considered single and have their GIS eligibility assessed on the basis of their own income. Those with a spouse or common-law partner are assessed on the basis of their joint income. Any change in marital status must be made known to the department without delay.

[7] A common-law partner, in relation to an individual, is defined as 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. For greater certainty, in the case of an individual's death, the 'relevant time' means the time of the individual's death<sup>2</sup>.

[8] A non-exhaustive list of factors to be considered in determining whether there was cohabitation in a conjugal relationship includes<sup>3</sup>:

- Financial interdependence
- A sexual relationship
- A common residence
- Sharing of responsibilities in running the household
- Shared use of assets
- Shared vacations
- Named as beneficiary
- Public recognition

**i. The deceased contributor and S. L. resided together at the same physical address from the early 1990s until August 2015, but as friends/companions.**

[9] I found the Claimant to be credible. He testified in a forthright fashion answering questions related to his father's living situation, relationship status, and the interactions he had with his father and S. L. during the time period in question.

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<sup>1</sup> This can be found in s. 12 and s. 13 of the *OAS Act*.

<sup>2</sup> This can be found in s. 2 of the *OAS Act*.

<sup>3</sup> This Federal Court explains these factors in a case called *Hodge v. Canada (MHRD)*, 2004 SCC 65

[10] It has been generally accepted, and all parties agree, that S. L. and the deceased contributor resided together in an apartment at X, Sudbury, Ontario, for many years leading up to the time of his death. While the Minister contends that they were in a common-law relationship from March 1991 to August 2015, the Claimant submits that the relationship never met the CPP definition of common-law. The Claimant's father and S. L. resided together in a landlord/tenant relationship for financial purposes.

[11] The Claimant submitted that several pieces of evidence used by the Minister to arrive at their recent decision the deceased contributor was in a common-law relationship were based on S. L.'s subjective account and not facts. The Claimant submitted that just because his father and S. L. became patients of Dr. Bonin in 2003 and lived at the same address does not indicate that they were in a common-law relationship. Dr. Bonin's impression of the relationship was based on what he was being advised.

[12] The Claimant also cited a letter from the apartment building office manager at X, M. J., which noted that S. L. had lived in the building since 1982. M. J. indicated that the deceased contributor began living with S. L. in 1991, but his name had never been added to the lease. M. J. assumed they lived common-law, but had no first-hand knowledge of their actual living arrangement.

[13] An attorney friend of S. L., M. T., submitted a letter to Service Canada in September 2015 stating that S. L. had approached the deceased contributor on several occasions to establish a common-law relationship, but he had refused. M. T. went on to report that in 2013 the deceased contributor finally agreed to recognize their relationship. It was at that point that S. L. approached the Canada Revenue Agency (CRA) about beginning the procedure changing their marital status. A few months later, however, the deceased contributor had changed his mind and M. T. noted that he physically coerced S. L. into reversing the process with the CRA. According to M. T., she did so out of fear and not because the information was inaccurate. The Claimant submitted that when M. T. was later interviewed, he reported that he had always just assumed S. L. and the deceased contributor were a couple. When he had written his letter in September 2015 on S. L.'s behalf as a friend, it was a reflection of what she was telling him.

[14] The Claimant reiterated that many people simply assumed his father and S. L. were in a common-law relationship because they resided at the same address and were not in relationships with other people. Those assumptions, however, were not accurate. I accept the Claimant's testimony in this regard.

[15] In terms of the physical living situation, the Claimant submitted that the apartment his father and S. L. resided in had two bedrooms. One was for S. L. and the other was for his father. The majority of the apartment had been furnished by S. L., apart from a few personal items the deceased contributor kept in his room and a chair he sat in to watch television. Though the apartment insurance was listed in both S. L. and the deceased contributor's name in 2008, there is no evidence that the deceased contributor actually signed the request for change. The Claimant submitted that this policy change could have easily been done without the knowledge of his father.

[16] I am mindful that there have been multiple accounts submitted by S. L. attesting to a common-law relationship between she and the deceased contributor. However, those accounts have been subjective and based on either assumptions or self-report from S. L. herself. As a result, I have placed very limited weight on them.

**ii. The deceased contributor and S. L. did not present themselves publically as common-law partners.**

[17] The Claimant submitted that S. L. and his father lived very separate lives. They had separate friends and went on separate vacations. S. L. did attend a family wedding with the deceased contributor in 2012, but only for the day as his companion. She did not attend another family wedding in 2009 with the deceased contributor, and was not invited to family baptisms that also took place in 2009. In 2001, there was a family reunion that took place for the Claimant's family, and S. L. was not invited to be part of the family photograph that was taken.

[18] The Claimant submitted that he and his family did not ever see his father and S. L. show affection towards each other, and that they were never recognized by the family as being in a romantic or common-law relationship. I find this first-hand account to be indicative of a relationship that was not conjugal in nature.

**iii. The deceased contributor continually rejected the notion of a common-law relationship with S. L.. S. L.'s integrity and credibility are also historically questionable.**

[19] I find that the evidence on file demonstrates vastly conflicting evidence of claimed marital status, particularly by S. L. from the 1990s to present. In 2002 S. L. was actually charged and convicted of fraud over five thousand dollars after pleading guilty to embezzling money from a local elderly couple. She spent six months in jail as a result. I find that this speaks loudly to the nature of her character and limits the credibility of any subjective account regarding her relationship with the late contributor. According to the Claimant, S. L. used the common-law marital status with his father whenever it was to her benefit. The following evidence supports the Claimant's submission.

[20] When S. L. applied for a CPP disability pension in March 1997, she listed her marital status as common-law. On August 5, 1998, in a declaration of spouse's statement of income S. L. indicated that she and the deceased contributor had cohabited for 10 continuous years from 1988 to March 31, 1998. In August 1998, S. L. applied for a CPP retirement pension and listed her marital status as divorced. In 2003, she indicated on her application for an OAS pension that her marital status was divorced. On her GIS application dated September 2003 she also indicated that she had been divorced since 1982. It is also important to note that in a letter dated July 2011, S. L. inquired to the Minister about whether she was entitled to half of her spouse's CPP and Death benefits should he pass away before her. She quantified, however, that the deceased contributor paid half the rent, they filed taxes separately, and he had his own room.

[21] In September 1998, the deceased contributor noted in a letter submitted to the Minister that he had no intention of living in a common-law relationship. He also specified that he and S. L. did not publicly represent themselves as husband and wife. His income tax returns clearly list his marital status as separated/divorced/single in 1997, 1998, 2000, 2001, 2002, 2003, and 2006<sup>4</sup>. On January 4, 2013 the deceased contributor filed an objection letter to the Canada Revenue Agency regarding a notice he received which indicated that his marital status had changed from divorced to common-law. He specifically outlined that S. L. was his landlord and that he rented

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<sup>4</sup> GD2-470 to 477

a room from her for \$480/month. The CRA ruling was subsequently reverted back to divorced/single for the deceased contributor in 2014. S. L. also sent a letter of support to the Minister on June 8, 2014 in which she noted that the CRA had made a mistake and that she was not in a common-law relationship with the deceased contributor, and never was.

[22] I find that the evidence supports a consistent declaration by the deceased contributor that he was not in a common-law relationship prior to the time of his death. There is evidence that he went to great length to ensure that his marital status continued to be divorced/single whenever it was called into question. S. L.'s various applications and declarations, on the other hand, have been inconsistent in terms of her reported marital status. I am not satisfied that she acted in good faith when making representations that she and the deceased contributor were in a common-law relationship.

**iv. The deceased contributor and S. L.'s finances remained separate and distinct during the time period in question.**

[23] The Claimant has provided evidence of receipts indicating that the deceased contributor paid S. L. rent on a monthly basis for his room, and that he kept a record of several financial loans he made to S. L. while they resided together over the years.

[24] Following his father's death, the Claimant submitted that S. L. made no contribution to his funeral expenses or arrangements. She did, however, attend the hospital prior to his death, even though the deceased contributor reportedly asked her on multiple occasions not to. The Claimant submitted that following his father's death S. L. did continuously ask for a copy of the death certificate, which he provided.

[25] I have also considered S. L.'s declaration dated January 28, 2016 which noted that she and the late contributor lived together for 29 years and they shared living expenses equally. She indicated that they presented as husband and wife socially. In an email to the Claimant from S. L. dated July 3, 2016, however, she wrote that though she and the deceased contributor did not declare that they were common-law, the government had advised her that after living that long with a person, she was entitled to some of his pension. Unfortunately, simply residing with a

person at the same physical address does not meet the criteria of a common-law relationship according to the OAS Act.

[26] I have concluded that on a balance of probabilities the deceased contributor and S. L. were not in a common-law relationship, according to the OAS Act definition. Specifically, this occurred from at least 1998 until the time of death in August 2015. The deceased contributor and S. L. remained financially and socially independent from one another, the deceased contributor made no representation of S. L. as his common-law spouse to others, they did not share assets, and the deceased contributor paid regular rent to S. L. for his room in her apartment. There is no question that they shared a residence for many years and were companions for one another during that time. Companionship and living at the same address, however, does not equate to a conjugal relationship.

#### **CONCLUSION**

[27] The appeal is allowed.

Tyler Moore  
Member, General Division - Income Security